Property of U.S. Government Information GPO

4-30-80
Vol. 45 No. 85
Pages 28701-29000

federal register

Wednesday
April 30, 1980

Highlights

Briefings on How To Use the Federal Register—For details on briefings in **Washington, D.C.; New Orleans, La.; Salt Lake City, Utah; Seattle, Wash.; Chicago, Ill.; St. Louis, Mo.; and Pittsburgh, Pa.**, see announcement in the **Reader Aids** section at the end of this issue.

28701 **National Energy Conservation Days, National Transportation Week** Presidential proclamation

28784 **Petroleum Prices** Administrative Conference of the United States announces a meeting on 5–5–80 relating to enforcement procedures

28824 **Crude Oil Windfall Profit Tax** Interior/GS issues an interim notice providing guidance to Federal lessees and operators

28825–28828 **Oil, Gas and Sulphur** Interior/GS issues receipt of proposed development and production plans (11 documents)

28922 **Gasoline-Fueled Heavy-Duty Vehicles** EPA proposes evaporative emission regulation and test procedures for the control of hydrocarbons; comments by 7–7–80 (Part IV of this issue)

28758 **Income Tax** Treasury/IRS proposes a rule on work incentive program credit; comments by 6–30–80

CONTINUED INSIDE

Highlights

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

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by Act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers, free of postage, for $75.00 per year, or $45.00 for six months, payable in advance. The charge for individual copies is $1.00 for each issue, or $1.00 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

There are no restrictions on the republication of material appearing in the **Federal Register.**

Area Code 202–523–5240

28984 **Basic Educational Opportunity** HEW/OE establishes 1980–81 family contribution schedules, formulas used in determining student eligibility for grants (Part VII of this issue)

28817 **Follow Through Program** HEW/OE invites applicants to conduct expanded demonstration activities; apply by 5–30–80

28704 **Justice System Improvement** Justice/OJARS, LEAA, NIJ and BJS amend its nondiscrimination regulations affecting recipients of financial assistance; effective 4–30–80

28767 **Deceased Veterans** VA proposes to amend its procurement regulations by revising provisions relating to transportation allowances for burial of unclaimed veterans; comments by 5–29–80

28970 **Handicapped Persons** ATBCB proposes to revise regulations relating to compliance with standards for access to and use of buildings; comments by 6–30–80 (Part V of this issue)

28781 **VHF Public Coast Station** FCC deletes provisions that limit the entry of new stations into the market; comments by 6–30–80; reply comments by 7–30–80

28912 **Public Participation** EPA gives notice of proposed policy in order to enhance its ability to manage programs and make decisions in the public interest; comments by 6–30–80 (Part III of this issue)

28904 **DNA Molecules** HEW/NIH proposes actions to be taken under guidelines for research; comments by 5–30–80 (Part II of this issue)

28847 **Privacy Act Document** NRC

28704 **Import Trade** ITC clarifies ruling on time extensions to file exceptions to recommended findings

28785 **Loan Programs** USDA/CCC announces interest for 1973 and subsequent crop price support programs and farm storage and drying equipment

28851 **Sunshine Act Meetings**

Separate Parts of This Issue

28904 **Part II, HEW/NIH**
28912 **Part III, EPA**
28922 **Part IV, EPA**
28970 **Part V, ATBCB**
28981 **Part VI, USDA/FGIS**
28984 **Part VII, HEW/OE**

Contents

Federal Register
Vol. 45, No. 85
Wednesday, April 30, 1980

The President
PROCLAMATIONS
28701 Energy Conservation Days, National Transportation Week, 1980, National (Proc. 4753)

Executive Agencies

Administrative Conference of United States
NOTICES
Meetings:
28784 Ratemaking and Economic Regulation Committee

Agricultural Marketing Service
PROPOSED RULES
Milk marketing orders:
28734 Oklahoma Metropolitan et al.
28732 Potatoes (Irish) grown in Wash.

Agriculture Department
See Agricultural Marketing Service; Commodity Credit Corporation; Federal Crop Insurance Corporation; Federal Grain Inspection Service; Soil Conservation Service.

Air Force Department
NOTICES
Meetings:
28793 Scientific Advisory Board (2 documents)

Architectural and Transportation Barriers Compliance Board
PROPOSED RULES
28970 Handicapped persons, standards for access and use of buildings; practice and procedures for compliance hearings

Arts and Humanities, National Foundation
NOTICES
Meetings:
28844 Humanities Panel

Chrysler Corporation Loan Guarantee Board
RULES
28703 Sunshine Act meetings; implementation
NOTICES
28786 Meeting
28855 Meetings; Sunshine Act

Civil Aeronautics Board
NOTICES
28851 Meetings; Sunshine Act

Commerce Department
See also International Trade Administration; National Bureau of Standards; National Oceanic and Atmospheric Administration.
NOTICES
Committees; establishment, renewals, terminations, etc.:
28792 Gulf of Mexico and Pacific Fishery Management Councils Advisory Panels

Commodity Credit Corporation
NOTICES
28785 Loan and price support programs; interest rate

Commodity Futures Trading Commission
NOTICES
28851 Meetings; Sunshine Act (2 documents)

Defense Department
See also Air Force Department; Engineers Corps; Navy Department.
RULES
28714 Civilian health and medical program of uniformed services (CHAMPUS): last pay status clarification; double coverage

Drug Enforcement Administration
NOTICES
Registration applications, etc.: controlled substances:
28843 David H. Blanck & Co.
28844 Elizaga, Daniel P. M.D.
28844 Moss, Aaron A., D.D.S.

Economic Regulatory Administration
NOTICES
Consent orders:
28797 Maurice L. Brown Co.
Decisions and orders:
28796 Carmel Energy, Inc.
Electric energy transmission; exports to Canada or Mexico; authorizations, permits, etc.:
28794 Nebraska Public Power District; intervention of South Dakota State Planning Bureau
Powerplant and industrial fuel use; existing powerplant or installation; classification requests:
28796 Wisconsin Electric Power Co.
Powerplant and industrial fuel use; prohibition orders, exemption requests, etc.:
28794 Champlin Petroleum Co.

Education Office
RULES
28984 Basic educational opportunity grant program; family contribution schedules
NOTICES
Grants applications and proposals, closing dates:
28817 Follow Through Program; resource centers

Energy Department
See also Economic Regulatory Administration; Federal Energy Regulatory Commission; Hearings and Appeals Office, Energy Department; Southeastern Power Administration.
NOTICES
International atomic energy agreements; civil uses; subsequent arrangements:
28799 European Atomic Energy Community

Engineers Corps
RULES
Water resources policies and authorities:
28714 Participation in environmental quality improvements

Environmental Protection Agency
PROPOSED RULES
Air pollution control; new motor vehicles and engines:
28922 Evaporative emission standards, certification and test procedures; gasoline-fueled heavy-duty vehicles, 1983 and later model years
Air quality planning purposes; designation of areas:
28767 Ohio; extension of time
NOTICES
Meetings:
28806 Science Advisory Board
Pesticide registration, cancellation, etc.:
28805 Dowicil 75
Pesticides; emergency exemption applications:
28804 Benomyl
28803 Imazalil
28804 Oxamyl
Pesticides; tolerances in animal feeds and human food:
28803 Elanco Products Co.
28912 Public participation policy, proposed; inquiry
Toxic and hazardous substances control:
28805 Premanufacture notices receipts

Environmental Quality Office, Housing and Urban Development Department
NOTICES
Environmental statements; availability, etc.:
28819 South University Industrial Park, Albuquerque, N. Mex., et al.

Federal Communications Commission
RULES
Organization and functions:
28717 Science and Technology Office; reorganization
Radio services, special:
28721 Emergency radio service; one-way radio paging; correction
Radio stations; table of assignments:
28718 Arkansas
28718 Missouri
28719 New York
28720 Texas
PROPOSED RULES
Radio services, special:
28781 VHF public coast stations market; new stations entry limit; removal
Radio stations; table of assignments:
28775 Alaska; extension of time
28769 California
28771 Colorado
28777 Massachusetts
28778 New Mexico
28773 Oregon
28774 Vermont
28768 West Virginia
Television broadcasting:
28780 Cable television; frequency channelling requirements and restrictions, signal leakage, etc.; extension of time
Television stations; table of assignments:
28770 California
28775 Michigan and Ohio
NOTICES
28814 FM and television translator applications ready and available for processing
Hearings, etc.:
28806 American Communication Systems, Inc.
28808 Canyon Broadcasting Co. et al.
28810 Live Broadcasting Co., Inc., et al.
28809 Robinson, Elmer C.
28806 Wilson, Hosea et al.
28813 Wyomedia et al.
Meetings:
28808 Marine Services Radio Technical Commission
28815 National Industry Advisory Committee
Radio services, special:
28811 Domestic public land mobile radio service; construction permit applications for base stations on irregular terrain; processing procedures
28812 Public mobile radio service applications found to be defective and unacceptable for filing; return authorization
28808 Rulemaking proceedings filed, granted, denied, etc.; petitions by various companies
28808 Senior Executive Service Performance Review Board; membership

Federal Crop Insurance Corporation
PROPOSED RULES
Crop insurance; various commodities:
28726 Potatoes

Federal Energy Regulatory Commission
NOTICES
28852 Meetings; Sunshine Act

Federal Grain Inspection Service
NOTICES
Grain standards; inspection points:
28981 Ohio

Federal Maritime Commission
NOTICES
28852 Meetings; Sunshine Act

Federal Reserve System
NOTICES
Applications, etc.:
28816 Coastal Bankshares, Inc.
28816 Fabank, Inc.
28815 First Guthrie Corp.
28816 Frazee Bancorporation, Inc.
28817 Southern Bancorporation of Alabama et al.
28817 Stapleton Bancorporation, Ltd.
28816 Streator Bancorp., Inc.
28852 Meetings; Sunshine Act

Federal Trade Commission
PROPOSED RULES
Prohibited trade practices:
28754 Fred Meyer, Inc.

Fiscal Service
RULES
Bonds, U.S. savings:
28712 Series E offering; revision; correction

Fish and Wildlife Service
RULES
Endangered and threatened species:
28721 Goodenough gambusia
28722 National fish hatcheries

NOTICES
28823, 28824 Endangered and threatened species permits; applications (3 documents)

Foreign Claims Settlement Commission
NOTICES
28852 Meetings; Sunshine Act

General Services Administration
RULES
Procurement:
28716 Subcontracting under Federal contracts; socially and economically disadvantaged small business concerns; temporary
NOTICES
Public utilities; hearings, etc.; proposed intervention:
28817 Illinois Commerce Commission

Geological Survey
NOTICES
28824 Crude oil windfall profit tax; Federal royalty share
Outer Continental Shelf; oil, gas, and sulphur operations; development and production plans:
28825 Aminoil U.S.A., Inc.
28825 ARCO Oil & Gas Co.
28826 Conoco Inc.
28826 Exxon Co. U.S.A.
28826 Gulf Oil Exploration & Production Co.
28826 Ocean Production Co.
28827 Pennzoil Co. (2 documents)
28827 Shell Oil Co.
28828 Superior Oil Co.
28828 Tenneco Oil Exploration & Production

Health, Education, and Welfare Department
See also Education Office; National Institutes of Health.
NOTICES
Meetings:
28819 Education Statistics Advisory Council
28818 HEW/Navy Bethesda cogeneration project

Hearings and Appeals Office, Energy Department
NOTICES
Applications for exception:
28797 Decisions and orders

Heritage Conservation and Recreation Service
RULES
28716 Historic Places National Register; CFR part redesignation
NOTICES
28828 World heritage properties list; U.S. nominations inventory

Housing and Urban Development Department
See Environmental Quality Office, Housing and Urban Development Department.

Interior Department
See Fish and Wildlife Service; Geological Survey; Heritage Conservation and Recreation Service; Land Management Bureau; National Park Service; Surface Mining Office.

Internal Revenue Service
PROPOSED RULES
Income taxes:
28758 Work incentive program (WIN) credit

International Trade Administration
NOTICES
Countervailing duty petitions and preliminary determinations:
28786 Fasteners from India

International Trade Commission
RULES
28704 Investigations of unfair practices in import trade; filing of exceptions and alternative findings
NOTICES
Import investigations
28843 Airtight cast-iron stoves; termination
28842 Anaerobic impregnating compositions and components
28840 Clams in airtight containers from Canada

Interstate Commerce Commission
NOTICES
Motor carriers:
28831 Finance applications
28837 Released rates applications
28832 Temporary authority applications
28837 Transportation of Government traffic; special certificate letter

Justice Assistance, Research, and Statistics Office
RULES
28704 Nondiscrimination in federally assisted programs

Justice Department
See also Drug Enforcement Administration; Justice Assistance, Research and Statistics Office.
NOTICES
Meetings:
28843 Circuit Judge Nominating Commission, U.S.

Land Management Bureau
NOTICES
Alaska native claims selections; applications, etc.:
28820 Doyon, Ltd.
Meetings:
28823 Southern Appalachian Regional Coal Team
Outer Continental Shelf:
28822 Oil and gas lease sales; restricted joint bidders; list; correction
Wilderness areas; characteristics, inventories, etc.:
28822 Arizona
28823 Montana

National Aeronautics and Space Administration
NOTICES
Meetings:
28844 Life Sciences Advisory Committee

National Bureau of Standards
NOTICES
Information processing standards; Federal:
28789 I/O channel level interface standards; inquiry
28788 Parallel recorded magnetic tape cartridge for information interchange

National Institutes of Health
NOTICES
Meetings:
28904 Recombinant DNA Advisory Committee
28904 Recombinant DNA research; proposed actions under guidelines; inquiry

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
28723 Alaska salmon; emergency rules

National Park Service
RULES
28716 Historic Places National Register; CFR part redesignation
NOTICES
Meetings:
28830 Chesapeake and Ohio Canal National Historical Park Commission

Navy Department
NOTICES
Meetings:
28793 Naval Discharge Review Board
28794 Navy Resale System Advisory Committee

Nuclear Regulatory Commission
NOTICES
Applications, etc.:
28844 Arkansas Power & Light Co.
28845 Consumers Power Co.
28846 Philadelphia Electric Co. et al.
28852 Meetings; Sunshine Act (2 documents)
28847 Privacy Act; systems of records

Occupational Safety and Health Review Commission
NOTICES
28852, 28853 Meetings; Sunshine Act (3 documents)

Postal Service
NOTICES
28853, 28854 Meetings; Sunshine Act (3 documents)

Securities and Exchange Commission
NOTICES
28854 Meetings; Sunshine Act

Small Business Administration
NOTICES
Applications, etc.:
28848 Greater Baltimore City Venture Capital Corp.
Disaster areas:
28847 Arkansas
28848 Connecticut
28848 Oklahoma
28848 Texas
28849 Wisconsin

Soil Conservation Service
NOTICES
Environmental statements; availability, etc.:
28785 Colorado River Water Quality Improvement Program

Southeastern Power Administration
NOTICES
28800 Kerr-Philpott projects; power rates; interim extensions

State Department
NOTICES
Meetings:
28849 Shipping Coordinating Committee

Surface Mining Office
PROPOSED RULES
Abandoned mine lands reclamation program; plan submissions:
28765 Texas

Tennessee Valley Authority
NOTICES
Environmental statements, availability, etc.:
28849 Sequoyah Nuclear Plant, Hamilton County, Tenn.; low-level radioactive waste management

Textile Agreements Implementation Committee
NOTICES
Cotton and man-made textiles:
28792 Haiti

Trade Representative, Office of United States
NOTICES
Import Quotas:
28847 Anhydrous ammonia from Soviet Union; discontinuation of temporary restraints

Treasury Department
See also Fiscal Service; Internal Revenue Service.
NOTICES
Meetings:
28849 Small Business Advisory Committee
28850 Senior Executive Service Performance Review Board; membership

Veterans Administration
PROPOSED RULES
28767 Procurement; mortuary services
NOTICES
Meetings:
28850 Educational Allowances Station Committee

MEETINGS ANNOUNCED IN THIS ISSUE

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES
28784 Enforcement of Petroleum Price Regulations, 5–5–80

CHRYSLER CORPORATION LOAN GUARANTEE BOARD
28786 Meeting, 4–29–80

DEFENSE DEPARTMENT
Air Force Department—
28793 Scientific Advisory Board, 6–3 through 6–6–80 (2 documents)
Navy Department—
28793 Naval Discharge Review Board, April through October meetings
28794 Navy Resale System Advisory Committee, 5–26–80

ENVIRONMENTAL PROTECTION AGENCY

28806 Science Advisory Board, Energy-Related Health Effects Research Subcommittee, 5–21 and 5–22–80

FEDERAL COMMUNICATIONS COMMISSION

28815 National Industry Advisory Commission, Amateur Radio Services Subcommittee, 5–16–80

28808 Radio Technical Commission for Marine Services, Executive Committee, 5–15–80

HEALTH, EDUCATION, AND WELFARE DEPARTMENT

National Institutes of Health—

28904 Recombinant DNA Advisory Committee, 6–5 and 6–6–80

Office of the Secretary—

28819 Education Statistics Advisory Council, 5–14 and 5–15–80

28818 HEW/Navy Bethesda Cogeneration Project, 6–11–80

INTERIOR DEPARTMENT

Land Management Bureau—

28823 Southern Appalachian Regional Coal Team, 5–29–80

National Park Service—

28830 Chesapeake and Ohio Canal National Historic Park Commission, 5–17–80

JUSTICE DEPARTMENT

28843 U.S. Circuit Judge Nominating Commission Second Circuit Panel, 5–7–80

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

28844 NASA Advisory Council, Life Sciences Advisory Committee, 5–5–80

STATE DEPARTMENT

28849 Shipping Coordinating Committee, Safety of Life at Sea Subcommittee, 5–12–80

TREASURY DEPARTMENT

Office of the Secretary—

28849 Treasury Small Business Advisory Committee, 5–12 and 5–13–80

VETERANS ADMINISTRATION

28850 Station Committee on Educational Allowances, 5–28–80

CHANGED MEETING

ARTS AND HUMANITIES, NATIONAL FOUNDATION

28844 Humanities Panel Advisory Committee, changed from 4–25–80 to 4–30–80

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Proclamations:

4753 28701

7 CFR

Proposed Rules:

422 28726
946 28732
1071 28734
1073 28734
1104 28734
1106 28734
1126 28734
1132 28734

13 CFR

400 28703

16 CFR

Proposed Rules:

13 28754

19 CFR

210 28704

26 CFR

Proposed Rules:

1 28758

28 CFR

42 28704

30 CFR

Proposed Rules:

943 28765

31 CFR

316 28712

32 CFR

199 28714

33 CFR

236 28714

36 CFR

63 28716
1204 28716

Proposed Rules:

1150 28970

40 CFR

Proposed Rules:

81 28767
86 28922

41 CFR

Ch. I 28716

Proposed Rules:

8–4 28767

45 CFR

174 28984
175 28984
176 28984
190 28984

47 CFR

0 28717
73 (4 documents) 28718, 28720
90 28721

Proposed Rules:

73 (10 documents) 28768–28778
76 28780
81 28781

50 CFR

17 28721
70 28722
674 28723

Federal Register
Vol. 45, No. 85
Wednesday, April 30, 1980

Presidential Documents

Title 3—

The President

Proclamation 4753 of April 28, 1980

National Energy Conservation Days, National Transportation Week, 1980

By the President of the United States of America

A Proclamation

The security of our Nation and the vitality of our economy are dependent on our wise use of limited energy resources. Transportation consumes half of our petroleum fuel. As a Nation we have begun to conserve, but we can do much more—by using public transit, by joining carpools and vanpools, by driving efficiently, and by observing the 55 mile-per-hour speed limit.

Public transit plays an important role in the life of our cities by providing an energy-efficient means of commuting, by helping to relieve congestion, by improving air quality, and by helping to revitalize our downtown areas. Public transit is the best, and sometimes the only, means of transportation for many of our elderly, our poor, and our very young.

The national maximum 55 mile-per-hour speed limit is a proven way to save lives and energy. If all motorists obeyed the law, we would save almost 6 billion gallons of motor fuel each year. Compliance with the law also saves lives. For the three years before the 55 mile-per-hour speed limit became law annual fatalities averaged more than 54,000. For the following three years the average dropped to 45,000, proving that the law has been the single biggest factor in reducing highway fatalities.

The immense expenditure for individual driving adds to inflation, seriously affects our balance of payments, and threatens our standard of living. Careful selection, operation, and maintenance of our vehicles can reverse the trend in operating costs for all of us and reduce the need for imported oil.

Ridesharing has enormous energy-saving potential and can reduce substantially our Nation's dependence on imported oil. Currently, 52 million people drive alone to work. If these drivers joined together in sharing the ride, at least 26 million cars would be removed from our congested highways, and we could save an additional 22.7 million gallons of fuel each workday and help improve our air quality.

In view of the contributions of these measures to the conservation of our energy resources, NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, designate

Monday, May 12, 1980, as National Public Transit Day

Tuesday, May 13, 1980, as National Drive 55 Day

Wednesday, May 14, 1980, as National Driver Efficiency Day, and

Thursday, May 15, 1980, as National Ridesharing Day.

I urge all Governors, appropriate Federal officials, transportation organizations, and the people of the United States to join with the U.S. Department of Transportation in observing these days in recognition of the vital role that transportation plays in our daily lives and in the future of an energy-secure America.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of April, in the year of our Lord nineteen hundred and eighty, and of the Independence of the United States of America the two hundred and fourth.

Jimmy Carter

[FR Doc. 80-13391
Filed 4-28-80; 3:01 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 45, No. 85
Wednesday, April 30, 1980

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.

CHRYSLER CORPORATION LOAN GUARANTEE BOARD

13 CFR Part 400

Compliance With Government in the Sunshine Act

AGENCY: Chrysler Corporation Loan Guarantee Board.

ACTION: Final rule.

SUMMARY: The Board has adopted interim regulations governing the means and rules by which the Board will act for the period it is under court order to comply with the provisions of the Government in the Sunshine Act, 5 U.S.C. 552b.

EFFECTIVE DATE: The regulations are effective April 28, 1980.

FOR FURTHER INFORMATION CONTACT: Brian M. Freeman, Executive Director and Secretary, Chrysler Corporation Loan Guarantee Board, 15th Street and Pennsylvania Avenue, NW., Washington, D.C. 20220. Telephone Number 202/566–5888.

SUPPLEMENTARY INFORMATION: On January 7, 1980, the President signed into law the Chrysler Corporation Loan Guarantee Act of 1979, Pub. L. 96–185 (the "Act"), establishing the Board. Under the Act the Board is authorized, on terms and conditions it deems appropriate, to make commitments to guarantee loans and to issue guarantees for the repayment of principal and interest of loans for the benefit of the Chrysler Corporation. The Act requires the Board to make certain determinations, which are specified in the Act, prior to making such commitments or guarantees. The Act also requires the Board to make certain reports to Congress.

Regulations governing the procedures of the Board were adopted on January 31, 1980, 13 CFR Part 400 and published in 45 FR 8940, Vol. 29 dated February 11, 1980. The regulations are based upon the position of the Board that it is not an agency subject to the Government in the Sunshine Act, 5 U.S.C. 552b. On April 25, 1980, the United States District Court for the District of Columbia served the Board with a temporary restraining order preventing for 10 days the Board from holding any meeting not consistent with the provisions of the Government in the Sunshine Act. *Symons* v. *Chrysler Corporation Loan Guarantee Board,* Civil No. 80–1036. The interim rules are adopted to provide procedures for the Board to act for the period it is subject to court order to comply with the Government in the Sunshine Act.

Part 400 of Title 13 of the Code of Federal Regulations is amended by adding a new § 400.8 to read as follows.

§ 400.8 Compliance with Government in the Sunshine Act.

(a) The rules of this section apply only for the period of time the Board is under court order to comply with the Government in the Sunshine Act, 5 U.S.C. 552b.

(b) The provisions of this section will supercede the provisions of § 400.5 to the extent inconsistent therewith.

(c) *Meetings and Actions of the Board*—(1) *General Rule—Plan and Frequency.* A public announcement will be made at least seven days before the meeting stating the time, place, and the subject matter of the meeting, whether it is to be open or closed, and the identity and phone number of the Secretary of the Board who may be contacted for information about the meeting.

(2) *Shorter notice of time of meeting.* A majority of the Board members may call a meeting of the Board at an earlier time than seven days hence if the majority determine that the business of the Board makes it necessary to do so. The vote of the Board members will be recorded. A public announcement containing the information detailed in paragraph (c)(1) of this section will be made as soon as practicable.

(3) *Change in meeting*—(i) *Time.* The time of the meeting may be changed by the chairperson provided notice of the change is made at the earliest practicable time. If the change will be to shorten the time of notice of meeting to less than seven days, the provisions of paragraph (c)(2) of the section must be met.

(ii) *Subject or openness of meeting.* A change in the subject of a meeting or the determination to open or close the meeting or portion thereof to the public will be upon a majority vote of the entire Board membership that such action is necessary to the business of the Board and that no earlier announcement was possible. A public announcement of the change and of the recorded vote will be made at the earliest practicable time.

(4) *Federal Register Notice.* Notices will be submitted to the **Federal Register** immediately following each public announcement referred to in this paragraph. The notice will contain the same information as the public announcement.

(5) *Transcript.* The secretary shall cause an electronic recording or other verbatem transcript to be made of every Board meeting. For closed Board meetings, or portions thereof, the secretary shall as soon as practicable, review the transcript and have the non-exempt portions made available to the public for inspection. Copies may be furnished upon tender of the costs of duplication.

(6) *Closing of meetings*—(i) *By the Board.* By a majority vote of its membership, the Board may close to the public a meeting, portions of a meeting, a series of meetings or portions thereof involving the same particular matters, and information received by the Board. A series of meetings may not be closed for more than 30 days by a single vote. The vote shall be recorded; no proxies are allowable. In considering whether a meeting may be closed, the Board will obtain the advice of its General Counsel that there is a basis for doing so under the Government in Sunshine Act. If there is a closing, the General Counsel will certify that in his or opinion the meeting may be closed and will state the relevent exemption provision. There will be retained by the secretary a copy of the certification and a statement of the presiding officer of the closed meeting setting forth the time and place of the meeting and the persons present.

(ii) *Notice.* Within one day of any vote under this paragraph, a written copy of the vote will be made available to the public. If a meeting or portion thereof is closed, there will be made available to the public within one day a full written explanation of its closing action and a

list of persons expected to attend the closed meeting and their affiliations.

(iii) *Emergency votes.* If a meeting or portion thereof may properly be closed because of section 552b(c) (4), (8), (9)(A), or (10), it may be closed by a majority vote of the members taken at the beginning of the meeting. The vote shall be recorded and made available to the public. To the extent not exempt from disclosure under section 552b(c), public announcement of the time, place and subject matter of the meeting will be made at the earliest practicable time.

Dated: April 28, 1980.

Brian M. Freeman,

Secretary, Chrysler Corporation Loan Guarantee Board.

[FR Doc. 80-13441 Filed 4-29-80; 8:45 am]

BILLING CODE 4810-27-M

INTERNATIONAL TRADE COMMISSION

19 CFR Part 210

Import Trade; Investigations of Alleged Unfair Practices

AGENCY: United States International Trade Commission.

ACTION: Final rule.

SUMMARY: Part 210 of the Commission's *Rules of Practice and Procedure* contains rules for the conduct of investigations of alleged unfair practices in the import trade. The Commission conducts such investigations pursuant to section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337). Commission § 210.54 concerns the filing of (1) exceptions to the presiding officer's recommended determination, and (2) alternative findings of fact and conclusions of law. The Commission is amending § 210.54 to make clear that motions for extensions of time in which to file exceptions to the recommended determination and alternative findings of fact and conclusions of law will be ruled upon by the Commission. The amended rule also provides that such motions may be ruled upon by the Commission on an ex parte basis.

EFFECTIVE DATE: April 30, 1980.

FOR FURTHER INFORMATION CONTACT: N. Tim Yaworski, Office of the General Counsel, U.S. International Trade Commission, 701 E Street, NW., Washington, D.C., telephone (202) 523-0311.

Section 210.54 of the U.S. International Trade Commission's *Rules of Practice and Procedure* is amended to read as follows:

§ 210.54 Filing of exceptions to the recommended determination and alternative findings of fact and conclusions of law.

Except as otherwise authorized by the Commission, the parties shall be allowed ten (10) days from the date of service of the recommended determination to file exceptions to the recommended determination and alternative findings of fact and conclusions of law with the Commission. All exceptions and alternative findings of fact and conclusions of law shall be concisely supported by references to the record and the law relied upon. The Commission may rule upon motions for extension of time to file exceptions ex parte.

By order of the Commission.
Issued: April 15, 1980.

Kenneth R. Mason,

Secretary.

[FR Doc. 80-13286 Filed 4-29-80; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Office of Justice Assistance, Research, and Statistics

28 CFR Part 42

Nondiscrimination in Federally Assisted Programs

AGENCY: Department of Justice/Office of Justice Assistance, Research, and Statistics (OJARS), Law Enforcement Assistance Administration (LEAA), National Institute of Justice (NIJ), Bureau of Justice Statistics (BJS).

ACTION: Final rule.

SUMMARY: OJARS is amending its nondiscrimination regulations, affecting recipients of financial assistance from LEAA, NIJ, and BJS, to conform them to statutory amendments made by the Justice System Improvement Act of 1979 (JSIA).

EFFECTIVE DATE: April 30, 1980.

FOR FURTHER INFORMATION CONTACT: Thomas J. Madden, General Counsel, OJARS or David I. Tevelin, Attorney-Advisor, OJARS Office of General Counsel (202) 724-6235.

SUPPLEMENTARY INFORMATION: The Law Enforcement Assistance Administration (LEAA) was reorganized by the Justice System Improvement Act of 1979 (JSIA), Pub. L. 96-157, on December 27, 1979. Section 817(d) of the act directed the Office of Justice Assistance, Research, and Statistics (OJARS), one of the new agencies created by the Act, to "review existing civil rights regulations and conform them" to the Act within 120 days after its enactment. Those regulations, the LEAA Nondiscrimination Regulations, are codified at 28 CFR 42.201, *et seq.*

The civil rights provisions in the JSIA differ from the previously applicable provisions in the Crime Control Act of 1976, Pub. L. 94-503, in only three respects. First, section 815(c) of the JSIA now vests the civil rights authority previously given to the Administrator of LEAA in the Director of OJARS. Changes reflecting that amendment have been made throughout the regulation. Second, section 815(b) of the JSIA no longer contains the provision previously found in section 518(b) of the Crime Control Act that forbade LEAA from requiring a recipient to adopt quotas in order to eliminate a racial imbalance. That restriction has, accordingly, been eliminated from section 42.203(j) of the regulations. Third, the new Act specifies that all compliance hearings should be held on the record in accordance with the Administrative Procedures Act, 5 U.S.C. 554. See section 815(c)(2) (F) and (G) of the JSIA. Sections 42.202(a) and 42.213(a) of the regulations have been amended to reflect this change.

OJARS' review of the previous regulations also revealed a number of areas not related to the passage of the new Act that also warranted amendment. Because most of these amendments are procedural, technical, or purely informational, they are being made as final in the manner specified below.

1. All references in the LEAA Nondiscrimination Regulations to "section 262 of the Juvenile Justice Act" have been eliminated. The Juvenile Justice Amendments of 1977, Pub. L. 95-115, eliminated the civil rights provisions formerly found in section 262(b) of the Juvenile Justice Delinquency and Prevention Act of 1974, as amended, 42 U.S.C. 5601, *et seq.*, (JJ Act), and made the civil rights provisions of the Crime Control Act, supra, applicable to recipients of funds under the JJ Act. See 42 U.S.C. 5672. Many of the references to section 262 were eliminated from the regulations on June 30, 1978 (43 FR 28794). The references retained since that date are, by this time, unnecessary as a point of reference to Juvenile Justice Act recipients. OJARS wishes to emphasize, however, that the deletion of the reference to section 262 does not mean that the civil rights provisions of the JSIA are not applicable to Juvenile Justice Act recipients. Those provisions apply to those recipients in the identical

manner that they apply to JSIA recipients.

2. Section 42.205(a) has been amended to specify that OJARS will investigate only those complaints "filed by or on behalf of an individual claiming to be aggrieved." This change conforms the regulations to the agency's actual practice and to the Equal Employment Opportunity Commission's complaint investigation regulations, 29 CFR 1601.7(a). Letters that charge a recipient with discrimination, without citing a specifically aggrieved individual, will be considered in the selection of recipients for compliance reviews under § 42.206, but will not initiate a complaint investigation under § 42.205.

OCRC will, however, treat as complaints letters that are filed on behalf of an individual who does not wish to have his identity divulged to the allegedly discriminating agency, and investigate them pursuant to § 42.205.

3. Former §§ 42.208 and 42.209 are no longer "reserved." Accordingly, former §§ 42.210–42.217 have been redesignated as §§ 42.208–42.215, in sequence.

4. The reference to pre-award compliance reviews that was previously in the Commentary on § 42.206(a) has been eliminated and replaced, with some elaboration, by § 42.206(b) of the regulations themselves.

5. Section 42.201(a) has been amended to expressly note that the regulations implement not only the nondiscrimination provisions of the Justice System Improvement Act, but Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, and Executive Order 12138 (requiring all Federal agencies to take steps to support women's business enterprise) as well. Numerous citations in the regulations to other statutes, regulations, and guidelines have also been updated.

6. A definition has been added to explain that all masculine terms, such as "he," "him," and "his," should be construed to mean their respective feminine counterparts, "she," "her" and "hers," where appropriate. See section 42.202(s).

7. The reference in § 42.208(b) to the West Publishing Company's National Reporter System as a source for finding "pattern or practice" findings of discrimination against JSIA recipients has been eliminated. This reference has proven only duplicative of the other sources listed in § 42.208(b).

8. Section 42.205(c)(5) has been amended in order to clarify that OJARS will monitor ongoing litigation between a complainant and a recipient primarily through the court docket. The complainant will be contacted only if the docket does not sufficiently disclose the current status of the case. The term "where necessary" has accordingly been inserted before the phrase "contacts with the complaint" in § 42.205(c)(5).

9. The Commentary on § 42.205(c)(1) has been amended to require that a recipient must have been receiving LEAA, NIJ, or BJS assistance at the time of the alleged discrimination if OJARS is to have jurisdiction over the complaint. The complaint will be investigated even if the respondent agency is no longer a recipient at the time the complaint is received.

10. A number of other grammatical, technical, and clarifying changes that do not substantively affect the regulations have also been made. Compare specifically, §§ 42.202(d), 42.203(b)(9), 42.203(c), 42.203(e), 42.203(f), 42.203(g), 42.204(c), 42.205(c)(3)(i), 42.205(c)(4), 42.205(c)(5), 42.206(c), 42.206(c)(2), 42.206(d)(3), 42.206(e), 42.206(f), 42.208(a)(2), 42.208(b)(2), 42.208(c), 42.208(c)(3), 42.208(e) (i) (ii), 42.208(g)(3), 42.308(g)(4), 42.210(a), and the Commentary on §§ 42.203(j) and 42.205(b), with their respective predecessor sections.

OJARS expects to publish a Proposed Rule for §§ 42.203(b)(8) and 42.204(b) in the near future. Section 42.203(b)(8) would specifically prohibit a JSIA or Juvenile Justice (JJ) Act recipient from depriving any person of his or her constitutional rights on the basis of race, color, religion, national origin, or sex. Section 42.204(b) would prohibit certain awards of assistance under the JSIA or the JJ Act until the applicant's Equal Employment Opportunity Program (EEOP) has been approved by OJARS. These paragraphs are shown as reserved in this final rule.

There have been no changes in the complaint investigation and compliance review timetables published as final on February 16, 1977, 42 FR 9492. Part 42 of title 28 CFR is amended by revising Subpart D to read as follows:

PART 42—NONDISCRIMINATION; EQUAL EMPLOYMENT OPPORTUNITY; POLICIES AND PROCEDURES

Subpart D—Nondiscrimination in Federally Assisted Programs—Implementation of Section 815(c)(1) of the Justice System Improvement Act of 1979

Sec.

42.201 Purpose and application.
42.202 Definitions.
42.203 Discrimination prohibited.
42.204 Applicants' obligations.
42.205 Complaint investigation.
42.206 Compliance reviews.
42.207 Compliance information.
42.208 Notice of noncompliance.
42.209 Compliance secured.
42.210 Compliance not secured.
42.211 Resumption of suspended funds.
42.212 Preliminary hearing.
42.213 Full hearing.
42.214 Judicial review.
42.215 Other actions authorized under the JSIA.
Appendix A—Commentary.

Authority: Secs. 802(a), 815(c), and 817(d) of the Justice System Improvement Act of 1979, 42 U.S.C. § 3701, *et seq.*, as amended (Pub. L. 90–351, as amended by Pub. L. 93–83, Pub. L. 93–415, Pub. L. 94–503, and Pub. L. 96–157 (December 27, 1979) (JSIA) and Sec. 262 of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, 42 U.S.C. 5672 (Pub. L. 93–415, as amended by Pub. L. 95–115)).

Subpart D—Nondiscrimination in Federally Assisted Programs—Implementation of Section 815(c)(1) of the Justice System Improvement Act of 1979

§ 42.201 Purpose and application.

(a) The purpose of this subpart is to implement the provisions of section 815(c) of the Justice System Improvement Act of 1979 (42 U.S.C. 3789d(c); Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d; and Title IX of the Education Amendments of 1972, 20 U.S.C. 1681, *et seq.*, to the end that no person in any State shall on the ground of race, color, national origin, sex, or religion be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment in connection with any program or activity funded in whole or in part with funds made available under either the Justice System Improvement Act or the Juvenile Justice Act by the Law Enforcement Assistance Administration, the National Institute of Justice, or the Bureau of Justice Statistics. These regulations also implement Executive Order 12138, which requires all Federal agencies awarding financial assistance to take certain steps to advance women's business enterprise.

(b) The regulations in this subpart apply to the delivery of services by, and employment practices of recipients administering, participating in, or substantially benefiting from any program or activity receiving Federal financial assistance extended under the Justice System Improvement Act of 1979, or the Juvenile Justice and Delinquency Prevention Act of 1974, as amended.

(c) Where a private recipient which receives such assistance through a unit of government is engaged in prohibited discrimination, the Office of Justice Assistance, Research, and Statistics will invoke the enforcement procedures of this subpart (Sections 42.208, *et seq.*) against the appropriate unit of government for failure to enforce the

assurances of nondiscrimination given it by the private recipient pursuant to § 42.204(a). Where a private recipient receives assistance either directly from the Law Enforcement Assistance Administration, the National Institute of Justice, or the Bureau of Justice Statistics or through another private entity which receives funds directly from one of those agencies, compliance will be enforced pursuant to section 803(a) of the Justice System Improvement Act.

§ 42.202 Definitions.

(a) "JSIA" means the Justice System Improvement Act of 1979, Pub. L. 96–157, 42 U.S.C. 3701, *et seq.*

(b) "Juvenile Justice Act" means Title I and II of the Juvenile Justice and Delinquency Prevention Act of 1974, Pub. L. 93–415, as amended by Pub. L. 94–503 and Pub. L. 95–115.

(c) "OJARS" or "Office" means the Office of Justice Assistance, Research, and Statistics.

(d) "LEAA" means the Law Enforcement Assistance Administration.

(e) "NIJ" means the National Institute of Justice.

(f) "BJS" means the Bureau of Justice Statistics.

(g) "Employment practices" means all terms and conditions of employment including but not limited to, all practices relating to the screening, recruitment, referral, selection, training, appointment, promotion, demotion, and assignment of personnel, and includes advertising, hiring, assignments, classification, discipline, layoff and termination, upgrading, transfer, leave practices, rate of pay, fringe benefits, or other forms of pay or credit for services rendered and use of facilities.

(h) "Investigation" includes fact-finding efforts and, pursuant to § 42.205(c)(3), attempts to secure the voluntary resolution of complaints.

(i) "Compliance review" means a review of a recipient's selected employment practices or delivery of services for compliance with the provisions of section 815(c)(1) of the Justice System Improvement Act, or this subpart.

(j) "Noncompliance" means the failure of a recipient to comply with section 815(c)(1) of the Justice System Improvement Act, or this subpart.

(k) "Program or activity" means the operation of the agency or organizational unit of government receiving or substantially benefiting from financial assistance awarded, e.g., a police department or department of corrections.

(l) "Pattern or practice" means any procedure, custom, or act affecting or potentially affecting, more than a single individual in a single or isolated instance.

(m) "Religion" includes all aspects of religious observance and practice as well as belief.

(n) "Recipient" means any State or local unit of government or agency thereof, and any private entity, institution, or organization, to which Federal financial assistance is extended directly, or through such government or agency, but such term does not include any ultimate beneficiary of such assistance.

(o) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands;

(p) "Unit of local government" means any city, county, township, town, borough, parish, village or other general purpose political subdivision of a State, an Indian tribe which performs law enforcement functions as determined by the Secretary of the Interior, or, for the purpose of assistance eligiblity, any agency of the District of Columbia government or the United States Government performing law enforcement functions in and for the District of Columbia;

(q) "Combination" as applied to States or units of local government means any grouping or joining together of such States or units for the purpose of preparing, developing, or implementing a criminal justice program or project;

(r) "Criminal justice control" or "CJC" means the agency designated by a State to perform the functions listed in section 402(b)(1) of the Justice System Improvement Act.

(s) All masculine terms such as "he," "his," and "him" should be construed to mean their respective feminine counterparts, "she," "hers," and "her," where appropriate.

§ 42.203 Discrimination prohibited.

(a) No person in any State shall on the ground of race, color, religion, national origin, or sex be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or denied employment in connection with any program or activity funded in whole or in part with funds made available under the JSIA or the Juvenile Justice Act.

(b) A recipient may not, directly or through contractual or other arrangements, on the grounds set forth in paragraph (a) of this section:

(1) Deny an individual any disposition, service, financial aid, or benefit provided under the program;

(2) Provide any disposition, service, financial aid, or benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;

(3) Subject an individual to segregation or separate treatment in any matter related to his receipt of any disposition, service, financial aid, or benefit under the program;

(4) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any disposition, service, or financial aid or benefit under the program;

(5) Treat an individual differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership, or other requirement or condition which individuals must meet in order to be provided any disposition, service, financial aid, function, or benefit provided under the program;

(6) Deny an individual an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program;

(7) Deny a person the opportunity to participate as a member of a planning or advisory body which is an integral part of the program;

(8) [Reserved]

(9) Subject any individual to discrimination in its employment practices in connection with any program or activity funded in whole or in part with funds made available under the JSIA or the Juvenile Justice Act;

(10) Use any selection device in a manner which is inconsistent with the Department of Justice Uniform on Employee Selection Guidelines, 28 CFR 50.14.

(c) In matters involving employment discrimination, section 815(c)(1) of the JSIA shall be interpreted by the Office consistently with Title VII of the Civil Rights Act of 1964, Pub. L. 88–352, 79 Stat. 253, as amended by the Equal Employment Opportunity Act of 1972, Pub. L. 92–261, 87 Stat. 103, and the Pregnancy Discrimination Act, Pub. L. 95–555, 92 Stat. 2076.

(d) The use of a minimum height or weight requirement which operates to disproportionately exclude women and persons of certain national origins, such as persons of Hispanic or Asian descent, is a violation of this subpart, unless the recipient is able to demonstrate convincingly, through use of supportive factual data, that the requirement has been validated as set forth in the

Department of Justice Guidelines on Employee Selection Procedures, 28 CFR 50.14.

(e) A recipient, in determining the type of disposition, services, financial aid, benefits, or facilities which will be provided under any program, or the class of individuals to whom, or the situations in which, such will be provided under any program, may not directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination under section 815(c)(1) of the JSIA, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, sex, national origin, or religion.

(f) In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding individuals from, denying them the benefits of, subjecting them to discrimination under, or denying them employment in connection with any program or activity to which this subpart applies; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the JSIA, the Juvenile Justice Act, or this subpart.

(g) For the purposes of this section, the disposition, services, financial aid, or benefits provided under a program or activity receiving Federal financial assistance shall be deemed to include any portion of any program or function or activity conducted by any recipient of Federal financial assistance which program, function, or activity is directly or indirectly improved, enhanced, enlarged, or benefited by such Federal financial assistance or which makes use of any facility, equipment, or property provided with the aid of Federal financial assistance.

(h) The enumeration of specific forms of prohibited discrimination in paragraphs (b) through (g) of this section does not limit the generality of the prohibition in paragraph (a) of this section.

(i)(1) In administering a program regarding which the recipient has previously discriminated against persons on the ground of race, color, religion, national origin, or sex, the recipient must take affirmative action to overcome the effects of prior discrimination.

(2) Even in the absence of such prior discrimination, a recipient in administering a program may take affirmative action to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color, religion, national origin, or sex.

(j) Nothing contained in this subpart shall be construed as requiring any recipient to adopt a percentage ratio, quota system, or other program to achieve racial balance. The use of goals and timetables is not use of a quota prohibited by this section.

§ 42.204 Applicants' obligations.

(a) Every application for Federal financial assistance to which this subpart applies shall, as a condition of approval of such application and the extension of any Federal financial assistance pursuant to such application, contain or be accompanied by an assurance that the applicant will comply with all applicable nondiscrimination requirements and will obtain such assurances from its subgrantees, contractors, or subcontractors to which this subpart applies, as a condition of the extension of Federal financial assistance to them.

(b) [Reserved]

(c) Every application for Federal financial assistance from a State or local unit of government or agency thereof shall contain an assurance that in the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing, on the ground of race, color, religion, national origin, or sex against the recipient State or local government unit, or agency, the recipient will forward a copy of the finding to the appropriate CJC and to OJARS.

§ 42.205 Complaint investigation.

(a) The Office shall investigate complaints filed by or on behalf of an individual claiming to be aggrieved, that allege a violation of section 815(c)(1) of the JSIA, or this subpart.

(b) No complaint will be investigated if it is received more than one year after the date of the alleged discrimination, unless the time for filing is extended by the Director of OJARS for good cause shown.

(c) The Office shall conduct investigations of complaints as follows:

(1) Within 21 days of receipt of a complaint, the Office shall:

(i) Ascertain whether it had jurisdiction under paragraphs (a) and (b) of this section;

(ii) If jurisdiction is found, notify the recipient alleged to be discriminating of its receipt of the complaint; and

(iii) Initiate the investigation.

(2) The investigation will ordinarily be initiated by a letter requesting data pertinent to the complaint and advising the recipient of:

(i) The nature of the complaint, and, with the written consent of the complainant, the identity of the complainant;

(ii) The programs or activities affected by the complaint;

(iii) The opportunity to make, at any time prior to receipt of the Office's preliminary findings, a documentary submission, responding to, rebutting, or denying the allegations made in the complaint; and

(iv) The schedule under which the complaint will be investigated and a determination of compliance or non-compliance made.

Copies of this letter will also be sent to the chief executive of the appropriate unit(s) of government, and to the appropriate CJC.

(3) Within 150 days or, where an on-site investigation is required, within 175 days after the initiation of the investigation, the Office shall advise the complainant, the recipient, the chief executive(s) of the appropriate unit(s) of government, and the appropriate CJC of:

(i) Its investigative findings;

(ii) Where appropriate, its recommendations for compliance; and

(iii) If it is likely that satisfactory resolution of the complaint can be obtained, the recipient's opportunity to request the Office to engage in voluntary compliance negotiations prior to the Director of OJARS' determination of compliance or non-compliance.

(4) If, within 30 days, the Office's recommendations for compliance are not met, or voluntary compliance is not secured, the Director of OJARS of the 30-day period. If the Director makes a determination of non-compliance with section 815(c)(1) of the JSIA, the Office shall institute administrative proceedings pursuant to § 42.208, *et seq.*

(5) If the complainant or another party, other than the Attorney General, has filed suit in Federal or State court alleging the same discrimination alleged in a complaint to OJARS, and, during OJARS' investigation, the trial of that suit would be in progress, OJARS will suspend its investigation and monitor the litigation through the court docket and, where necessary, contacts with the complainant. Upon receipt of notice that the court has made a finding of a pattern or practice of discrimination within the meaning of § 42.208, the Office will institute administrative proceedings pursuant to § 42.208, *et seq.* Upon receipt of notice that the court has made a finding affecting only the complainant, the Office will adopt the findings of the court as its investigative findings pursuant to § 42.205(c)(3).

(6) The time limits listed in paragraphs (c)(1) through (c)(5) of this section shall

be appropriately adjusted where OJARS requests another Federal agency or another branch of the Department of Justice to act on the complaint. OJARS will monitor the progress of the matter through liaison with the other agency. Where the request to act does not result in timely resolution of the matter, OJARS will institute appropriate proceedings pursuant to this section.

§ 42.206 Compliance reviews.

(a) The Office shall periodically conduct:

(1) Pre-award compliance reviews of all applicants requesting a grant from IEAA, NIJ, or BJS for $500,000 or more; and

(2) Post-award compliance reviews of selected recipients of IEAA, NIJ, or BJS assistance.

(b) *Pre-award reviews.* The Office shall review selected formula, discretionary, and national priority applications for $500,000 or more in order to determine whether the application presents a possibility of discrimination in the services to be performed under the grant, or in the employment practices of the applicant. In those instances where it finds such a possibility, the Office shall special condition, disapprove or take other action with respect to the application to assure that the project complies with section 815(c)(1) of the JSIA.

(c) *Post-award reviews.* The Office shall seek to review those recipients which appear to have the most serious equal employment opportunity problems, or the greatest disparity in the delivery of services to the minority and non-minority or male and female communities they serve. Selection for review shall be made on the basis of:

(1) The relative disparity between the percentage of minorities, or women, in the relevant labor market, and the percentage of minorities, or women, employed by the recipient;

(2) The percentage of women and minorities in the population receiving program benefits;

(3) The number and nature of discrimination complaints filed against a recipient with OJARS or other Federal agencies;

(4) The scope of the problems revealed by an investigation commenced on the basis of a complaint filed with the Office against a recipient or by a pre-award compliance review; and

(5) The amount of assistance provided to the recipient.

(d) Within 15 days after selection of a recipient for review, the Office shall inform the recipient that it has been selected and will initiate the review. The review will ordinarily be initiated by a letter requesting data pertinent to the review and advising the recipient of:

(1) The practices to be reviewed;

(2) The programs or activities affected by the review;

(3) The opportunity to make, at any time prior to receipt of the Office's investigative findings, a documentary submission responding to the Office, explaining, validating, or otherwise addressing the practices under review; and

(4) The schedule under which the review will be conducted and a determination of compliance or non-compliance made.

Copies of this letter will also be sent to the chief executive of the appropriate unit(s) of government, and to the appropriate CJC.

(e) Within 150 days or, where an on-site investigation is required, within 175 days after the initiation of the review, the Office shall advise the recipient, the chief executive(s) of the appropriate unit(s) of government, and the appropriate CJC, of:

(1) Its investigative findings;

(2) Where appropriate, its recommendations for compliance; and

(3) The opportunity to request the Office to engage in voluntary compliance negotiations prior to the Director of OJARS' determination of compliance or noncompliance.

(f) If, within 30 days, the Office's recommendations for compliance are not met, or voluntary compliance is not secured, the Director of OJARS shall make a determination of compliance or non-compliance. The determination shall be made no later than 14 days after the conclusion of the 30-day negotiation period. If the Director makes a determination of non-compliance with section 815(c) of the JSIA, the Office shall institute administrative proceedings pursuant to § 42.208, *et seq.*

§ 42.207 Compliance information.

(a) Each recipient shall:

(1) Keep such records, and submit to OJARS such timely, complete, and accurate information as OJARS may request to determine whether the recipient is complying with Section 815(c)(1) of the JSIA; and

(2) Permit reasonable access by OJARS to its books, documents, papers, and records, to the extent necessary to determine whether the recipient is complying with Section 815(c)(1) of the JSIA.

(b) Failure to comply with § 42.207(a) shall subject the recipient to the sanctions provided in Section 803(a) of the JSIA, 42 U.S.C. 3783(a).

§ 42.208 Notice of noncompliance.

(a) Whenever the Office has:

(1) Received notice of a finding, after notice and opportunity for a hearing by:

(i) A Federal court (other than in an action brought by the Attorney General under Section 815(c)(3) of the JSIA);

(ii) A State court; or

(iii) A Federal or State administrative agency (other than the Office under paragraph (a)(2) of this section); to the effect that there has been a pattern or practice of discrimination in violation of Section 815(c)(1) of the JSIA; or

(2) Made a determination after an investigation by the Office pursuant to § 42.205 or § 42.206 of this subpart that a State government or unit of general local government, or agency thereof, is not in compliance with this subpart, or Section 815(c)(1) of the JSIA, or this subpart: the Office shall, within 10 days after such occurrence, notify the chief executive of the affected State and, if the action involves a unit of general local government, the chief executive of such unit of general local government, that such program or activity has been so found or determined not to be in compliance with this subpart or section 815(c)(1) of the JSIA or this subpart, and shall request each chief executive notified under this section with respect to such violation to secure compliance.

(b) For the purposes of this section, notice means:

(1) Publication in—

(i) Employment Practices Decisions, Commerce Clearinghouse, Inc.;

(ii) Fair Employment Practices, Bureau of National Affairs, Inc.;

(iii) The United States Law Week, Bureau of National Affairs, Inc.; or

(iv) Federal Supplement, Federal Reporter, or Supreme Reporter, West Publishing Company; or

(2) Receipt by the Office of a reliable copy of a pattern or practice finding, made after a due process hearing from any source.

(c) When the Office receives notice of a finding which has been made more than 120 days prior to receipt, the Office will determine if the finding is currently applicable.

(1) In determining the current applicability of the finding, the Office will contact the clerk of the court and the office of the deciding judge (or the appropriate agency official) to determine whether any subsequent orders have been entered.

(2) If the information is unavailable through the clerk or the office of the judge (or the appropriate agency official), the Office will contact the attorneys of record for both the plaintiff and defendant to determine whether any

subsequent orders have been entered, or if the recipient is in compliance.

(3) If, within 10 days of receipt of notice, it is not determined through the procedures set forth in paragraphs (c)(1) and (2) of this section, that the recipient is in full compliance with a final order of the court (or agency) within the meaning of § 42.211(b), the Office will notify the appropriate chief executive of the recipient's noncompliance as provided in § 42.208(a).

(d) For purposes of paragraph (a)(1)(iii) of this section a finding by a Federal or State administrative agency shall be deemed rendered after notice and opportunity for a hearing if it is rendered pursuant to procedures consistent with the provisions of subchapter II of Chapter 5, Title 5, United States Code (the Administrative Procedures Act).

(e) The procedures of a Federal or State administrative agency shall be deemed to be consistent with the Administrative Procedure Act (APA) if:

(1) The agency gives all interested parties opportunity for—

(i) The submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment when time, the nature of the proceeding, and the public interest permit; and

(ii) Hearing on notice, and a decision by an individual who did not participate in the investigation or prosecution of the matter.

(2) A party is entitled to be represented by counsel or other qualified representative, to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts; and

(3) The record shows the ruling on each finding, conclusion, or exception presented. All decisions, including initial recommended, and tentative decisions, shall be a part of the record and shall include a statement of—

(i) Findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record; and

(ii) The appropriate rule, order, sanction, relief, or defenal thereof.

(f) If within 10 days of receipt of notice the Office cannot determine whether the finding was rendered pursuant to procedures consistent with the APA, it shall presume the APA procedures were applied, and send notification under § 42.208(a) to the appropriate chief executive(s).

(g) Each notification under § 42.208(a) shall advise the appropriate chief executive of:

(1) The program or activity determined to be in noncompliance;

(2) The general legal and factual basis for its determination;

(3) The Office's request to secure compliance;

(4) The action to be taken by the Office and the provisions of law under which the proposed action is to be taken should the chief executive fail to secure compliance; and

(5) The right of the recipient to request a preliminary hearing, pursuant to § 42.212, and a full hearing, pursuant to § 42.213.

§ 42.209 Compliance secured.

(a) In the event a chief executive secures compliance after notice pursuant to § 42.208, the terms and conditions with which the affected State government or unit of general local government agrees to comply shall be set forth in writing and signed by the chief executive of the State, by the chief executive of such unit (in the event of a violation by a unit of general local government), and by the Director of OJARS.

(b) Prior to the effective date of the agreement, the Office shall send a copy of the agreement to each complainant, if any, with respect to such violation, and to the appropriate CJC.

(c) The chief executive of the State, or the chief executive of the unit (in the event of a violation by a unit of general local government) shall file semi-annual reports with the Office detailing the steps taken to comply with the agreement.

(d) Within 15 days of receipt of such reports, the Office shall send a copy to each complainant, if any.

(e) The Director of OJARS shall also determine a recipient to be in compliance if it complies fully with the final order or judgement of a Federal or State court, pursuant to §§ 42.211(a)(2) and 42.211(b), or if found by such court to be in compliance with section 815(c)(1).

§ 42.210 Compliance not secured.

(a) If, at the conclusion of 90 days after notification of noncompliance with Section 815(c)(1):

(1) Compliance has not been secured by the chief executive of that State or the chief executive of that unit of general local government; and

(2) An administrative law judge has not made a determination under § 42.212 that it is likely the State government or unit of local government will prevail on the merits;

the Office shall notify the Attorney General that compliance has not been secured and shall cause to have suspended further payment of any funds under the JSIA or Juvenile Justice Act, as appropriate, to the specific program or activity in which the noncompliance has been found.

(b) If a hearing is requested pursuant to section 42.213, the suspension of funds shall be effective for a period of not more than 30 days after the conclusion of the hearing, or in the absence of a hearing under section 42.213, funds shall be suspended for not more than 120 days, unless there has been an express finding by the Director of OJARS after notice and opportunity for such a hearing, that the recipient is not in compliance with section 815(c)(1) of the JSIA, or this subpart.

§ 42.211 Resumption of suspended funds.

(a) Payment of suspended funds made available under the JSIA or the Juvenile Justice Act shall resume only if—

(1) Such State government or unit of general local government enters into a compliance agreement signed by the Director of OJARS in accordance with § 42.209;

(2) Such State government or unit of general local government:

(i) Complies fully with the final order or judgment of a Federal or State court, if that order or judgement covers all matters raised by the Director of OJARS in the notice pursuant to 42.208, or

(ii) Is found to be in compliance with section 815(c)(1) of the JSIA by such court;

(3) After a hearing, the Director of OJARS, pursuant to § 42.213, finds that noncompliance has not been demonstrated; or

(4) An administrative law judge has determined, under § 42.212, that it is likely that the State government or unit of local government will prevail on the merits.

(b) Full compliance with a court order, for the purposes of paragraph (2) of this section, includes the securing of an agreement to comply over a period of time, particularly in complex cases or where compliance would require an extended period of time for implementation.

§ 42.212 Preliminary hearing.

(a) Prior to the suspension of funds under § 42.210(a), but within the 90-day period after notification under § 42.208, the State government or unit of local government may request an expedited preliminary hearing on the record in accordance with 5 U.S.C. 554 in order to determine whether it is likely that the State government or unit of local government would, at a full hearing under §42.213, prevail on the merits on the issue of the alleged noncompliance.

(b) The preliminary hearing shall be initiated within 30 days of request. The ALJ shall make his finding within 15 days after the conclusion of the preliminary hearing.

§ 42.213 Full hearing.

(a) At any time after notification of noncompliance under § 42.208, but before the conclusion of the 120-day suspension period referred to in § 42.210, a State government or unit of general local government may request a hearing on the record in accordance with 5 U.S.C. 554 in order to contest the findings of determination of noncompliance made under § 42.208. The Office shall initiate the hearing within 60 days of request.

(b) Within 30 days after the conclusion of the hearing, or, in the absence of a hearing, at the conclusion of the 120-day period referred to in § 42.210, the Director of OJARS shall make a finding of compliance or noncompliance.

(1) If the Director makes a finding of noncompliance, the Director shall:

(i) Notify the Attorney General in order that the Attorney General may institute a civil action under section 815(c)(3) of the JSIA;

(ii) Cause to have terminated the payment of funds under the JSIA and/or the Juvenile Justice Act; and

(iii) If appropriate, seek repayment of funds.

(2) If the Director makes a finding of compliance, payment of the suspended funds and reconsideration of applications shall resume.

§ 42.214 Judicial review.

Any State government or unit of general local government aggrieved by a final determination of the Office under § 42.213 may appeal such determination as provided in Section 805 of the JSIA.

§ 42.215 Other actions authorized under the JSIA.

(a) The Director of OJARS may, at any time, request the Attorney General to file suit to enforce compliance with section 815(c)(1). OJARS will monitor the litigation through the court docket and liaison with the Civil Rights Division of the Department of Justice. Where the litigation does not result in timely resolution of the matter, and funds have not been suspended pursuant to § 42.215(b), OJARS will institute administrative proceedings unless enjoined from doing so by the court.

(b)(1) Whenever the Attorney General files a civil action alleging a pattern or practice of discriminatory conduct on the basis of race, color, religion, national origin, or sex in any program or activity of a State government or unit of local government which State government or unit of local government receives funds made available under the JSIA or the Juvenile Justice Act and the conduct allegedly violates or would violate the provisions of this subpart or section 815(c)(1) of the JSIA and neither party within 45 days after such filing has been granted such preliminary relief with regard to the suspension or payment of funds as may otherwise be available by law, the Director of OJARS shall suspend further payment of any funds under the JSIA and the Juvenile Justice Act to that specific program or activity alleged by the Attorney General to be in violation of the provisions of section 815(c)(1) of the JSIA until such time as the court orders resumption of payment.

(2) The Office expects that preliminary relief authorized by this subsection will not be granted unless the party making application for such relief meets the standards for a preliminary injunction.

(c)(1) Whenever a State government or unit of local government or any officer or employee thereof acting in an official capacity, has engaged or is engaging in any act or practice prohibited by section 815(c)(1) of the JSIA, a civil action may be instituted after exhaustion of administrative remedies by the person aggrieved in an appropriate United States District Court or in a State court or general jurisdiction.

(2) Administrative remedies shall be deemed to be exhausted upon the expiration of 60 days after the date the administrative complaint was filed with the Office or any other administrative enforcement agency, unless within such period there has been a determination by the Office or the agency on the merits of the complaint, in which case such remedies shall be deemed exhausted at the time the determination becomes final.

(3) The Attorney General, or a specifically designated assistant for or in the name of the United States may intervene upon timely application in any civil action brought to enforce compliance with Section 815(c)(1) of the JSIA if he certifies that the action is of general public importance. In such action the United States shall be entitled to the same relief as if it had instituted the action.

Appendix A—Commentary

Section 42.201(c). The compliance enforcement mechanism of section 815(c)(2) applies by its terms to State and local government. The prohibitions in section 815(c)(1), however, apply to all recipients of OJARS assistance. Accordingly, where a private entity which has received LEAA, NIJ, or BJS assistance through a State or local unit of government is determined by OJARS to be in non-compliance, OJARS will invoke the section 815(c)(2) mechanism against the appropriate unit of government for its failure to enforce the assurances of compliance given it by the private recipient, unless the unit has initiated its own compliance action against the private recipient. The fund termination procedures of section 803(a) will be invoked against non-complying private recipients which receive assistance directly from LEAA, NIJ, or BJS, or through another private entity.

Section 42.202(g). Section 815(c)(1) of the JSIA limits suspension and termination of assistance in the event of noncompliance to the "programs or activity" in which the noncompliance is found. The phrase "program or activity" was first used in section 815(c)(1) of the Crime Control Act of 1976, the substantially identical predecessor to section 815(c)(1).

House Report No. 94–1155 (94th Congress, 2d Session), at p. 26, explained the provision as follows:

"Suspension may be limited to the specific program or activity found to have discriminated, rather than all of the recipients' LEAA funds.

"For example, if discriminatory employment practices in a city's police department were cited in the notification, LEAA may only suspend that part of the city's payments which fund the police department. LEAA may not suspend the city's LEAA funds which are used in the city courts, prisons, or juvenile justice agencies."

This passage makes it clear that OJARS need not demonstrate a nexus between the particular project funded and the discriminatory activity. See *Lau* v. *Nichols*, 414 U.S. 563, 566 (1974).

Sections 42.203(b) and 42.203(e–i). These provisions are derived from 28 CFR 42.104(b) of Subpart C of the Department of Justice Nondiscrimination Regulations. Where appropriate "sex" and "religion" have been added as prohibited grounds of discrimination, and "denial of employment" as another activity within the scope of section 815(c)(1).

Individual projects benefiting a particular sex, race, or ethnic group are not violative of section 815(c)(1) unless the granting agency or the recipient has engaged in a pattern of granting preferential treatment to one such group, and cannot justify the preference on the basis of a compelling governmental interest, in the case of racial or ethnic discrimination, or a substantial relationship to an important governmental function, in the case of sex discrimination.

Section 42.203(b)(10). On August 25, 1978, the Department of Justice, the Equal Employment Opportunity Commission, the Department of Labor and the then-Civil Service Commission published the Uniform Employee Selection Guidelines codified at 28 CFR 50.14. Since OJARS is a component of the Department, these guidelines are applicable to the selection procedures of LEAA, NIJ, and BJS recipients. See 44 FR 11996 (March 2, 1979) for a detailed commentary on the guidelines.

Section 42.203(c). In the Conference Report on Section 518(c) of the Crime Control Act (the substantially identical predecessor of Section 815(c)), the managers stated that "In the area of employment cases brought under this section, it is intended by the conferees that the standards of Title VII of the Civil Rights Act of 1964 apply." H. Rept. No. 94–1723 (94th Cong., 2d Sess.) at p. 32.

This section makes the OJARS standards of employment discrimination consistent with those used by the Civil Rights Division of the Department of Justice. It further clarifies that the burden shifts to the employer to validate its selection procedures once OJARS has demonstrated that those procedures disproportionately exclude an affected class. Discriminatory purpose on the part of the employer, which must be shown before the burden shifts in a Fourteenth Amendment case such as *Washington* v. *Davis,* 426 U.S. 229, 96 S. Ct. 2040 (1976), need not be shown in an employment discrimination case brought under section 815(c)(1).

Section 42.203(j). Section 815(b) of the JSIA reads:

"Notwithstanding any other provision of law, nothing contained in this title shall be construed to authorize the National Institute of Justice, the Bureau of Justice Statistics, or the Law Enforcement Assistance Administration (1) to require, or condition the availability or amount of a grant upon the adoption by an applicant or grantee under this title of a percentage ratio, quota system, or other program to achieve racial balance in any criminal justice agency; or (2) to deny or discontinue a grant because of the refusal of an applicant or grantee under this title to adopt such a ratio, system, or other program."

In commenting on the Crime Control Act of 1976, Senator Roman Hruska of Nebraska explained the difference between quotas and goals and timetables as follows:

"Section 518(b) [now 815(b)] of the act prohibits the setting of quotas. This provision was unchanged, and this provision will still bind the Administration.

"LEAA does have an affirmative obligation under this law to seek to eliminate discriminatory practices, voluntarily, if possible, prior to resorting to fund termination. LEAA can request that a recipient eliminate the effect of past discrimination by requiring the recipient to commit itself to goals and timetables. The formulation of goals is not a quota prohibited by section 518(b) of the act. A goal is a numerical objective fixed realistically in terms of the number of vacancies expected and the number of qualified applicants available. Factors such as a lower attrition rate than expected, bona fide fiscal restraints, or a lack of qualified applicants would be acceptable reasons for not meeting a goal that has been established and no sanctions would accrue under the program." Cong. Rec. S 17320 (September 30, 1976, daily ed.).

The Senate Judiciary Committee Report on the JSIA also emphasized that section 815(b) does not "undercut subsection (c) in any way; subsection (b) has been interpreted so as not to limit LEAA's anti-discrimination enforcement capabilities. Indeed, recent court decisions have made this abundantly clear. See, e.g., *United States* v. *City of Los Angeles,* No. 77–3460 (C.D. Cal. 2/1/79)." S. Rept. 96–142, p. 57.

See also the Equal Employment Opportunity Commission Affirmative Action Guidelines, 44 FR 4422 (January 19, 1979).

Section 42.204. All grantees and subgrantees must make the assurances found in paragraph (a). Only State and local units of government and agencies thereof must make the assurance found in paragraph (c), since, as explained in the commentary on § 42.201(c), the enforcement provisions of section 815(c)(2) apply only to governmental recipients.

Section 42.205(a). Where information available to the Office clearly and convincingly demonstrates that the complaint is frivolous or otherwise without merit, the complaint will not be investigated, and the complainant will be so advised.

Section 42.205(b). A one-year timeliness requirement is imposed to ensure that OJARS will be devoting its resources to the resolution of active issues, and to maximize the possibility that necessary witnesses and evidence are still available.

Examples of good cause which would clearly warrant an extension of the filing period are a statement from the complainant stating that he or she was unware of the discrimination until after a year had passed, or that he or she was not aware that a remedy was available through OJARS.

Section 42.205(c)(1). Jurisdiction exists if the complaint alleges discrimination on a ground prohibited by section 815(c)(1), if the recipient was receiving funds at the time of the discrimination, and the respondent named in the complaint is a current recipient of LEAA, NIJ, or BJS assistance.

Prior to a determination of noncompliance, OJARS will attempt to negotiate voluntary compliance only during the 30-day period following receipt of the Office's preliminary findings, and only at the request of the recipient, as provided in § 42.205(c)(3). If a determination of noncompliance is made, OJARS will participate in voluntary compliance efforts during the 90-day period following the letter sent to the chief executive(s) under section 42.208.

Sections 42.205(c) (3) and (4) and 42.206(e). OJARS will notify the appropriate chief executive(s) of its recommendations during the voluntary resolution phase of both the complaint investigation and compliance review process. OJARS expects that the early involvement of the chief executive will often expedite the resolution of issues.

Section 42.205(c)(5). OJARS will initiate an investigation if the litigation discussed in this subparagraph becomes protracted or apparently will not resolve the matter within a reasonable time.

Section 42.205(c)(6). In order to effectively utilize the resources of other agencies, and to avoid duplication of effort, OJARS may request another agency to act on a particular complaint. OJARS expects this practice to be limited, and will attempt to ensure that any cooperative agreement reached with another agency is consistent with the timetables set forth in § 42.205(c).

Section 42.206(a). OJARS recognizes the practical impossibility of reviewing the compliance of each of its more than 39,000 recipients. The regulations seek to expedite the review process by reducing its length and narrowing its focus. Compliance reviews may, in some instances, be limited to specific employment practices, or other functions of a recipient, that appear to have the greatest adverse impact on an affected class.

Section 42.206(b). The factors listed will be considered cumulatively by OJARS in selecting recipients for reviews. OJARS will consider data from all sources, including information provided by both internal and external auditors.

Section 42.208(b). Upon receipt of the publications listed, OJARS will review the case reports for findings that may be violations of section 815(c)(1). In the case of the West Publishing Company reporters, OJARS will consult the topic "Civil Rights" in the Key Number Digests contained in the advance sheets.

Section 42.208(e). This subsection sets forth the minimum procedural safeguards that OJARS would require of an administrative hearing to assure the process was consistent with the Administrative Procedure Act. The sufficiency of other procedures that may vary in form but insure due process and the same opportunity for a fair hearing of both parties' evidence will be determined by OJARS on a case-by-case basis.

The Office will compile a list of State agencies whose procedures have been found consistent with the Administrative Procedure Act, and a list of State agencies whose procedures have been found inconsistent. When a finding of an agency not on either list is received, the Office will attempt to reliably determine the procedures used to render the findings.

Section 42.209(a). Although the signature of the appropriate chief executives are ultimately required on the compliance agreement, these regulations do not preclude them from delegating the responsibility for securing compliance during the 90-day period following notification, to State or local administrative or human rights agencies under their respective authority. A compliance agreement may be an agreement to comply over a period of time, particularly in complex cases or where compliance would require an extended period of time for implementation.

Section 42.209(b). The regulations require that a copy of the proposed compliance agreement be sent to the complainant, if any, before the effective date of the agreement. Although the Act would permit a copy to be sent as late as the effective date, OJARS believes the compliance agreement would be more likely to resolve all concerns and discourage litigation if the complainant's views were considered before it took effect.

Section 42.211(b). An example of a case where compliance would require an extended period of time for implementation would be a court order setting a goal of five years for an employer to raise the percentage of minorities in its workforce to parity with the percentage of minorities in the relevant geographical labor force.

Section 42.213. The full hearing will be conducted in accordance with JSIA Hearing and Appeal Procedures, 28 CFR 18.1, *et seq.*

Section 42.215(a). In a December 20, 1976 letter to the Administrator of LEAA, Congressman Peter Rodino, Chairman of the House Judiciary Committee, commented on the regulations proposed to implement the substantially identical nondiscrimination provisions of the Crime Control Act. He advised the Administrator that "the committee intentionally omitted the word 'refer' from the law to ensure that LEAA would always retain administrative jurisdiction over a complaint filed with them. It is not appropriate for LEAA to refer cases to the Civil Rights Division or other Federal or State agencies without monitoring the case for prompt resolution."

Section 42.215(c)(2). The exhaustion of administrative remedies at the end of 60 days (unless the Office has made a determination) does not limit OJARS' authority to investigate a complaint after the expiration of that period. OJARS will continue to investigate the complaint after the end of the 60-day period, if necessary, in accordance with the provisions of § 42.205.

The provision for attorney's fees in section 815(c)(4)(B) of the JSIA is not recited in the regulations because it does not affect the authority or actions of the Office.

Thomas J. Madden,

General Counsel, Office of Justice Assistance, Research, and Statistics.

[FR Doc. 80-13293 Filed 4-29-80; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 316

Offering of U.S. Savings Bonds, Series E

Correction

In FR Doc. 80-10069 appearing at page 21880 in the issue for Wednesday, April 2, 1980, on page 21985 the following appendix should be added following the last table in the document.

BILLING CODE 1505-01-M

APPENDIX

Summary of investment yields to maturity and extended maturity dates under regulations prescribed for Series E savings bonds with issue dates from May 1, 1941.*

Issues	Term to maturity (years and months)		Yield[1] during maturity period							Yield[1] during extended maturity period (10 years)							Yield[1] during second extended maturity period (10 years)							Yield[1] during third (and final) extended maturity period (10 years)	
			1959	1965	1968	1969	1970	1973	1979		1959	1965	1968	1969	1970	1973	1979		1965	1968	1969	1970	1973	1979		1973	1979
5/41- 4/42	10- 0	2.90								2.90	+.60							3.75e	+.40	+.10b	5.00	+.50e			5.50e	+.50e	+.50e
5/42-11/43	10- 0	2.90								3.00e	+.50							3.75e	+.40	+.10b	5.00	+.50e			5.50e	+.50e	+.50e
12/43- 5/44	10- 0	2.90								3.00e	+.50							3.75e	+.40	+.10b	5.00	+.50e			6.00e		+.50e
6/44-11/45	10- 0	2.90								3.00e	+.50							3.75e	+.40	+.10b	5.00	+.50e	+.50e		6.00e		+.50e
12/45- 5/48	10- 0	2.90								3.00e	+.50							4.15e		+.10b	5.00	+.50e	+.50e		6.00e		+.50e
6/48- 5/49	10- 0	2.90								3.00e	+.50							4.25b			5.00	+.50e	+.50e		6.00e		+.50e
6/49-11/49	10- 0	2.90								3.75		+.40	+.10b					5.00e				+.50e	+.50e	+.50e	6.50e		
12/49- 5/50	10- 0	2.90	+.60							3.75		+.40	+.10b	5.00				5.00e				+.50e	+.50e	+.50e	6.50e[2]		
6/50-11/50	10- 0	2.90	+.60							3.75		+.40	+.10b	5.00				5.50e					+.50e	+.50e	6.50e[3]		
12/50	10- 0	2.90	+.60							3.75		+.40	+.10b	5.00	+.50e			5.50e					+.50e	+.50e	6.50e[2]		
1/51- 4/52	10- 0	2.90	+.60							3.75		+.40	+.10b	5.00	+.50e			5.50e					+.50e	+.50e	6.50e[3]		
5/52- 3/54	9- 8	3.00	+.50							3.75		+.40	+.10b	5.00	+.50e			5.50e					+.50e	+.50e	6.50e[2]		
4/54- 9/54	9- 8	3.00	+.50							3.75		+.40	+.10b	5.00	+.50e			6.00e						+.50e	6.50e[3]		
10/54- 5/55	9- 8	3.00	+.50							3.75		+.40	+.10b	5.00	+.50e	+.50e		6.00e						+.50e	6.50e[2]		
6/55- 3/56	9- 8	3.00	+.50							3.75		+.40	+.10b	5.00	+.50e	+.50e		6.00e						+.50e	6.50e[3]		
4/56-11/56	9- 8	3.00	+.50							3.75		+.40	+.10b	5.00	+.50e	+.50e		6.00e						+.50e	6.50e[2]		
12/56- 1/57	9- 8	3.00	+.50	+.40						4.15e			+.10b	5.00	+.50e	+.50e		6.00e						+.50e	6.50e[3]		
2/57- 5/57	8-11	3.25	+.50							4.15e			+.10b	5.00	+.50e	+.50e		6.00e						+.50e	6.50e[2]		
6/57- 5/59	8-11	3.25	+.50	+.40						4.15e			+.10b	5.00	+.50e	+.50e		6.00e						+.50e	6.50e[3]		
6/59- 5/60	7- 9	3.75		+.40						4.15e			+.10b	5.00	+.50e	+.50e		6.00e						+.50e	6.50e[2]		
6/60- 5/61	7- 9	3.75		+.40						4.15e			+.10b	5.00	+.50e	+.50e		6.00e						+.50e	6.50e[3]		
6/61- 8/61	7- 9	3.75		+.40	+.10b					4.25b				5.00	+.50e	+.50e		6.00e						+.50e	6.50e[2]		
9/61- 2/62	7- 9	3.75		+.40	+.10b					4.25b				5.00	+.50e	+.50e		6.00e						+.50e	6.50e[3]		
3/62- 8/62	7- 9	3.75		+.40	+.10b					5.00e					+.50e	+.50e		6.50e						+.50e	6.50e[2]		
9/62- 3/63	7- 9	3.75		+.40	+.10b	5.00				5.00e					+.50e	+.50e	+.50e	6.50e[2]						+.50e	6.50e[3]		
4/63- 5/63	7- 9	3.75		+.40	+.10b	5.00				5.50e						+.50e	+.50e	6.50e[3]						+.50e	6.50e[2]		
6/63-11/65	7- 9	3.75		+.40	+.10b	5.00	+.50b			5.50e						+.50e	+.50e	6.50e[3]						+.50e	6.50e[3]		
12/65-11/66	7- 0	4.15			+.10b	5.00	+.50b			5.50e						+.50e	+.50e	6.50e[3]						+.50e	6.50e[2]		
12/66- 5/67	7- 0	4.15			+.10b	5.00	+.50b			6.00e							+.50e	6.50e[3]						+.50e	6.50e[3]		
6/67- 5/68	7- 0	4.15			+.10b	5.00	+.50b	+.50e		6.00e							+.50e	6.50e[3]						+.50e	6.50e[3]		
6/68- 5/69	7- 0	4.25b				5.00	+.50b	+.50e		6.00e							+.50e	6.50e[3]						+.50e	6.50e[3]		
6/69- 5/70	5-10	5.00					+.50b	+.50e		6.00e							+.50e	6.50e[3]						+.50e	6.50e[3]		
6/70-11/73	5-10	5.50b						+.50e		6.00e							+.50e	6.50e[3]						+.50e	6.50e[3]		
12/73- 5/74	5- 0	6.00								6.00e							+.50e	6.50e[3]						+.50e	6.50e[3]		
6/74-11/74	5- 0	6.00								6.50e							+.50e	6.50e[3]						+.50e	6.50e[3]		
12/74-12/75	5- 0	6.00							+.50b	6.50e[2]								6.50e[2]							6.50e[2]		
1/76- 5/79	5- 0	6.00							+.50b	6.50e[3]								6.50e[3]							6.50e[3]		
6/79- 6/80	5- 0	6.50								6.50e[3]								6.50e[2]							6.50e[2]		

1/ All yields are in terms of percent per annum, compounded semiannually. The first figure in each maturity period is the overall yield for that period at time of entry into period. Crediting of accruals is on a graduated basis unless otherwise indicated, the full rate being credited only upon holding to end of period(lesser credit if redeemed earlier). An "e" indicates accrual on an approximately level basis. A "b" indicates increased accrual on a bonus basis; that is, full rate is credited only if bond is held to end of period(no increase if redeemed earlier). Rate increases within periods took effect at beginning of first full half-year interest accrual period starting on or after effective date as follows:

1959 - graduated improvements in rate to next maturity beginning June 1, 1959.
1965 - graduated improvement in rate to next maturity beginning Dec. 1, 1965.
1968 - bonus improvement in rate to next maturity beginning June 1, 1968, which took effect as early as Mar. 1, 1968, in some cases, but did not apply to first accrual period if it was less than a half-year.
1969 - maximum rate to next maturity beginning June 1, 1969.
1970 - bonus and level improvements in rate to next maturity beginning June 1, 1970.
1973 - level improvement in rate to next maturity beginning Dec. 1, 1973.
1979 - bonus and level improvement in rate to next maturity beginning June 1, 1979.

2/ Yield does not apply if prevailing rate for Series E bonds being issued at time extension begins is different from 6.50 percent.
3/ Yield does not apply if prevailing rate for Series E bonds being issued at time extension begins is different from 6.50 percent. During this maturity period, bonds held until their first interest accrual date in 1991 will receive a bonus payment which will increase their yield from their first semiannual interest accrual date in 1980 to their first interest accrual date in 1991 by ½ of 1%.

* The purpose of this table is to summarize the history of yields on Series E savings bonds. Because of the graduated nature of these yields this table does not contain sufficient detail for the calculation of redemption values.

BILLING CODE 1505-01-C

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Double Coverage; Correction

AGENCY: Office of the Secretary of Defense.

ACTION: Correction to final rule.

SUMMARY: The purpose of this correction to the regulations on implementation of the Civilian and Medical Program of the Uniformed Services (32 CFR Part 199) is to reinsert at § 199.14, Double Coverage, paragraph (d)(3), Title XVIII of the Social Security Act, as Amended: Medicare.

EFFECTIVE DATE: January 10, 1977.

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

SUPPLEMENTARY INFORMATION: In FR Doc. 77–7834, appearing in the **Federal Register** on April 4, 1977 (42 FR 17972), the Department of Defense published its regulation, DoD 6010.8–R, "Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)." In FR Doc. 79–18244, appearing in the **Federal Register** on June 12, 1979 (44 FR 33679), the Office of the Secretary of Defense published an addendum to 32 CFR Part 199 to clarify DoD's position of "last pay" on CHAMPUS benefits. At the time of the publication of this addendum, section 199.14, paragraph (d)(3) was inadvertently omitted.

Accordingly, § 199.14, paragraph (d)(3) is being reinserted, and reads as follows:

§ 199.14 Double coverage.

* * * * *

(d) *Retirees; Dependents of Retirees; and Dependents of Deceased Active Duty Members of Retirees.* * * *

(3) *Title XVIII of the Social Security Act, as Amended: Medicare.*—(i) *Eligible for Part A. "Hospital Insurance."* A retiree, dependent of a retiree and a dependent of a deceased active duty member or retiree loses his or her eligibility for CHAMPUS if, upon reaching 65 years of age, or because of disability or chronic renal disease, he or she becomes entitled to Hospital Insurance Benefits (Part A) of Medicare. (Refer to § 199.9, "Eligibility.")

(a) Under the circumstances described in paragraph (d)(3)(i) of this section, CHAMPUS eligibility ceases, even though the person lives outside the United States where Medicare benefits are not available.

(b) If upon reaching age 65, a CHAMPUS beneficiary is not entitled to "Hospital Insurance Benefits" (Part A) of Medicare, eligibility for CHAMPUS benefits continues. In such event the CHAMPUS beneficiary must file a Social Security Administration "Notice of Disallowance" (certifying to the fact that he or she does not have entitlement to Part A of Medicare) with the Uniformed Service responsible for the issuance of his or her ID card. A new ID card will then be issued showing continued CHAMPUS eligibility past age 65.

(ii) *1972 Amendments to the Social Security Act: Other Part A Eligibility.* Certain persons over 65 years of age, who were not previously entitled to Medicare Part A, "Hospital Insurance Benefits," became eligible to enroll in Part A after June 30, 1973, under the premium-HI provision of the 1972 Amendments to the Social Security Act. Entitlement to Medicare Part A benefits secured under these circumstances does not result in loss of CHAMPUS eligibility. However, in every such instance of double coverage with Medicare Part A, Medicare is the primary payor and CHAMPUS is the secondary payor, and initial payment of CHAMPUS benefit is not authorized.

(iii) *Eligibility for Medicare Part B, "Supplementary Medical Insurance."* Any person age 65 years or over may elect to purchase Medicare Part B coverage whether or not they are eligible for Part A. Entitlement to coverage only under Medicare Part B does not result in a loss of CHAMPUS eligibility. However, in every instance of double coverage with Medicare Part B, Medicare is the primary payor and CHAMPUS is the secondary payor and initial payment of CHAMPUS benefits is not authorized.

* * * * *

April 24, 1980

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

[FR Doc. 80–13222 Filed 4–29–80; 8:45 am]

BILLING CODE 3810–70–M

Department of the Army, Corps of Engineers

33 CFR Part 236

[ER 1165–2–28]

Water Resources Policies and Authorities; Corps of Engineers Participation in Improvements for Environmental Quality

AGENCY: U.S. Army Corps of Engineers.

ACTION: Final rule.

SUMMARY: This final rule provides guidance and procedures to Corps of Engineers field offices regarding the Corps of Engineers role in environmental quality improvements as part of a water resource project. The rule defines those measures which may be recommended to Congress without approval of the Office of the Chief of Engineers; information to be submitted prior to recommendations of other measures; and guidance for determining cost sharing recommendations for environmental quality measures in water resource plans. This guidance is needed to foster the inclusion of environmental quality features in Corps plans.

EFFECTIVE DATE: April 30, 1980.

FOR FURTHER INFORMATION CONTACT: Robert Kaighn, Department of the Army, Corps of Engineers, Wash., D.C. 20314, Attn: DAEN–CWR–R (202–272–0123).

(Pub. L. 738/74th Cong.; Pub. L. 89–72; Pub. L. 91–190)

Dated: March 27, 1980.

Forrest T. Gay, III,

Colonel, Corps of Engineers, Executive Director, Engineer Staff.

Accordingly, the Department of the Army amends 33 CFR by adding a new Part 236 to read as follows:

PART 236—WATER RESOURCE POLICIES AND AUTHORITIES: CORPS OF ENGINEERS PARTICIPATION IN IMPROVEMENTS FOR ENVIRONMENTAL QUALITY

Sec.

236.1 Purpose.
236.2 Applicability.
236.3 References.
236.4 Background.
236.5 Policy and procedure.
236.6 Other agencies EQ measures.

Authority: Pub. L. 738, 74th Cong.; Pub. L. 89–72; Pub. L. 91–190.

§ 236.1 Purpose.

This regulation provides guidance for including Environmental Quality (EQ)

measures in Corps of Engineers water resource development plans.

§ 236.2 Applicability.

This regulation is applicable to all OCE elements and field operating activities having Civil Works responsibilities.

§ 236.3 References.

(a) PL 89–72
(b) ER 1105–2–10
(c) ER 1105–2–200

§ 236.4 Background.

(a) The role of the Corps of Engineers in the development of water and related land resources has gradually broadened over the past century. Starting with the development of navigation on the Mississippi River in 1824, the Corps role has grown to encompass, among others, flood control, beach erosion control and hurricane protection, hydroelectric power, recreation, water supply, water quality, fish and wildlife and low-flow augmentation. Laws, executive orders, and national policies promulgated in the past decade require that the quality of the environment be protected and, where possible, enhanced as the nation grows. As a result, the Federal role in EQ, including the Corps, has continued to broaden. Balancing economic and environmental interests is a major requirement to be considered in the planning of all Corps projects.

(b) Enhancement of the environment is an objective of Federal water resource programs to be considered in the planning, design, construction, and operation and maintenance of projects. Opportunities for enhancement of the environment are sought through each of the above phases of project development. Specific considerations may include, but are not limited to, actions to preserve or enhance critical habitat for fish and wildlife; maintain or enhance water quality; improve streamflow; preservation and restoration of certain cultural resources, and the preservation or creation of wetlands.

(c) The 1105–2–200 series of Engineer Regulations describe the procedures to be followed in developing water resource plans. These procedures require the establishment of planning objectives (generally encompassing a combination of National Economic Development (NED) and EQ outputs), and evaluation of alternative plans to meet those objectives to differing degrees. With respect to the recommendation of measures for Corps implementation, ER 1105–2–200 states that, "If the selected plan or a portion thereof is not within existing Corps implementation authority, but is responsive to the planning objectives established for the study, the reporting officer may recommend Federal (Corps) participation." The ER further states that the basis for and extent of such participation is to be specified, including the precedent setting aspects of the recommendation, and further, that such recommendations are to be coordinated through DAEN–CWP before commitments are made to states or local interests. This regulation expands upon that policy and provides operational policies and criteria which will allow the field to recommend authorization for implementation of certain EQ measures.

§ 236.5 Policy and procedure.

The following policies and procedures set forth criteria to be applied in determining when EQ measures may be recommended for implementation by the Corps.

(a) *Policy.*—(1) *Achievement of Specified, Study Authority Planning Objectives.* Recommended plans must include measures for accomplishment of the primary purposes authorized by Congress.

(2) *Relationship of EQ Measures to a Corps Water Resource Development.* Measures proposed for EQ must enhance, preserve or restore the environment of the study area. EQ opportunities created as a result of meeting study authority purposes should be pursued and, as appropriate, included in plans for Corps implementation. In addition, the recommended plan may also include separable EQ measures to meet established planning objectives. *Such separable EQ measures for Corps implementation must be related to, or take advantage of, opportunities created by a water resource development to be recommended for implementation by the Corps of Engineers.*

(3) *Justification.* Recommended plans must be justified on the basis that combined beneficial NED and EQ effects outweigh combined adverse NED and EQ effects.

(4) *Cost Sharing.* Some features of plans required to foster EQ objectives in the Corps of Engineers program have well-defined laws or policies which establish cost sharing requirements. For instance, Pub. L. 89–72, as amended, defines cost sharing requirements for fish and wildlife enhancement. However, there are other features which may not be defined by law or policy. In those instances, cost sharing will be based on an analogy with established cost sharing policies or other similar Federal programs as described in the Catalog of Federal Domestic Assistance. Cost sharing for EQ measures for which the Corps has no standard policy will be approved by HQDA (DAEN–CWP–E, C or W), WASH DC 20314, prior to proposing cost sharing to local interests.

(b) *Procedures for Approval.*—(1) *Without Advance OCE Approval.* The reporting officer may recommend separable EQ measures that satisfy any one of the following criteria:

(i) Implemented on lands required for the water resource development;

(ii) Required to complete or more fully develop proposed EQ measures partly on lands, including mitigation lands, required for the water resource development;

(iii) More cost effective to implement or manage when directly integrated with the implementation or management of the water resource development.

(2) *With Advance Approval.* Other separable EQ measures may be recommended with advance approval of the Director of Civil Works through the intensive management program (ER 1105–2–10). The appropriateness for including such measures will be based upon a consideration of factors which may include, but are not limited to:

(i) Level of significance of the EQ resource.

(ii) Proximity to the proposed water resource development.

(iii) Acceptability and support for Corps implementation.

(iv) Certainty of the pending loss or significant degradation of the EQ resource in the absence of implementing the proposed EQ measure.

(v) Relationship of the EQ measures to implementing the proposed water resources development.

(vi) Relationship of the EQ measures to assigned missions of other agencies and the capability for timely implementation by these agencies.

(vii) Cost effectiveness.

§ 236.6 Other agencies EQ measures.

The selected plan may include EQ measures not proposed for Corps implementation, but to be accomplished through other Federal programs or by local interests. Planning reports including such measures will discuss how they would impact on the recommended plan, and how they may be implemented by the appropriate Federal agency or the local interests. However, implementation of such measures will not be required as local cooperation for the works proposed for Corps implementation.

[FR Doc. 80–12312 Filed 4–29–80; 8:45 am]
BILLING CODE 3710–92–M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 63

National Register of Historic Places; Transfer of Regulations

AGENCY: National Park Service, Interior.

ACTION: Redesignation of Part 63 Chapter I to Part 1204 Chapter XII.

SUMMARY: Since the Heritage Conservation and Recreation Service was established on January 25, 1978, regulations currently published in Title 36, Chapter I which pertain to the programs of the Service must be transferred to Title 36, Chapter XII. So that the Service's regulations are consolidated under one Title and Chapter, this document redesignates and transfers 36 CFR Chapter I, Part 63 to 36 CFR Chapter XII, Part 1204.

EFFECTIVE DATE: April 30, 1980.

FOR FURTHER INFORMATION CONTACT: Ms. Carol D. Shull, Acting Keeper of the National Register, United States Department of the Interior, Heritage Conservation and Recreation Service, Washington, D.C. 20243 (202) 343–6401.

SUPPLEMENTARY INFORMATION: This document transfers and redesignates 36 CFR Chapter I, Part 63 to 36 CFR, Chapter XII, Part 1204. Therefore, Part 63 is deleted from Title 36.

PART 63—[REDESIGNATED AS PART 1204]

Dated: April 16, 1980.

Bob Herbst,

Assistant Secretary of the Interior.

[FR Doc. 80-13275 Filed 4-29-80; 8:45 am]

BILLING CODE 4310-03-M

Heritage Conservation and Recreation Service

36 CFR Part 1204

Determinations of Eligibility for Inclusion in the National Register of Historic Places

AGENCY: Heritage Conservation and Recreation Service, Interior.

ACTION: Redesignation of regulations from Part 63, Chapter I, 36 CFR.

SUMMARY: Since the Heritage Conservation and Recreation Service was established on January 25, 1978, regulations currently published in Title 36, Chapter I which pertain to the programs of the Service must be transferred to Title 36 Chapter XII. So that the Service's regulations are consolidated under one Title and Chapter, this document adopts the transfer and redesignation of 36 CFR, Chapter I, Part 63, as Part 1204.

EFFECTIVE DATE: April 30, 1980.

FOR FURTHER INFORMATION CONTACT: Ms. Carol D. Shull, Acting Keeper of the National Register, United States Department of the Interior, Heritage Conservation and Recreation Service, Washington, D.C. 20243 (202) 343–6401.

The originator of these procedures is W. Ray Luce of the National Register of Historic Places (202) 343–6401.

Dated: April 16, 1980.

Bob Herbst,

Assistant Secretary of the Interior.

PART 1204—[REDESIGNATED FROM PART 63]

Accordingly, the regulations currently in 36 CFR, Chapter I Part 63 are transferred to Chapter XII and redesignated as Part 1204.

[FR Doc. 80-13276 Filed 4-29-80; 8:45 am]

BILLING CODE 4310-03-M

GENERAL SERVICES ADMINISTRATION

41 CFR Ch. 1

[FPR Temp. Reg. 50, Supplement 1]

Subcontracting Under Federal Contracts; Temporary Regulation

AGENCY: General Services Administration.

ACTION: Temporary regulation.

SUMMARY: This temporary regulation prescribes procedures concerning reviews by the Small Business Administration of solicitations and contracts, including subcontracting plans, when the dollar threshold of contracts is $500,000 or more ($1 million for construction). The Acting Administrator, Office of Federal Procurement Policy, issued Policy Letter 80–1 which implements a provision in section 211 of Pub. L. 95–507 by requiring that the procedures set forth in the letter be published in procurement regulations. The intended effect is to determine whether the maximum practicable opportunities have been afforded to small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals to participate as subcontractors.

DATES: Effective date: May 5, 1980.

Expiration date: May 5, 1982.

FOR FURTHER INFORMATION CONTACT: Philip G. Read, Director, Federal Procurement Regulations Directorate, Office of Acquisition Policy (703–557–8947).

In 41 CFR Chapter 1, the following temporary regulation is added to the appendix at the end of the chapter to read as follows:

(Sec. 205(c), 63 Stat. 390; (40 U.S.C. 486(c)))

[Federal Procurement Regs.; Temporary Reg. 50, Supp. 1]

Subcontracting under Federal contracts

April 18, 1980.

1. *Purpose.* This temporary regulation prescribes procedures concerning reviews by the Small Business Administration of solicitations and contracts, including subcontracting plans, when the dollar threshold of contracts is $500,000 or more ($1 million for construction).

2. *Effective date.* This regulation is effective May 5, 1980.

3. *Expiration date.* This regulation expires on May 5, 1982, unless canceled earlier.

4. *Background.* The Acting Administrator, Office of Federal Procurement Policy (OFPP), issued Policy Letter 80–1, January 24, 1980, which sets forth procedures concerning reviews of solicitations and contracts, including subcontracting plans, as required by section 211 of Pub. L. 95–507. The purpose of these reviews is to determine whether the maximum practicable opportunities have been afforded small business concerns and small business concerns owned and controlled by socially or economically disadvantaged individuals to participate as subcontractors. The regulation supplements the procedures in FPR Temporary Regulation 50.

5. *Explanation of changes.* a. The procedures prescribed in the attachment supersede any conflicting procedures in Subpart 1–1.7.

b. Section 1–16.804–3(d)(5) is revised to read as follows:

(5) Summary data shall be furnished showing the dollar amount of subcontract and purchase commitments reported by large company prime contractors under the Small Business Subcontracting clauses for advertised and negotiated contracts (see FPR Temporary Regulation 50) and the total number of prime contractors submitting such reports. See § 1–16.804–5 concerning the reporting form to be used by prime contractors. Due to the normal time lag between the time prime contracts are awarded and subcontracts thereunder are placed, information in this regard may appear unbalanced on any individual periodic report.

c. Section 1–16.804–5 is amended to change the caption and paragraph (a) to read as follows:

§ 1–16.804–5 Report by contractors under Small Business and Small Disadvantaged Business Subcontracting Program.

(a) Optional Form 61, June 1978 edition (illustrated in § 1–16.902–OF 61), is designed for use when obtaining information from large business concerns; e.g., other than small business concerns on the dollar value of their subcontract and purchase commitments under the Small Business and Small Disadvantaged business clauses for advertised and negotiated contracts (see FPR Temporary Regulation 50) and/or Labor Surplus Area Subcontracting clauses. Unless otherwise provided by the contracting agency, reports are not required under contracts or subcontracts with small business concerns, minority business enterprises, and educational and nonprofit institutions.

6. *Agency action.* Pending the publication of a permanent FPR amendment, agencies shall employ the procedures set forth in OFPP Policy Letter 80–1, January 24, 1980. These procedures are illustrated in attachment A.

7. *Effect on other directives.* Paragraph 3 of FPR Temporary Regulation 50 is revised to extend the expiration date to May 5, 1982.

Ray Kline,

Acting Administrator of General Services.

Executive Office of the President, Office of Management and Budget, Washington, D.C. 20503, January 24, 1980.

Policy Letter 80–1

To the Heads of Executive Departments and Establishments. Subject: Pub. L. 95–507, Section 211, Subcontracting: Agency Coordination with the Small Business Administration Resident Procurement Center Representatives

Section 211 of Pub. L. 95–507 amends section 8(d)(10) of the Small Business Act, 15 U.S.C. 637 to authorize the Small Business Administration (SBA) to review any solicitation for any contract over the stated thresholds. The purpose of the review is to determine whether maximum practicable opportunity has been afforded small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals to participate as subcontractors in such awards. Furthermore, SBA is responsible for evaluating compliance with agreed upon subcontracting plans.

In order to facilitate the implementation of these provisions by the Small Business Administration, departments and agencies shall observe the following policies regarding section 8(d)(10), and shall incorporate them in their procurement regulations:

1. The Small Business Administration's resident Procurement Center Representative shall be provided an opportunity to review any solicitation that meets the threshold prior to release to the public. The Procurement Center Representatives shall be provided a period reasonable under the circumstances to review the solicitation.

2. Prior to the execution of any negotiated contractual document requiring a subcontracting plan, the total procurement package including the proposed subcontracting plan shall be made available to the resident Procurement Center Representative, with a reasonable time for review. The Procurement Center Representative may submit recommendations, which shall be advisory in nature, to the contracting officer. The Procurement Center Representative shall also be provided a copy of the subcontracting plan finally negotiated by the contracting officer.

A copy of any subcontracting plan submitted pursuant to a formally advertised procurement also shall be provied the resident Procurement Center Representative upon execution of the contractual document.

3. The small and disadvantaged business specialist of the contracting activity shall notify the Small Business Administration of the award of contracts, amendments, or modifications that contain subcontracting plans. The notification shall contain the contractor's name and address, place of performance, dollar amount, performance period, description of contract item or items, and name and address of contracting officer. A copy of the award document (e.g., DD 350) is sufficient for these purposes. The notification shall be sent to the Assistant Regional Administrator for Regional Programs in the SBA region where contract performance is to take place.

The Director of the Office of Management and Budget concurs in the issuance of this policy directive to be effective February 25, 1980.

James D. Currie,

Acting Administrator.

[FR Doc. 80–13235 Filed 4–29–80; 8:45 am]

BILLING CODE 6820–61–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[FCC 80–79]

Reflecting a Reorganization of the Office of Science and Technology

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This amendment changes the Commission's Rules to incorporate the reorganization of the Office of Science and Technology. The reorganization was necessary in order to allow the Chief Scientist to deal efficiently with the rapid growth of new communications technology, and to emphasize the technical engineering and scientific aspects of the Office.

EFFECTIVE DATE: May 12, 1980.

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

FOR FURTHER INFORMATION CONTACT: Charles Marietta, Jr., Office of Executive Director, 632–7513.

SUPPLEMENTARY INFORMATION:

Adopted: February 13, 1980.

Released: April 23, 1980.

By the Commission: 1. The Commission has before it for consideration proposed changes in the organization of the Office of Science and Technology. Implementation of the proposed changes would require amendments to §§ 0.31 and 0.32 of the Commission's Rules and Regulations and deletion of §§ 0.33, 0.34, 0.35, 0.36, and 0.38.

2. To promote operational efficiency, the Commission is hereby approving the consolidation of the four existing divisions within the Office of Science and Technology into three divisions, to be known as the Spectrum Management Division, the Authorization and Standards Division and the Research and Analysis Division. The functions of the present International and Operations Division will be transferred to an International Staff. These changes will enable the Chief Scientist to meet the increasing demands of innovations in telecommunications and associated technologies through realignment of related functions. Part 0 of the Rules and Regulations is being amended to reflect these changes.

3. The amendments adopted herein pertain to agency organization. The prior notice procedure and effective date provisions of Section 4 of the Administrative Procedure Act are therefore inapplicable. Authority for the amendments adopted herein is contained in Sections 4(i) and 5(b) of the Communications Act of 1934, as amended.

4. In view of the foregoing, it is ordered, effective May 12, 1980, that Part 0 of the Rules and Regulations is amended as set forth in the Appendix hereto.

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

Part 0 of Chapter 1 of Title 47 of the Code of Federal Regulations is hereby amended as indicated below.

1. Sections 0.31 and 0.32 are amended to read:

§ 0.31 Functions of the Office.

The Office of Science and Technology has the following duties and responsibilities:

(a) To plan and direct broad programs for development of information relative to communications techniques and equipment, radiowave propagation, and new uses for communications, and advise the Commission and staff offices in such matters.

(b) To represent the Commission and serve as its coordinator for various national and international conferences and meetings devoted to the progress of communications and the development of information and standards relative thereto.

(c) To conduct scientific and technical studies in advanced phases of terrestrial and space communications, and special projects to obtain theoretical and experimental data on new or improved techniques.

(d) To advise the Commission concerning engineering matters, including the privacy and security of communications, involved in making or implementing policy or in resolving specific cases.

(e) To develop and implement procedures to acquire, store, and retrieve scientific and technical information useful in the engineering work of the Commission.

(f) To advise and represent the Commission on frequency allocation and spectrum usage matters, including those covered by international agreements.

(g) To render, in cooperation with the General Counsel and the Office of Plans and Policy, advice to the Commission, participate in and coordinate staff work with respect to general frequency allocation proceedings and other proceedings not within the jurisdiction of any single bureau, and render service and advice with respect to rule making matters and proceedings affecting more than one Bureau.

(h) To collaborate with and advise other Bureaus and Offices in the formulation of technical requirements of the Rules.

(i) To administer Parts 2, 5, 15, and 18 of this chapter, including licensing, recordkeeping, and rule making.

(j) To perform all engineering and management functions of the Commission with respect to formulating rules and regulations, technical standards, and general policies for Parts 15 and 18 of this chapter, and for type approval and acceptance, and certification of radio equipment for compliance with the Rules.

(k) To maintain liaison with other agencies of government, technical experts representing foreign governments, and members of the public and industry concerned with communications and frequency allocation and usage.

(l) To calibrate and standardize technical equipment and installations used by the Commission.

(m) To exercise authority as may be assigned or referred by the Commission pursuant to section 5(d) of the Communications Act of 1934, as amended.

§ 0.32 Units in the Office.

The Office of Science and Technology is comprised of the following units:

(a) Immediate Office of the Chief Scientist.

(b) Authorization and Standards Division.

(c) Research and Analysis Division.

(d) Spectrum Management Division.

§§ 0.33, 0.34, 0.35, 0.36, and 0.38, [Deleted]

2. Sections 0.33, 0.34, 0.35, 0.36, and 0.38, are deleted.

[FR Doc. 80-13226 Filed 4-29-80; 8:45 am]
BILLING CODE 6712-01-M

---

47 CFR Part 73

[BC Docket No. 79-341; RM-3489]

FM Broadcast Station in Steelville, Mo.; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Report and order.

SUMMARY: Action taken herein assigns a first Class A FM channel to Steelville, Missouri, in response to a petition filed by Randy L. Wachter. The channel could provide for a first local aural broadcast service to the community.

EFFECTIVE DATE: June 2, 1980.

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

FOR FURTHER INFORMATION CONTACT: Mildred B. Nesterak, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of § 73.202(b), *Table of Assignments*, FM Broadcast Stations. (Steelville, Missouri), BC Docket No. 79-341, RM-3489.

Report and Order—Proceeding Terminated

Adopted: April 16, 1980.

Released: April 23, 1980.

1. The Commission herein considers the *Notice of Proposed Rule Making*, adopted December 19, 1979, 45 FR 1922, which invited comments on a proposal to assign Channel 244A to Steelville, Missouri, in response to a petition filed by Randy L. Wachter ("petitioner"). Supporting coments were filed by petitioner in which he reaffirmed his intention to file for the channel, if assigned.

2. Steelville (pop. 1,392),[1] seat of Crawford County (pop. 14,828), is located approximately 126 kilometers (78 miles) southwest of St. Louis, Missouri. There is no local aural broadcast service in Steelville.

3. In support of his proposal, petitioner had submitted information with respect to Steelville which was persuasive as to its need for a first FM assignment.

4. We believe the public interest would be served by assigning FM Channel 244A to Steelville, Missouri. A station on the proposed channel would provide the community with a first local aural broadcast service.

5. 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 June 2, 1980, the FM Table of Assignments (§ 73.202(b) of the Commission's rules) is amended with regard to the community listed below:

City	Channel No.
Steelville, Missouri	244A

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

7. For further information concerning this proceeding, contact Mildred B. Nesterak, Broadcast Bureau, (202) 632-7792.

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

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 80-13230 Filed 4-29-80; 8:45 am]
BILLING CODE 6712-01-M

---

47 CFR Part 73

[BC Docket No. 79-1; RM-3166; RM-3351]

FM Broadcast Stations in Clinton and Bald Knob, Ark.; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

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

ACTION: Report and order.

SUMMARY: By action taken herein, the Commission assigns FM Channel 296A to Bald Knob, Arkansas, in response to a petition from John Paul Capps. A conflicting request to assign Channel 296A to Clinton, Arkansas, filed by Weber-King Radio has been denied. In addition, a separate proposal to assign Channel 221A to Clinton has also been denied for lack of interest. The Bald Knob assignment could provide for a first local aural service to that community.

EFFECTIVE DATE: June 2, 1980.

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

FOR FURTHER INFORMATION CONTACT: Molly Pauker, Broadcast Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of § 73.202(b), *Table of Assignments*, FM Broadcast Stations. (Clinton and Bald Knob, Arkansas), BC Docket No. 79-1, RM-3166, RM-3351.

Report and Order—Proceeding Terminated

Adopted: April 15, 1980.
Released: April 23, 1980.

1. The Commission has under consideration the *Notice of Proposed Rule Making*, 44 FR 5163, January 25, 1979, inviting comments on a proposal to assign Channel 296A to Clinton, Arkansas, as its first local FM channel assignment. The *Notice* was issued in response to a petition filed by Victor Weber and Sidney R. King, doing business as Weber-King Radio ("Weber-King"). John Paul Capps ("Capps") filed a counterproposal asking us to assign Channel 296A to Bald Knob, Arkansas, as its first local FM channel assignment and to assign Channel 221A, instead of 296A, to Clinton. Joellen Broadcasting Company ("JBC"), licensee of Station KOTN-FM (Channel 222), Pine Bluff, Arkansas, opposes Capps' requested assignment of Channel 221A to CLinton, on the grounds that the assignment would conflict with its application to move its station's transmitter site.[1] In a letter, Station KUCA-FM (Channel 218A), Conway, Arkansas, also states that the proposal for Channel 221A at Clinton would conflict with its application for Class C facilities.[2]

2. Clinton, Arkansas (pop. 1,029),[3] seat of Van Buren County (pop. 8,275), is located approximately 121 kilometers (75 miles) north of Little Rock, Arkansas. Weber-King states that both Clinton and Van Buren County are growing in population, and that Clinton is primarily agricultural, specializing in cattle and poultry production. Clinton is currently served by daytime-only AM Station KGFL, operated by Weber-King. There is currently no other FM assignment in Clinton or Van Buren County.

3. Bald Knob, Arkansas (pop. 2,094), is located in White County (pop. 39,253). Capps states that Bald Knob is growing in population, and that the area is primarily agricultural, specializing in strawberries, poultry and cattle. Bald Knob has no local aural service but receives service from Stations KMCW(AM) and KABK-FM (Channel 249A), Augusta, Arkansas,[4] and Stations KWCK(AM) and KSER(FM), (Channel 257), Searcy, Arkansas.

4. In reply comments, Weber-King opposes the proposed alternative assignment of Channel 221A to Clinton, since, even if the JBC site change were denied, a 10 kilometers (6 miles) site restriction (to comply with the separation to JBC's station's present site) would prevent it from using a combined transmitter site with its daytime-only AM station, currently located south of Clinton. It also states that even if JBC's application were to be denied, it has not been shown that sites are available for a Channel 221A station northwest of Clinton. Finally, Weber-King argues that Clinton should be favored for Channel 296A since Bald Knob is adequately served by nearby stations, one of which has obtained dual-city identification to include Bald Knob.

5. In our opinion, JBC's site preference would not be an obstacle from Clinton obtaining its first local aural service (see *Freeport, Tex.*, Dkt. 21512, 45 Fed. Reg. 21638 (1980)). Furthermore, the Conway station could be required to change frequency (to Channel 217, for example) to accommodate its proposed increase in facilities and avoid a short-spacing to the Channel 221A proposal. However, we do not believe that Channel 221A should be assigned to Clinton. We have not been given adequate assurance from Weber-King that it would apply for the channel, if assigned. From its statements, it does not appear that Weber-King would seek to operate separate facilities from its AM operation in view of the site restriction.

6. Thus, we are left with choosing between the conflicting proposals for Channel 296A. We believe that the public will be better served by our assigning Channel 296A to Bald Knob. This choice is based on Bald Knob's larger population and its present lack of local service compared to Clinton which already has a daytime AM service. Although Bald Knob receives service from the nearby stations, one of which (Station KABK-FM) has been granted authority to identity with Bald Knob, such service does not reach the level of local service. Indeed, the mere fact of identification imposes no additional obligation on a station to provide local programming.

7. 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 Section 0.281 of the Commission's Rules, IT IS ORDERED, That effective June 2, 1980, the FM Table of Assignments, Section 73.202(b) of the Commission's Rules, IS AMENDED with respect to the community listed below:

City	Channel No.
Bald Knob, Arkansas	296A

8. It is further ordered, That the petition filed by Weber-King Radio proposing the assignment of Channel 296A to Clinton, Arkansas, IS DENIED.

9. It is further ordered, That this proceeding IS TERMINATED.

10. For further information concerning this proceeding, contact Molly Pauker, Broadcast Bureau, (202) 632-6302.

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

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 80-13231 Filed 4-29-80; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[BC Docket No. 79-148; RM-3339]

FM Broadcast Station in Moriah, N.Y.; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Report and order.

SUMMARY: Action taken herein assigns a first Class A FM channel to Moriah, New York, in response to a petition filed

[1] JBC has applied to move its transmitter site approximately 13 miles closer to Clinton which would create a separation of approximately 138 kilometers (86 miles) from Clinton. The required separation is 168 kilometers (105 miles).

[2] The required spacing is 105 kilometers (65 miles). The Conway station is situated 65 kilometers (41 miles) from Clinton.

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

[4] Station KABK-FM identifies itself dually with Augusta and Bald Knob.

by Peter E. Hunn. The channel can be used to bring a first local aural broadcast service to Moriah.

EFFECTIVE DATE: June 2, 1980.

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

FOR FURTHER INFORMATION CONTACT: Mildred B. Nesterak, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

Report and Order—(Proceeding Terminated)

Adopted: April 16, 1980.
Released: April 23, 1980.

In the matter of Amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Moriah, New York), BC Docket No. 79-148 RM-3339.

By the Chief, Policy and Rules Division:

1. The Commission has under consideration a *Notice of Proposed Rule Making*, adopted June 7, 1979, 44 FR 34980, proposing the assignment of FM Channel 292A to Moriah, New York, in response to a petition filed by Peter E. Hunn ("petitioner"). Supporting comments were filed by petitioner in which he reaffirmed his intention to apply for the channel, if assigned.

2. Moriah (pop. 5,244),[1] in Essex County (pop. 34,631), is situated in the Lake Champlain Adirondack Mountain area, approximately 61 kilometers (38 miles) north of Glens Falls, New York. There is no local aural broadcast service in Moriah.

3. Petitioner asserts that the proposed FM station could serve the area residents by providing information on local issues and events and by broadcasting local weather information which is important to an area near the shores of Lake Champlain and the Adirondack Mountains.

4. The Canadian Government has given its concurrence to the proposed assignment of Channel 292A to Moriah, New York.

5. We have given careful consideration to the proposal and believe that Channel 292A should be assigned to Moriah, New York. An interest has been shown for its use and the assignment would provide the community with its first local aural broadcast service.

6. Authority for the action taken herein is contained in Sections 4(i), 5(d)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Section 0.281 of the Commission's Rules.

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

7. In view of the foregoing, it is ordered, that effective June 2, 1980, Section 73.202(b) of the Commission's Rules, the FM Table of Assignments, as regards Moriah, New York, is amended to read as follows:

City	Channel No.
Moriah, New York	292A

8. It is further ordered, that this proceeding IS TERMINATED.

9. For further information concerning this proceeding, contact Mildred B. Nesterak, Broadcast Bureau, (202) 632-7792.

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

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules Division Broadcast Bureau.

[FR Doc. 80-13232 Filed 4-29-80; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[BC Docket No. 79-129; RM-3276]

FM Broadcast Station in Bandera, Texas; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Report and Order.

SUMMARY: Action taken herein assigns a first Class A FM channel to Bandera, Texas, in response to a petition filed by Paloma Broadcasting Corporation. The channel can be used to bring a first local aural broadcast service to the community.

EFFECTIVE DATE: June 2, 1980.

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

FOR FURTHER INFORMATION CONTACT: Mildred B. Nesterak, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of § 73.202(b), *Table of Assignments*, FM Broadcast Stations. (Bandera, Texas), BC Docket No. 79-129, RM-3276.

Report and Order—Proceeding Terminated

Adopted: April 16, 1980;
Released: April 23, 1980.

1. The Commission has under consideration its *Notice of Proposed Rule Making*, adopted May 23, 1979, 44 FR 33122, instituted in response to a petition filed by Paloma Broadcasting Corporation ("petitioner"). Petitioner proposed the assignment of Channel 252A to Bandera, Texas, as a first FM assignment to that community. No oppositions to the proposal were filed.

2. Bandera (pop. 891),[1] seat of Bandera County (pop. 4,747), is located approximately 74 kilometers (46 miles) northwest of San Antonio, Texas. There is no local aural broadcast service in Bandera. Channel 252A can be assigned to that community in conformity with the minimum distance separation requirements provided the transmitter site is located at least 9 kilometers (6 miles) north of Bandera. Petitioner reaffirmed its intention to file for the channel, if assigned.

3. In support of its proposal, petitioner submitted information with respect to Bandera which is persuasive as to its need for a first FM channel assignment.

4. The Mexican Government has given its concurrence to the proposed assignment of Channel 252A to Bandera, Texas.

5. We believe that the public interest would be served by the assignment of Channel 252A to Bandera, Texas. An interest has been expressed for its use and such an assignment would provide the community with a first local aural broadcast service.

6. Accordingly, it is ordered, that effective June 2, 1980, the FM Table of Assignments, § 73.202(b) of the Commission's rules, is amended with respect to the community listed below:

City	Channel No.
Bandera, Texas	252A

7. Authority for the adoption of the amendment is 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.

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

9. For further information concerning this proceeding, contact Mildred B. Nesterak, Broadcast Bureau, (202) 632-7792.

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

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules Division.

[FR Doc. 80-13180 Filed 4-29-80; 8:45 am]

BILLING CODE 6712-01-M

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

47 CFR Part 90

[PR Docket No. 79-192; RM-3315, RM-3325, RM-3330]

One-Way Radio Paging in the Special Emergency Radio Service; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: Rules were adopted in this proceeding (PR Docket 79-192) at 45 FR 13084, February 28, 1980, which reallocated four call box frequency pairs to the Special Emergency Radio Service for medical paging and extended deadlines for conversion of paging systems to paging-only frequencies. A citation was inadvertently omitted from a rule change made to § 90.55 in Appendix B. This document corrects the omission.

EFFECTIVE DATE: March 31, 1980.

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

FOR FURTHER INFORMATION CONTACT: Emmett H. Pritchard, Private Radio Bureau, Rules Division, (202) 632-6497.

In the matter of Amendment of Part 90 of the Commission's rules regarding one-way radio paging in the Special Emergency Radio Service, PR Docket 79-192; RMs-3315, 3325, 3330.

Released: April 23, 1980.

By Report and Order in this proceeding adopted February 13, 1980, and released February 28, 1980 (FCC 80-65, 15472), the Commission reallocated four call box frequency pairs to the Special Emergency Radio Service (SERS) for medical paging and extended deadlines for conversion to paging-only frequencies from January 1, 1980, for one year for areas within 75 miles of the center of the top 27 urban areas and indefinitely elsewhere. In Appendix B, rules were promulgated to accomplish those ends, but an assignment limitation provided at § 90.53(b)(4) was inadvertently omitted from rule changes made to § 90.55. Therefore, at § 90.55, Paging operations, the first sentence is corrected to read as follows:

§ 90.55 Paging operations.

Effective August 15, 1974, paging operations may be authorized in this service only on frequencies assigned under the provisions of § 90.53(b)(4), (25) or (26).* * *

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 80-13182 Filed 4-29-80; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Determination That the Goodenough Gambusia (Gambusia Amistadensis) Is an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines that the Goodenough gambusia (*Gambusia amistadensis*) is an Endangered species. This fish has been extirpated from the wild in its native habitat, Goodenough Spring, Val Verde County, Texas, and presently survives in captivity at the University of Texas and Dexter National Fish Hatchery. The disappearance of the wild population of this species was due to destruction of its native habitat by impoundment activities of the U.S. Army Corps of Engineers. The present action will afford this species the protection provided by the Endangered Species Act of 1973, as amended.

EFFECTIVE DATE: This rule takes effect on May 30, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240, 703/235-2771.

SUPPLEMENTARY INFORMATION:

Background

The Goodenough gambusia was known to occur only in Goodenough Spring, tributary to the Rio Grande River in Val Verde County, Texas. In July of 1968, backwaters of the Corps of Engineers Amistad Reservoir began permanent flooding of the area. Subsequent visits to the area after the reservoir had reached full pool level found the spring under more than seventy feet of silt laden water. A scuba diver examined the Goodenough Spring area but did not detect any clear water issuing from the spring. This species is presently surviving only in captivity at the University of Texas and Dexter National Fish Hatchery in New Mexico.

This species was originally proposed as endangered on August 15, 1978 (FR 43, 36117-36120). Comments received in response to this proposal have been received and are summarized herein. A public hearing was held in Austin, Texas on July 9, 1979 to receive oral statements on several endangered plants and the Goodenough gambusia. No oral statements were made concerning the Goodenough gambusia.

Summary of Comments and Recommendations

Section 4(b)(1)(c) of the Act requires that a summary of all comments and recommendations received be published in the **Federal Register** prior to adding any species to the List of Endangered and Threatened Wildlife Plants.

All comments received during the period of August 15, 1978 to December 31, 1979 were considered in formulating this final rule.

A total of three comments were received on the Goodenough gambusia proposal. They were from the State of Texas, the Lone Star Chapter of the Sierra Club and a zoologist from the University of Texas. All three letters supported the proposed Endangered status for Goodenough gambusia. As previously mentioned, no oral statements were made pertaining to the Goodenough gambusia at the public hearing in Austin, Texas on July 9, 1979.

Conclusion

After a thorough review and consideration of all the information available, the Director has determined that the Goodenough gambusia (*Gambusia amistadensis*) is Endangered due to the factor described in Section 4(a) of the Act, as amplified below.

1. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The Goodenough gambusia was known to occur only in Goodenough Spring, tributary to the Rio Grande River in Val Verde County, Texas. In July of 1968, backwaters of the Corps of Engineers Amistad Reservoir began permanent flooding of the area. Subsequent visits to the area after the reservoir had reached full pool level found the spring under more than 70 feet of silt laden water. A scuba diver examined the Goodenough Spring area but did not detect any clear water issuing from the spring. This species is presently surviving only in captivity at the University of Texas and Dexter National Fish Hatchery.

2. *Overutilization for commercial, sporting, scientific, or educational purposes.* Not applicable.

3. *Disease or predation.* Not applicable.

4. *The inadequacy of regulatory mechanisms.* Not applicable.

5. *Other natural or manmade factors affecting its continued survival.* Not applicable.

Effect of the Rulemaking

Section 7(a) of the Act, as amended, provides:

The Secretary shall review other programs administered by him and utilize such

programs in furtherance of the purposes of this Act. All other Federal agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act. Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency (hereinafter referred to as an "agency action") is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical, unless such agency has been granted an exemption for such action by the Committee pursuant to subsection (h) of this section.

Provisions for interagency cooperation were published on January 4, 1978, in the **Federal Register** (43 FR 870–876) and codified at 50 CFR 402. These regulations are intended to assist Federal agencies in complying with Section 7(a) of the Act. The present rule requires Federal agencies to satisfy these statutory and regulatory obligations with respect to *Gambusia amistadensis*. Endangered species regulations in Title 50 of the Code of Federal Regulations set forth a series of general prohibitions and exceptions which apply to all Endangered species.

With respect to this fish, all pertinent prohibitions of Section 9(a)(1) of the Act, as implemented by 50 CFR 17.21 would apply. These prohibitions, in general, make it illegal for any person subject to the jurisdiction of the United States to import or export Endangered species; deliver, receive, carry, transport, or ship them in interstate commerce in the course of a commercial activity; or to sell or offer them for sale in interstate or foreign commerce.

Section 10 of the Act and 50 CFR 17.22 and 17.23 provide for the issuance of permits to carry out otherwise prohibited activities involving Endangered species under certain circumstances. Such permits involving Endangered species are available for scientific purposes or to enhance the propagation or survival of the species. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship which would be suffered if such relief were not available.

Effect Internationally

In addition to the protection provided by the Act, the Service will review this species to determine whether it should be proposed to the Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora for placement upon the appropriate appendix to that Convention or whether it should be considered under other appropriate international agreements.

National Environmental Policy Act

An environmental assessment has been prepared and is on file in the Service's Washington Office of Endangered Species. The assessment is the basis for a decision that this determination is not a major Federal action which significantly affects the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969.

Critical Habitat

The Endangered Species Act Amendments of 1978 added the following provision to subsection 4(a)(1) of the Endangered Species Act of 1973:

> At the time any such regulation [to determine a species to be Endangered or Threatened] is proposed, the Secretary shall by regulation, to the maximum extent prudent, specify any habitat of such species which is then considered to be critical habitat.

The Goodenough gambusia (*Gambusia amistadensis)* presently survives only in captive populations in a laboratory at the University of Texas and the Dexter National Fish Hatchery. Since it has been extirpated from its natural range, it is not prudent at this time to designate an area of Critical Habitat for this species. Critical Habitat may be determined at a future date if an effort is made to re-introduce the species.

The primary author of this proposed rulemaking is Dr. James D. Williams, Office of Endangered Species (703/235–1975).

Regulations Promulgation

Accordingly, Part 17, Subchapter B of Chapter 1, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. Section 17.11 is amended by adding, in alphabetical order, the following fish to the list of animals:

Goodenough gambusis (*Gambusis amistadensis)*

§ 17.11 Endangered and threatened wildlife.

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Gambusia, Goodenough.	*Gambusia amistadensis*	Texas	Entire	E		NA	NA

Dated: April 23, 1980.

Robert S. Cook,

Acting Director, Fish and Wildlife Service.

[FR Doc. 80–13292 Filed 4–29–80; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 70

National Fish Hatcheries

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service issues a final rule which amends Part 70 by changing cross-references to the National Wildlife Refuge System in that part to accurately cite the appropriate parts of the National Wildlife Refuge System regulations. Additionally, the administrative provisions of the National Wildlife Refuge System now are equally applicable to national fish hatchery areas.

DATES: Effective May 7, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. William E. Daugherty, Acting Chief, Division of National Fish Hatcheries, U.S. Fish and Wildlife Service,

Washington, D.C. 20240, telephone (202) 343–2197.

SUPPLEMENTARY INFORMATION: On June 13, 1979 (44 FR 33915–33916), the Service published a proposed rule to clarify the National Fish Hatcheries regulations found in 50 CFR Part 70. For some time those regulations contained inaccurate references to corresponding sections in 50 CFR Parts 25–31. The proposal corrected those cross-references and added a further one to incorporate the administrative provisions of 50 CFR Part 25 in the national fish hatchery area regulations, which include provisions for public notice, permits, appeals, fees, concessions, public safety, and closure.

Although the Service solicited comments on the proposal, none were received. Only minor editorial or typographical changes have been made in the text of the final rule.

Effective Date of This Rule

The Service has found good cause, as required by 5 U.S.C. 553(d)(3), for making this rule effective May 7, 1980. Erroneous cross-references to the National Wildlife Refuge System regulations have frustrated Service enforcement actions on national fish hatchery areas.

The primary author of this final rulemaking is Mr. John T. Webb, Division of Law Enforcement, U.S. Fish and Wildlife Service.

Note.—The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Regulations Promulgation

Accordingly, Part 70 of Title 50 of the Code of Federal Regulations is revised as set forth below:

PART 70—NATIONAL FISH HATCHERIES

Sec.

70.1 Purpose.
70.2 Administrative provisions.
70.3 State cooperation in national fish hatchery area management.
70.4 Prohibited acts.
70.5 Enforcement, penalty, and procedural requirements for violations of Parts 25, 26, and 27.
70.6 Public entry and use.
70.7 Land-use management.
70.8 Range and feral animal management.
70.9 Wildlife species management.

Authority: Sec. 4, 48 Stat. 402, as amended, sec. 4, 76 Stat. 654; 5 U.S.C. 301, 16 U.S.C. 664; 460k; sec. 2, 80 Stat. 926; 16 U.S.C. 668dd.

§ 70.1 Purpose.

All national fish hatchery areas are maintained for the fundamental purpose of the propagation and distribution of fish and other aquatic animal life and managed for the protection of all species of wildlife.

§ 70.2 Administrative provisions.

The provisions and regulations set forth in Part 25 of this chapter are equally applicable to national fish hatchery areas.

§ 70.3 State cooperation in national fish hatchery area management.

State cooperation may be enlisted in management programs including public hunting, fishing, and recreation. The details of these programs shall be mutually agreed upon by the Secretary and the head of the appropriate State agency in cooperative agreements executed for that purpose. Persons entering upon a national fish hatchery area shall comply with all regulations issued by the State agency under the terms of the cooperative agreement.

§ 70.4 Prohibited acts.

(a) The prohibited acts enumerated in Part 27 of this chapter are equally applicable to national fish hatchery areas.

(b) Fishing, taking, seining, or attempting to fish, take, seine, any fish, amphibian, or other aquatic animal on any national fish hatchery area is prohibited except as may be authorized under the provisions of Part 71 of this chapter.

(c) Hunting, killing, capturing, taking, or attempting to hunt, kill, capture, or take any animal on any national fish hatchery area is prohibited except as may be authorized in the provisions of Part 71 of this chapter.

(d) Disturbing spawning fish or fish preparing to spawn in ponds, raceways, streams, lakes, traps, and below traps, ladders, fish screens, fishways and racks is prohibited.

§ 70.5 Enforcement, penalty ,and procedural requirements for violations of Parts 25, 26, and 27.

The enforcement, penalty, and procedural requirement provisions set forth in Part 28 of this chapter are equally applicable to national fish hatchery areas.

§ 70.6 Public entry and use.

The public entry and use provisions set forth in Part 26 of this chapter are equally applicable to national fish hatchery areas.

Note.—For Federal Register citations to special regulations issued under § 70.6, see the List of CFR Sections Affected.

§ 70.7 Land-use management.

The land-use management provisions set forth in Part 29 of this chapter are equally applicable to national fish hatchery areas.

§ 70.8 Range and feral animal management.

The range and feral animal management provisions set forth in Part 30 of this chapter are equally applicable to national fish hatchery areas.

§ 70.9 Wildlife species management.

The wildlife species management provisions set forth in Part 31 of this chapter are equally applicable to national fish hatchery areas, except § 31.15 relating to hunting and fishing, which are treated separately in this part.

Dated: April 24, 1980.

Robert S. Cook,

Acting Director, Fish and Wildlife Service.

[FR Doc. 80–13166 Filed 4–29–80; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 674

Alaska Salmon Fishery

AGENCY: National Oceanic and Atmospheric Administration (NOAA)/ Commerce.

ACTION: Emergency regulations.

SUMMARY: The North Pacific Fishery Management Council has adopted, and the Assistant Administrator for Fisheries of the National Oceanic and Atmospheric Administration has, with one exception, approved certain amendments to the fishery management plan (FMP) for the High Seas Salmon Fishery off the Coast of Alaska. These amendments must become effective at the beginning of the fishing season for sound conservation reasons. Procedures under Section 305(e) of the Fishery Conservation and Management Act of 1976 (FCMA) are involved so that these regulations are implemented in a timely manner.

EFFECTIVE DATE: These regulations become effective on May 1, 1980, and remain in effect until June 15, 1980 unless sooner amended or revoked.

FOR FURTHER INFORMATION CONTACT: Mr. Harry L. Rietze, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802, telephone: 907 586–7221.

SUPPLEMENTARY INFORMATION: On May 18, 1978 the National Marine Fisheries Service published interim emergency regulations implementing the approved

portion of the Fishery Management Plan (FMP) for the Alaska salmon fishery. The FMP was published in its entirety in the **Federal Register** on June 8, 1979 (44 FR 33250). The emergency regulations were reimplemented on July 11, 1979, (44 FR 40519), were amended once on July 17, 1979 (44 FR 41467), and were published as final regulations on September 6, 1979 (44 FR 51988).

These amendments are designed to promote conservation of the ocean salmon resource while allowing utilization of those stocks for food production and to bring the regulations in the FCZ (fishery conservation zone) into conformity with the regulations promulgated by the State of Alaska for the conduct of the salmon troll fishery in State waters.

These amendments will:

(1) Allow entry into the troll fishery in the FCZ (a) to hand trollers; and (b) those holders of valid State of Alaska entry permits for the power troll fishery as of May 15, 1979, or a valid Federal permit;

(2) Provide for transfer of State permits under State law with review and oversight by the Department of Commerce;

(3) Require that all troll caught chinook or coho salmon be landed with heads on;

(4) Restrict trollers to no more than four lines in the area south of the latitude of Cape Spencer, and no more than six lines north of that line;

(5) Permit no more than six operational gurdies aboard any licensed salmon trolling vessel; and

(6) Prohibit possession of salmon in any area where the taking of that species is prohibited.

It has been determined that controlling the catch is necessary for the future well being of the stocks in this fishery. The amendments are designed to control expansion of fishing effort in the fishery off Alaska. Reduction of fishing effort on depleted wild chinook stocks would be desirable, but until further data is available to identify those stocks on the fishing grounds, this mixed stock fishery will continue to take some of them. Some reduction of effort is expected from these amendments since it will reduce effort by individual boats who in the past have fished six or more lines in the FCZ but will now be restricted to four lines south of the latitude of Cape Spencer and six lines north of that line.

Closures by field announcement are possible if individual stocks of fish show signs of being overfished.

The amendments require that all chinook and coho salmon must be landed with the heads attached. In 1979 the regulations required that all finclipped salmon must be landed with heads on. This regulation was designed to insure recovery of coded wire tags implanted in the nose of those finclipped fish. It was found during the season that many of the trollers who freeze their catch were removing the heads of all fish, including those with clipped fins, thus losing the coded wire tag (CWT) and the information it contained from the data base for the management of the fishery. The requirement to land all chinook and coho with heads on will cause some further handling of those frozen fish since the heads must be removed and the fish reglazed after landing and checking for tags. In addition, it will somewhat reduce the carrying capacity of the individual vessels since fish with heads on take up more space than headed fish. However, the importance of the tagging program, dependent on the recovery of those tags, makes it necessary to impose this restriction.

The amendments prohibit the possession of any species aboard a vessel while fishing in an area closed to the taking of that species. This amendment is designed to permit closure of areas to the taking of a species but still allowing the fishery to continue for other species. Permitting possession of species prohibited to be taken in that area would make the closure unenforceable.

State of Alaska regulations have prohibited the use of more than four lines per vessel in state waters for many years. There has been no limit on the number of lines that could be used in the FCZ. The amendment restricts individual vessels to no more than four lines in the FCZ south of the latitude of Cape Spencer and no more than six lines north of that line. That amendment will reduce the fishing effort to some extent but still allow six lines in the offshore waters of the Fairweather Grounds north of Cape Spencer where more gear is needed to fish successfully on those extensive grounds. It will also tend to enable more accurate measurement of catch per unit of effort (CPUE).

All Pacific salmon fisheries are seasonal, but the off-shore troll fishery, which is conducted for the most part on feeding, growing, fish could, with varying degrees of success, be conducted year around, in sharp contrast to the inshore net fisheries which are conducted on migrating salmon. The inshore fisheries are discrete. The homing salmon have sorted themselves out by stock and stream, or system, by the time they enter most net fisheries. This is not the case in the off-shore troll fishery. Several year classes and stocks are intermingled and are taken indiscriminately in that fishery. This is why tag recovery, catch statistics, gear size, and restrictions are so important in this fishery. Taking these matters into account, the Assistant Administrator finds and determines that an emergency exists in this fishery which requires that appropriate emergency regulations be promulgated under Sec. 305(e) of the Act.

The Assistant Administrator also finds and determines for the reasons mentioned above that advance notice of proposed rule-making would be impractical and contrary to the public interest.

Signed at Washington, DC this 28th day of April, 1980.

Winfred H. Meibohm,

Executive Director, National Marine Fisheries Service.

(16 U.S.C. 1801 *et seq.*)

50 CFR Part 674 is proposed to be amended as follows:

§ 674.4 [Amended]

1. Amend 674.4(a)(5) by changing "1980 to 1981."

§ 674.21 [Amended]

2. Amend 674.21 *Catch Limitations*, by revising paragraph (a)(1) and (2), paragraph (c) and (d) and figure 1 to read as follows:

"(a) *Size Restrictions*—(1) *Minimum size Limit*—(i) *Chinook Salmon*. Only chinook salmon 28 inches or more in length may be retained.

(ii) *Other Salmon*. There is no minimum size limit for sockeye, coho, pink or chum salmon.

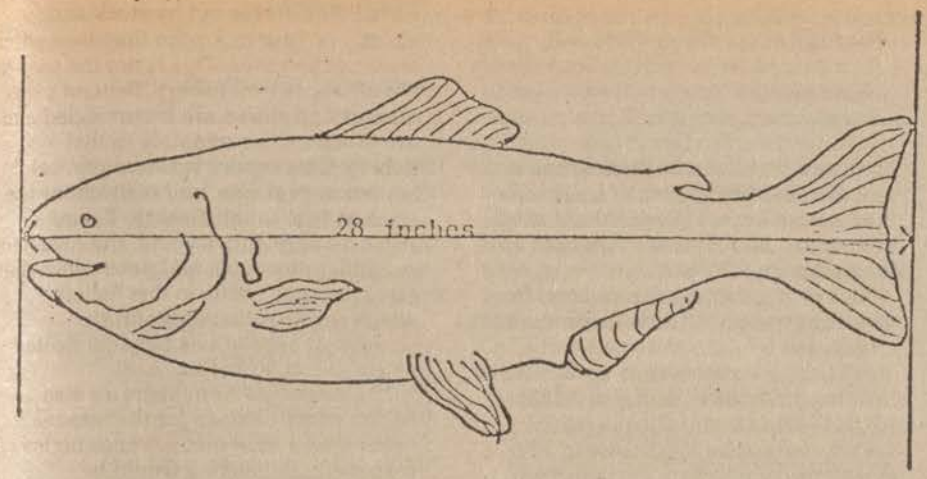
(2) *Method of Measurement*. For purposes of paragraph (1)(i) of this subsection, a chinook salmon is measured in a straight line passing over the pectoral fin, from the tip of the snout to the tip of the tail in its natural open position (see figure 1).

* * * * *

(c) *Landing Requirements*. All chinook or coho salmon taken in the management area must be landed with heads on.

(d) *Possession Prohibited*. The possession or retention of species of salmon in the management area or portion thereof which has been closed to the taking of such species of salmon, by vessels engaged in commercial fishing is prohibited.

Change figure 1 to appear as follows:



§ 674.24 [Amended]

Revise § 674.24(a)(2)(ii) to read as follows:

(a) * * *

(2) * * *

(ii) Vessels engaged in commercial fishing for salmon may not fish more than four lines south of a line beginning at the intersection of the inner boundary of the FCZ and the latitude of Cape Spencer at 58°12'08" N. lat., thence west along said latitude to 138°00' W. long., thence south along said longitude to 58°00' N. lat., thence west along said latitude to the intersection of the outer boundary of the FCZ and 58°00' N. lat. North of the line described above, such vessels may not fish more than six lines. All vessels engaged in commercial fishing for salmon must not have more than six gurdies mounted and in operational condition.

[FR Doc. 80-13358 Filed 4-29-80; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 45, No. 85
Wednesday, April 30, 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

Federal Crop Insurance Corporation

7 CFR Part 422

Proposed Potato Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation.

ACTION: Proposed rule.

SUMMARY: This proposed rule prescribes procedures for insuring potatoes effective with the 1981 crop year. This rule combines provisions from previous regulations for insuring potatoes in a shorter, clearer, more simplified document which will make the program more effective administratively. This rule is promulgated under the authority contained in the Federal Crop Insurance Act, as amended.

DATE: Written comments, data, and opinions must be submitted not later than June 30, 1980, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to James D. Deal, Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, telephone 202–447–3325.

The Draft Impact Analysis describing the options considered in developing this proposed rule and the impact of implementing each option is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION: This proposed action has been reviewed under USDA procedures established in Secretary's Memorandum No. 1955 to implement Executive Order No. 12044, and has been classified as "not significant".

Under the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), it is proposed that there be established a new Part 422 of Chapter IV in Title 7 of the Code of Federal Regulations to be known as 7 CFR Part 422 Potato Crop Insurance Regulations.

This part prescribes procedures for insuring potatoes effective with the 1981 crop year.

All previous regulations applicable to insuring potatoes as found in 7 CFR 401.101–401.111, and 401.155 (43 FR 14638), will not be applicable to 1981 and succeeding potato crops but will remain in effect for Federal Crop Insurance (FCIC) potato insurance policies issued for crop years prior to 1981.

It has been determined that combining all previous regulations for insuring potato crops into one shortened, simplified, and clearer regulation would be more effective administratively, while at the same time providing fewer documents for the policyholder to be concerned with.

In addition, proposed 7 CFR Part 422 provides (1) for a premimum adjustment table that provides for up to 50 percent premium discount for good insuring experience and premium increases for unfavorable insuring experience, which replaces the present premium discount system, (2) that any premium not paid by the termination date will be increased by a 9 percent charge, with a 9 percent simple interest applying to any balance at the end of each subsequent 12-month period thereafter, (3) that the period for submitting a notice of damage or loss is extended from 15 days to 30 days and eliminates the 60-day period for filing a claim, (4) that three coverage level options be offered in each county with the imposed level being provided on the actuarial table and the conversion level being closest to the present level for the county, (5) for a provision to allow insurability of potatoes any two of the first three years after acreage is orginally brought into production, which provision was previously stated on the county actuarial table, (6) that the term "marketable potatoes" is defined as potatoes acceptable for use as certified seed or for human consumption and which meet the standards for sale through market outlets for the area as may be further defined on the county actuarial table, and that the determination of marketable potatoes and the production to count shall be made by the Corporation, and (7) that the termination date for North Dakota is March 31 instead of April 15, which establishes the date for termination of the contract for nonpayment of premium 15 days earlier.

In addition, § 422.5 of the proposed Potato Crop Insurance Regulations, titled, "Good Faith Reliance on Misrepresentation," reflects an increase in limitation from $5,000 to $20,000 in those cases involving good faith reliance on misrepresentation wherein the Manager of the Corporation (FCIC) is authorized to take action to grant relief.

All written submissions made pursuant to this notice will be available for public inspection in the office of the Manager during regular business hours, 8:15 a.m. to 4:45 p.m., Monday through Friday.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to delete and reserve 7 CFR 401.155, but these provisions shall remain in effect for FCIC potato insurance policies issued for crop years prior to 1981. The Corporation also proposes to issue a new Part 422 in Chapter IV of Title 7 of the Code of Federal Regulations effective with the 1981 and subsequent crop years, which shall remain in effect until amended or superseded, to read as follows:

Part 422 is added to read as set forth below:

PART 422—POTATO CROP INSURANCE

Subpart—Regulations for the 1981 and Succeeding Crop Years

Sec.

422.1 Availability of potato insurance.
422.2 Premium rates, production guarantees, coverage levels, and prices at which indemnitites shall be computed.
422.3 Public notice of indemnities paid.
422.4 Creditors.
422.5 Good faith reliance on misrepresentation.
422.6 The contract.
422.7 The application and policy.

Authority: Secs. 506, 516, 52 Stat. 73, as amended, 77, as amended (7 U.S.C. 1506, 1516).

Subpart—Regulations for the 1981 and Succeeding Crop Years

§ 422.1 Availability of potato insurance.

Insurance shall be offered under the provisions of this subpart on potatoes in counties within limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation. Before insurance is offered in any county, there shall be published by appendix to this part the names of the counties in which potato insurance will be offered.

§ 422.2 Premium rates, production guarantees, coverage levels, and prices at which indeminities shall be computed.

The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for potatoes which shall be shown on the county acturaial table on file in the office for the county and may be changed from year to year.

(b) At the time the application for insurance is made, the applicant shall elect a coverage level and price at which indemnities shall be computed from among those levels and prices shown on the actuarial table for the crop year.

§ 422.3 Public notice of indemnities paid.

The Corporation shall provide for posting annually in each county at each county courthouse a listing of the indemnities paid in the county.

§ 422.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lein, mortgage, garnishment, levy, execution, bankruptcy, or an involuntary transfer shall not entitle the holder of the interest to any benefit under the contract except as provided in the policy.

§ 422.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the potato insurance contract, whenever (a) an insured person under a contract of crop insurance entered into under these regulations, as result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation, (1) is indebted to the Corporation for additional premiums, or (2) has suffered a loss to a crop which is not insured or for which the insured person is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured person believed to be insured, or believed the terms of the insurance contract to have been complied with or waived, and (b) the Board of Directors of the Corporation, or the Manager in cases involving not more than $20,000, finds (1) that an agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice, (2) that said insured person relied thereon in good faith, and (3) that to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured person shall be granted relief the same as if otherwise entitled thereto.

§ 422.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. Such acceptance shall be effective upon the date the notice of acceptance is mailed to the applicant. The contract shall cover the potato crop as provided in the policy. The contract shall consist of the application, the policy, the attached apendix, and the provisions of the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. Copies of forms referred to in the contract are available at the office for the county.

§ 422.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's insurable share in the potato crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the office for the county on or before the applicable closing date on file in the office for the county.

(b) The Corporation reserves the right to discontinue the acceptance of applications in any county upon its determination that the insurance risk involved is excessive, and also, for the same reason, to reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications or contract changes in any county, by placing the extended date on file in the office for the conty and publishing a notice in the **Federal Register** upon the Manager's determination that no adverse selectivity will result during the period of such extension: *Provided, however,* That if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1978 and succeeding crop years, a contract in the form provided for under this subpart will come into effect as a continuation of a potato contract issued under such prior regulations, without the filing of a new application.

(d) The provisions of the application and Potato Insurance Policy for the 1981 and succeeding crop years, and the Appendix to the Potato Insurance Policy are as follows:

U.S. Department of Agriculture, Federal Crop Insurance Corporation

Application for 19— and Succeeding Crop Years, Potato Crop Insurance Contract

Contract Number———
Identification Number ———
Name and Address———
Zip Code ———
County ———
State ———
Type of Entity ———
Applicant is over 18 Yes—— No——

A. The applicant, subject to the provisions of the regulations of the Federal Crop Insurance Corporation (herein called "Corporation"), hereby applies to the Corporation for insurance on the applicant's share in the potatoes planted on insurable acreage as shown on the county actuarial table for the above-stated county. The applicant elects from the actuarial table the coverage level and price at which indemnities shall be computed. The premium rates and production guarantees shall be those shown on the applicable county actuarial table filed in the office for the county for each crop year.
Level Election——— Price Election——— —

Example: For the 19—— Crop year Only (100% Share)

Location/ farm No.	Guarantee per acre*	Premium per acre**	Practice
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....

*Your guarantee will be on a unit basis (acres × per acre guarantee × share).

**Your premium is subject to adjustment in accordance with section 5(c) of the policy.

B. When notice of acceptance of this application is mailed to the applicant by the corporation, the contract shall be in effect for the crop year specified above, unless the time for submitting applications has passed at the time this application is filed, and shall continue for each succeeding crop year until canceled or terminated as provided in the contract. This accepted application, the following potato insurance policy, the attached appendix, and the provisions of the county actuarial table showing the production guarantees, coverage levels, premium rates, prices for computing indemnities, and insurable and uninsurable acreage shall constitute the contract. Additional information regarding contract provisions can be found in the county

regulations folder on file in the office for the country. No term or condition of the contract shall be waived or changed except in writing by the Corportation.

(Code No./Witness to Signature)————————
(Signature of applicant)————————
(Date)————————, 19——
Address of Office for County: ————————

Phone———————— ————————
Location of Farm Headquarters: ————————

Phone————————

Potato Crop Insurance Policy

Terms and Conditions

Subject to the provisions in the attached appendix:

1. Causes of loss. (a) Causes of loss insured against. The insurance provided is against unavoidable loss of production resulting from adverse weather conditions, insects, plant disease, wildlife, earthquake or fire occurring within the insurance period, subject to any exceptions, exclusions or limitations with respect to causes of loss shown on the actuarial table.

(b) Causes of loss not insured against. The contract shall not cover any loss of production, as determined by the Corporation, due to (1) damage that occurs or becomes evident after the potatoes have been placed in storage, (2) the neglect or malfeasance of the insured, any member of the insured's household, the insured's tenants or employees, (3) failure to follow recognized good farming practices, (4) damage resulting from the backing up of water by any governmental or public utilities dam or reservoir project, or (5) any cause not specified as an insured cause in this policy as limited by the actuarial table.

2. Crop and acreage insured. (a) The crop insured shall be potatoes which are planted for harvest and which are grown on insured acreage and for which the actuarial table shows a guaranteed and premium rate per acre.

(b) The acreage insured for each crop year shall be that acreage planted to potatoes on insurable acreage as shown on the actuarial table, and the insured's share therein as reported by the insured or as determined by the Corporation, whichever the Corporation shall elect: *Provided,* That insurance shall not attach or be considered to have attached, as determined by the Corporation, to any acreage (1) planted with non-certified seed, (2) on which potatoes were planted in either of the two preceding crop years or sunflowers were planted in the preceding crop year unless otherwise provided on the actuarial table; *however,* if acreage has not been previously cultivated, potatoes shall be insurable any two of the first three crop years on such land, (3) where premium rates are established by farming practices on the actuarial table, and the farming practices carried out on any acreage are not among those for which a premium rate has been established, (4) not reported for insurance as provided in section 3 if such acreage is irrigated and an irrigated practice is not provided for such acreage on the actuarial table, (5) which is destroyed and after such destruction it was practical to replant to potatoes and such acreage was not replanted, (6) initially planted after the date on file in the office for the county which has been established by the Corporation as being too late to initially plant and expect a normal crop to be produced, (7) of volunteer potatoes, (8) planted to a type or variety of potato not established as adapted to the area or shown as noninsurable on the actuarial table, (9) planted with another crop, or (10) planted for the development or production of hybrid seed or for experimental purposes.

3. Responsibility of insured to report acreage and share. The insured shall submit to the Corporation on a form prescribed by the Corporation, a report showing (a) all acreage of potatoes planted in the county (including a designation of any acreage to which insurance does not attach) in which the insured has a share and (b) the insured's share therein at the time of planting. Such report shall be submitted each year not later than the acreage reporting date on file in the office for the county.

4. Production guarantees, coverage levels, and prices for computing indemnities. (a) For each crop year of the contract, the production guarantees, coverage levels, and prices at which indemnities shall be computed shall be those shown on the actuarial table.

(b) The production guarantee per acre shall be reduced by 20 percent for any unharvested acreage.

5. Annual premium. (a) The annual premium is earned and payable at the time of planting and the amount thereof shall be determined by multiplying the insured acreage times the applicable premium per acre, times the insured's share at the time of planting, times the applicable premium adjustment percentage in subsection (c) of this section.

(b) For premium adjustment purposes, only the years during which premiums were earned shall be considered.

(c) The premium shall be adjusted as shown in the following table:

BILLING CODE 3410-08-M

Insert illustrations 21044

% ADJUSTMENTS FOR FAVORABLE CONTINUOUS INSURANCE EXPERIENCE																
	Numbers of Years Continuous Experience Through Previous Year															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15 or more
Loss Ratio 1/ Through Previous Crop Year	Percentage Adjustment Factor For Current Crop Year															
.00 – .20	100	95	95	90	90	85	80	75	70	70	65	65	60	60	55	50
.21 – .40	100	100	95	95	90	90	90	85	80	80	75	75	70	70	65	60
.41 – .60	100	100	95	95	95	95	95	90	90	90	85	85	80	80	75	70
.61 – .80	100	100	95	95	95	95	95	95	90	90	90	90	85	85	85	80
.81 – 1.09	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100

% ADJUSTMENTS FOR UNFAVORABLE INSURANCE EXPERIENCE																
	Number of Loss Years Through Previous Year 2/															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Loss Ratio 1/ Through Previous Crop Year	Percentage Adjustment Factor For Current Crop Yea:															
1.10 – 1.19	100	100	100	102	104	106	108	110	112	114	116	118	120	122	124	126
1.20 – 1.39	100	100	100	104	108	112	116	120	124	128	132	136	140	144	148	152
1.40 – 1.69	100	100	100	108	116	124	132	140	148	156	164	172	180	188	196	204
1.70 – 1.99	100	100	100	112	122	132	142	152	162	172	182	192	202	212	222	232
2.00 – 2.49	100	100	100	116	128	140	152	164	176	188	200	212	224	236	248	260
2.50 – 3.24	100	100	100	120	134	148	162	176	190	204	218	232	246	260	274	288
3.25 – 3.99	100	100	105	124	140	156	172	188	204	220	236	252	268	284	300	300
4.00 – 4.99	100	100	110	128	146	164	182	200	218	236	254	272	290	300	300	300
5.00 – 5.99	100	100	115	132	152	172	192	212	232	252	272	292	300	300	300	300
6.00 – Up	100	100	120	136	158	180	202	224	246	268	290	300	300	300	300	300

1/ Loss Ratio means the ratio of indemnity(ies) paid to premium(s) earned.

2/ Only the most recent 15 crop years will be used to determine the number of "Loss Years". (A crop year is determined to be a "Loss Year" when the amount of indemnity for the year exceeds the premium for the year.)

BILLING CODE 3410-08-C

(d) Any amount of premium for an insured crop which is unpaid on the day following the termination date for indebtedness for such crop shall be increased by a 9 percent service fee, which increased amount shall be the premium balance, and thereafter, at the end of each 12-month period, 9 percent simple interest shall attach to any amount of the premium balance which is unpaid: *Provided,* When notice of loss has been timely filed by the insured as provided in section 7 of this policy, the service fee will not be charged and the contract will remain in force if the premium is paid in full within 30 days after the date of approval or denial of the claim for indemnity; *however,* if any premium remains unpaid after such date, the contract will terminate and the amount of premium outstanding shall be increased by a 9 percent service fee, which increased amount shall be the premium balance. If such premium balance is not paid within 12 months immediately following the termination date, 9 percent simple interest shall apply from the termination date and each year thereafter to any unpaid premium balance.

(e) Any unpaid amount due the Corporation may be deducted from any indemnity payable to the insured by the Corporation or from any loan or payment to the insured under any Act of Congress or program administered by U.S. Department of Agriculture, when not prohibited by law.

6. Insurance period. Insurance on insured acreage shall attach at the time the potatoes are planted and shall cease upon the earliest of (a) final adjustment of a loss, (b) harvest or removal of the potatoes from the field, (c) October 31 of the calendar year in which potatoes are normally harvested in all states except North Dakota (where insurance ceases October 15), or (d) total destruction of the insured potato crop.

7. Notice of damage or loss. (a) Any notice of damage or loss shall be given promptly in writing by the insured to the Corporation at the office for the county.

(b) Notice shall be given promptly if, during the period before harvest, the potatoes on any unit are damaged to the extent that the insured does not expect to further care for the crop or harvest any part of it, or if the insured wants the consent of the Corporation to put the acreage to another use. No insured acreage shall be put to another use until the Corporation has made an appraisal of the potential production of such acreage and consents in writing to such other use. Such consent shall not be given until it is too late or impractical to replant to potatoes. Notice shall also be given when such acreage has been put to another use.

(c) In addition to the notices required in subsection (b) of this section, if an indemnity is to be claimed on any unit, the insured shall give written notice thereof to the Corporation at the office for the county at least 72 hours prior to the start of harvest, unless all of the production is to be delivered directly to a processing plant, but not later than *30 days* after the earliest of (1) the date harvest is completed on the unit, (2) the calendar date for the end of the insurance period, or (3) the date the entire potato crop on the unit is destroyed, as determined by the Corporation. The Corporation reserves the right to provide additional time if it determines there are extenuating circumstances.

(d) Any insured acreage which is not to be harvested and upon which an indemnity is to be claimed shall be left intact until inspected by the Corporation.

(e) The Corporation may reject any claim for indemnity if any of the requirements of this section are not met.

8. Claim for indemnity. (a) It shall be a condition precedent to the payment of any indemnity that the insured (1) establish the total production of potatoes on the unit and that any loss of production was directly caused by one or more of the insured causes during the insurance period for the crop year for which the indemnity is claimed and (2) furnish any other information regarding the manner and extent of loss as may be required by the Corporation.

(b) Indemnities shall be determined separately for each unit. The amount of indemnity for any unit shall be determined by (1) multiplying the insured acreage of potatoes on the unit by the applicable production guarantee per acre, which product shall be the production guarantee for the unit, (2) subtracting therefrom the total production of potatoes to be counted for the unit, (3) multiplying the remainder by the applicable price for computing indemnities, and (4) multiplying the result obtained in step (3) by the insured share: *Provided,* That if the premium computed on the insured acreage and share is more than the premium computed on the reported acreage and share, the amount of indemnity shall be computed on the insured acreage and share and then reduced proportionately.

(c) The total production to be counted for a unit shall be determined by the Corporation and shall include all harvested and appraised production.

(1) Any harvested production shall be determined by the Corporation on the basis of marketable potatoes.

(2) Appraised production to be counted shall include: (i) any appraisals by the Corporation for potential production on harvested acreage and for uninsured causes and poor farming practices, (ii) not less than the applicable guarantee for any acreage which is abandoned or put to another use without prior written consent of the Corporation or damaged solely by an uninsured cause or from which the harvested production is disposed of without prior written consent of the Corporation and such disposition prevents accurate determination of marketable potatoes, and (iii) only the appraisal in excess of 20 percent of the production guarantee for all other unharvested acreage.

(d) The Corporation reserves the right to determine the extent of any loss at the time the potatoes are placed in storage or delivered to a processor.

(e) Notwithstanding the provisions of subsection (c) of this section, if potatoes are marketed or stored without an acceptable inspection, the production to count for such potatoes shall be 90 percent of the gross weight so marketed or stored.

(f) The appraised potential production for acreage for which consent has been given to be put to another use shall be counted as production in determinng the amount of loss under the contract. *However,* if consent is given to put acreage to another use and the Corporation determines that any such acreage (1) is not put to another use before harvest of potatoes becomes general in the county, (2) is harvested, or (3) is further damaged by an insured cause before the acreage is put to another use, the indemnity for the unit shall be determined without regard to such appraisal and consent.

9. Misrepresentation and fraud. The Corporation may void the contract without affecting the insured's liability for premiums or waiving any right, including the right to collect any unpaid premiums if, at any time, the insured has concealed or misrepresented any material fact or committed any fraud relating to the contract, and such voidance shall be effective as of the beginning of the crop year with respect to which such act or omission occurred.

10. Transfer of insured share. If the insured transfers any part of the insured share during the crop year, protection will continue to be provided according to the provisions of the contract to the transferee for such crop year on the transferred share, and the transferee shall have the same rights and responsibilities under the contract as the original insured for the current crop year. Any transfer shall be made on an approved form.

11. Records and access to farm. The insured shall keep or cause to be kept for two years after the time of loss, records of the harvesting, storage, shipments, sale or other disposition of all potatoes produced on each unit including separate records showing the same information for production from any uninsured acreage. Any persons designated by the Corporation shall have access to such records and the farm for purposes related to the contract.

12. Life of Contract: Cancellation and termination. (a) The contract shall be in effect for the crop year specified on the application and may not be canceled for such crop year. Thereafter, either party may cancel the insurance for any crop year by giving a signed notice to the other on or before the cancellation date preceding such crop year.

(b) Except as provided in section 5(d) of this policy, the contract will terminate as to any crop year if any amount due the Corporation under this contract is not paid on or before the termination date for indebtedness preceding such crop year: *Provided,* That the date of payment for premium (1) if deducted from an indemnity claim shall be the date the insured signs such claim or (2) if deducted from payment under another program administered by the U.S. Department of Agriculture shall be the date such payment was approved.

(c) Following are the cancellation and termination dates:

State	Cancellation date	Termination date for indebtedness
All States	Dec. 31	Mar. 31.

(d) In the absence of a notice from the insured to cancel, and subject to the

provisions of subsections (a), (b), and (c) of this section, and section 7 of the Appendix, the contract shall continue in force for each succeeding crop year.

Appendix (Additional Terms and Conditions)

1. Meaning of terms. For the purposes of potato crop insurance:

(a) "Actuarial table" means the forms and related material for the crop year approved by the Corporation which are on file for public inspection in the office for the county, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, insurable and uninsurable acreage, and related information regarding potato insurance in the county.

(b) "County" means the county shown on the application and any additional land located in a local producing area bordering on the county, as shown on the actuarial table.

(c) "Crop year" means the period within which the potato crop is normally grown and shall be designated by the calendar year in which the potato crop is normally harvested.

(d) "Harvest" means the digging of potatoes.

(e) "Insurable acreage" means the land classified as insurable by the Corporation and shown as such on the county actuarial table.

(f) "Insured" means the person who submitted the application accepted by the Corporation.

(g) "Marketable potatoes" means potatoes acceptable for use as certified seed or for human consumption and which meet the standards for sale through market outlets for the area and as may be further defined on the county actuarial table. The determination of marketable potatoes and the production to count shall be made by the Corporation.

(h) "Office for the county" means the Corporation's office serving the county shown on the application for insurance or such office as may be designated by the Corporation.

(i) "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

(j) "Share" means the interest of the insured as landlord, owner-operator, or tenant in the insured potato crop at the time of planting as reported by the insured or as determined by the Corporation, whichever the Corporation shall elect, and no other share shall be deemed to be insured: *Provided,* That for the purpose of determining the amount of indemnity, the insured share shall not exceed the insured's share at the earliest of (1) the date of beginning of harvest on the unit, (2) the calendar date for the end of the insurance period, or (3) the date the entire crop on the unit is destroyed, as determined by the Corporation.

(k) "Tenant" means a person who rents land from another person for a share of the potato crop or proceeds therefrom.

(l) "Unit" means all insurable acreage of potatoes in the county on the date of planting for the crop year (1) in which the insured has a 100 percent share, or (2) which is owned by one entity and operated by another entity on a share basis. Land rented for cash, a fixed commodity payment, or any consideration other than a share in the potato crop on such land shall be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in the office for the county or by written agreement between the Corporation and the insured. The Corporation shall determine units as herein defined when adjusting a loss, notwithstanding what is shown on the acreage report, and has the right to consider any acreage and share reported by or for the insured's spouse or child or any member of the insured's household to be the bona fide share of the insured or any other person having the bona fide share.

2. Acreage insured. (a) The Corporation reserves the right to limit the insured acreage of potatoes to any acreage limitations established under any Act of Congress, provided the insured is so notified in writing prior to the planting of potatoes.

(b) If the insured does not submit an acreage report on or before the acreage reporting date on file in the office for the county, the Corporation may elect to determine by units the insured acreage and share or declare the insured acreage on any unit(s) to be "zero." If the insured does not have a share in any insured acreage in the county for any year, the insured shall submit a report so indicating. Any acreage report submitted by the insured may be revised only upon approval of the Corporation.

3. Irrigated acreage. (a) Where the actuarial table provides for insurance on an irrigated practice, the insured shall report as irrigated only the acreage for which the insured has adequate facilities and water to carry out a good irrigation practice at the time of planting.

(b) Where irrigated acreage is insurable, any loss of production caused by failure to carry out a good irrigation practice, except failure of the water supply from an unavoidable cause occurring after the beginning of planting, as determined by the Corporation, shall be considered as due to an uninsured cause. The failure or breakdown of irrigation equipment or facilities shall not be considered as a failure of the water supply from an unavoidable cause.

4. Annual premium. (a) If there is no break in the continuity of participation, any premium adjustment applicable under section 5 of the policy shall be transferred to (1) the contract of the insured's estate or surviving spouse in case of death of the insured, (2) the contract of the person who succeeds the insured if such person had previously participated in the farming operation, or (3) the contract of the same insured who stops farming in one county and starts farming in another county.

(b) If there is a break in the continuity of participation, any reduction in premium earned under section 5 of the policy shall not thereafter apply; *however,* any previous unfavorable insurance experience shall be considered in premium computation following a break in continuity.

5. Claim for and payment of indemnity. (a) Any claim for indemnity on a unit shall be submitted to the Corporation on a form prescribed by the Corporation.

(b) In determining the total production to be counted for each unit, production from units on which the production has been commingled will be allocated to such units in proportion to the liability on each unit.

(c) There shall be no abandonment to the Corporation of any insured potato acreage.

(d) In the event that any claim for indemnity under the provisions of the contract is denied by the Corporation, an action on such claim may be brought against the Corporation under the provisions of 7 U.S.C. 1508(c): *Provided,* That the same is brought within one year after the date notice of denial of the claim is mailed to and received by the insured.

(e) Any indemnity will be payable within 30 days after a claim for indemnity is approved by the Corporation. *However,* in no event shall the Corporation be liable for interest or damages in connection with any claim for indemnity whether such claim be approved or disapproved by the Corporation.

(f) If the insured is an individual who dies, disappears, or is judicially declared incompetent, or the insured is an entity other than an individual and such entity is dissolved after the potatoes are planted for any crop year, any indemnity will be paid to the person(s) the Corporation determines to be beneficially entitled thereto.

(g) The Corporation reserves the right to reject any claim for indemnity if any of the requirements of this section or section 8 of the policy are not met and the Corporation determines that the amount of loss cannot be satisfactorily determined.

6. Subrogation. The insured (including any assignee or transferee) assigns to the Corporation all rights of recovery against any person for loss or damage to the extent that payment hereunder is made by the Corporation. The Corporation thereafter shall execute all papers required and take appropriate action as may be necessary to secure such rights.

7. Termination of the contract. (a) The contract shall terminate if no premium is earned for five consecutive years.

(b) If the insured is an individual who dies or is judicially declared incompetent, or the insured entity is other than an individual and such entity is dissolved, the contract shall terminate as of the date of death, judicial declaration, or dissolution; *however,* if such event occurs after insurance attaches for any crop year, the contract shall continue in force through such crop year and terminate at the end thereof. Death of a partner in a partnership shall dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons shall dissolve the joint entity.

8. Coverage level and price election. (a) If the insured has not elected on the application a coverage level and price at which indemnities shall be computed from among those shown on the actuarial table, the coverage level and price election which shall be applicable under the contract, and which the insured shall be deemed to have elected, shall be as provided on the actuarial table for such purposes.

(b) The insured may, with the consent of the Corporation, change the coverage level and/or price election for any crop year on or before the closing date for submitting applications for that crop year.

9. Assignment of indemnity. Upon approval of a form prescribed by the Corporation, the insured may assign to another party the right to an indemnity for the crop year and such assignee shall have the right to submit the loss notices and forms as required by the contract.

10. Contract changes. The Corporation reserves the right to change any terms and provisions of the contract from year to year. Any changes shall be mailed to the insured or placed on file and made available for public inspection in the office for the county at least 15 days prior to the cancellation date preceding the crop year for which the changes are to become effective, and such mailing or filing shall constitute notice to the insured. Acceptance of any changes will be conclusively presumed in the absence of any notice from the insured to cancel the contract as provided in section 12 of the policy.

Note.—The reporting requirements contained herein have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942 and OMB Circular A–40.

Approved by the Board of Directors on March 14, 1980.

Peter F. Cole,

Secretary,

Federal Crop Insurance Corporation.

Dated: April 23, 1980.

Approved by:

James D. Deal,

Manager.

[FR Doc. 80–13234 Filed 4–29–80; 8:45 am]

BILLING CODE 3410–08–M

Agricultural Marketing Service

7 CFR Part 946

Irish Potatoes Grown in Washington; Proposed Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed regulation would require fresh market shipments of potatoes grown in Washington to be inspected and meet minimum grade, size, maturity and pack requirements. The regulation should promote orderly marketing of such potatoes and keep less desirable quality and sizes from being shipped to consumers.

DATE: Comments due June 12, 1980.

ADDRESSES: Comments should be sent to: Hearing Clerk, Room 1077–S, U.S. Department of Agriculture, Washington, D.C. 20250. Two copies of all written comments shall be submitted, and they will be made available for public inspection at the office of the Hearing Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Charles W. Porter (202) 447–2615.

SUPPLEMENTARY INFORMATION: Marketing agreement No. 113 and Order No. 946, both as amended, regulate the handling of Irish potatoes grown in the State of Washington. This program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The State of Washington Potato Committee, established under the order, is responsible for its local administration.

This notice is based upon the recommendations made by the committee at its public meeting in Othello, Washington, on March 19, 1980.

The recommendations of the committee reflect its appraisal of the composition of the 1980 crop of Washington potatoes and the marketing prospects for this season. Shipments are expected to begin in early July. The proposed grade, size, cleanness, maturity and pack requirements, which are similar to those currently in effect through July 31, 1980, would prevent potatoes of lesser maturities, low quality, or undesirable sizes from being distributed in fresh market channels. They would also provide consumers with good quality potatoes consistent with the overall quality of the crop.

Potatoes of the Norgold variety grown in Districts 1 through 4 would again be required to be at least 5 ounces in weight or to have a minimum diameter of 2¼ inches. The committee believes that this minimum size would help to maintain the quality of the Norgold pack, particularly the smaller sizes remaining after the 50-pound cartons are packed. Norgolds grown in District 5 would be required to be 2⅛ inches minimum diameter August 1 through September 30 and 2 inches or 4 ounces during the remainder of each season. These requirements are intended to allow District 5, which has access to different markets, to market a greater portion of its crop.

All other long varieties would be required to be at least 2⅛ inches minimum diameter or 5 ounces mimimum weight during the period from August 1 through September 30, 1980, when most of the Norgolds are marketed. The committee believes this minimum diameter size should provide a more desirable potato pack to consumers. After September 30, 1980, all other long varieties would be required to be at least 2 inches in diameter or 4 ounces in weight. These requirements are the same as last year.

To prevent Norgold variety potatoes of less than 2¼ inches in diameter from being commingled and marketed fresh with other long varieties, all shipments of such commingled long varieties must meet the minimum size requirements of the Norgold variety. This should help insure a high quality pack.

The committee recommended retaining the additional 10 percent tolerance for damage due to internal defects for potatoes packed in 50-pound cartons. This problem usually occurs in the larger size potatoes—the predominant ones packed in cartons. Without this tolerance these larger potatoes would have to be shipped in bags which provide less protection to the potatoes and less ease of handling.

Exceptions are proposed to certain of these requirements to recognize special situations in which such requirements would be inappropriate or unreasonable.

Shipments would be allowed to certain special purpose outlets without regard to minimum grade, size, cleanness, maturity and pack requirements provided that safeguards are used ot prevent such potatoes from reaching unauthorized outlets. Seed would be exempted because requirements for this outlet differ greatly from those for fresh market. Shipments for use as livestock feed would likewise be exempt. Potatoes grown in the production area could be shipped without regard to the aforesaid requirements to specified locations in Morrow and Umatilla Counties, Oregon, in District No. 5, and Spokane County in District No. 1 for grading and storing. Since no purpose would be served by regulating potatoes used for charity purposes, such shipments would be exempt. Exemption of potatoes for most processing uses is mandatory under the legislative authority for this part. Therefore, shipments to processing outlets are exempt.

Again this season the minimum quantity exemption is proposed to be 20 hundredweight. This should relieve the burden on handling noncommercial quantities of potatoes and allow direct marketing outlets to operate in greater freedom.

Requirements for export shipments differ from those for domestic markets. Quality requirements may differ in foreign markets and smaller sizes are more acceptable. Because of this, export shipments would be exempt. In commercial prepeeling, operators remove the surface defects from potatoes which would be undesirable for the tablestock market, and smaller sizes are acceptable. For these reasons potatoes for prepeeling would also be exempt.

This proposal has been reviewed under USDA criteria for implementing Executive Order 12044. A determination has been made that this action should be classified "not significant." A Draft Impact Analysis is available from Charles W. Porter (202) 447–2615.

The proposal is as follows:

§ 946.334 [Removed]

1. *Termination of regulations:* Handling regulation § 946.334, effective July 1, 1979, through July 31, 1980 (44 FR 37902) shall be terminated upon the effective date of this section.

2. Section 946.335 is added to read as set forth below.

§ 946.335 Handling regulation.

During the period July 1, 1980, through July 31, 1981, no person shall handle any lot of potatoes unless such potatoes meet the requirements of paragraphs (a), (b), (c), and (g) of this section or unless such potatoes are handled in accordance with paragraphs (d) and (e) or (f) of this section.

(a) *Minimum quality requirements.*—(1) *Grade. All Varieties.* U. S. No. 2, or better grade.

(2) *Size.*—(i) *Round varieties.* 1 7/8 inches (47.6 mm) minimum diameter.

(ii) *Long varieties.* Norgold variety grown in Districts 1 through 4 must be 2 1/4 inches (57.2 mm) minimum diameter or 5 ounces minimum weight. Other long varieties and Norgolds grown in District 5 must be 2 1/8 inches (54.0 mm) minimum diameter or 5 ounces minimum weight during August 1 through September 30, and 2 inches (50.8 mm) or 4 ounces during the remainder of each season. Shipments of commingled long varieties containing Norgolds shall meet the Norgold size requirements.

(3) *Cleanness.* All varieties and grades—as required in the United States Standards for Grades of Potatoes. For example: U.S. No. 2—"not seriously damaged by dirt," and U.S. No. 1—"fairly clean."

(b) *Minimum maturity requirements.*—(1) *Round and White Rose varieties.* Not more than "moderately skinned."

(2) *Other long varieties (including but not limited to Russet Burbank and Norgold).* Not more than "slightly skinned."

(c) *Pack.* Potatoes packed in 50-pound cartons shall be U.S. No. 1 grade or better, except that potatoes which fail to meet the U.S. No. 1 grade only because of internal defects may be shipped provided the lot contains not more than 10 percent damage by any internal defect or combination of internal defects but not more than 5 percent serious damage by any internal defect or combination of internal defects.

(d) *Special purpose shipments.* The minimum grade, size, cleanness, maturity, and pack requirements set forth in paragraphs (a), (b), and (c) of this section shall not be applicable to shipments of potatoes for any of the following purposes:

(1) Livestock feed;

(2) Charity;

(3) Seed;

(4) Prepeeling;

(5) Canning, freezing, and "other processing" as hereinafter defined; or

(6) Grading or storing at any specific location in Morrow and Umatilla Counties in the State of Oregon, in District 5, or in Spokane County in District 1;

(7) Export, except to Alaska or Hawaii.

Shipments of potatoes for the purposes specified in subparagraphs (1) through (7) of this paragraph shall be exempt from inspection requirements specified in paragraph (g) of this section except shipments pursuant to subparagraph (6) shall comply with inspection requirements of (e)(2) of this section. Shipments specified in paragraph (d) (1), (2), (3), and (5) of this section shall be exempt from assessment requirements specified in § 946.41.

(e) *Safeguards.* (1) Handlers desiring to make shipments of potatoes for prepeeling shall:

(i) Notify the committee of intent to ship potatoes by applying on forms furnished by the committee for a certificate applicable to such special purpose shipments;

(ii) Prepare on forms furnished by the committee a special purpose shipment report on each such shipment. The handler shall forward copies of each such special purpose shipment report to the committee office and to the receiver with instructions to the receiver that he sign and return a copy to the committee office. Failure of the handler or receiver to report such shipments by promptly signing and returning the applicable special purpose shipment report to the committee office shall be cause for cancellation of such handler's certificate applicable to such special purpose shipments and/or the receiver's eligibility to receive further shipments pursuant to such certificate. Upon cancellation of such certificate, the handler may appeal to the committee for reconsideration; such appeal shall be in writing;

(iii) Before diverting any such special purpose shipment from the receiver of record as previously furnished to the committee by the handler such handler shall submit to the committee a revised special purpose shipment report.

(2) Handlers desiring to make shipments for grading or storing at any specified location in Morrow and Umatilla Counties in the State of Oregon, in District No. 5, or in Spokane County in District No. 1 shall:

(i) Notify the committee of intent to so ship potatoes by applying on forms furnished by the committee for a certificate applicable to such special purpose shipment. Upon receiving such application, the committee shall supply to the handler the appropriate certificate after it has determined that adequate facilities exist to accommodate such shipments and that such potatoes will be used only for authorized purposes;

(ii) If reshipment is for any purpose other than as specified in paragraph (d) of this section, each handler desiring to make reshipment of potatoes which have been graded or stored shall, prior to reshipment, cause each such shipment to be inspected by an authorized representative of the Federal-State Inspection Service. Such shipments must comply with the minimum grade, size, cleanness, maturity, and pack requirements specified in paragraphs (a), (b), and (c) of this section;

(iii) If reshipment is for any of the purposes specified in paragraph (d) of this section, each handler making reshipment of potatoes which have been graded or stored shall do so in accordance with the applicable safeguard requirements specified in paragraph (e) of this section.

(3) Each handler making shipments of potatoes for canning, freezing, or "other processing" pursuant to paragraph (d) of this section shall:

(i) First apply to the committee for and obtain a Certificate of Privilege to make shipments for processing;

(ii) Make shipments only to those firms whose names appear on the committee's list of canners, freezers, or other processors of potato products maintained by the committee, or to persons not on the list provided the handler furnishes the committee, prior to such shipment, evidence that the receiver may reasonably be expected to use the potatoes only for canning, freezing, or other processing;

(iii) Upon request by the committee, furnish reports of each shipment pursuant to the applicable Certificate of Privilege;

(iv) Mail to the office of the committee a copy of the bill of lading for each Certificate of Privilege shipment promptly after the date of shipment;

(v) Bill each shipment directly to the applicable processor.

(4) Each receiver of potatoes for processing pursuant to paragraph (d) of this section shall:

(i) Complete and return an application form for consideration of approval as a canner, freezer, or other processor of potato products;

(ii) Certify to the committee and to the Secretary that potatoes received from the production area for processing will be used for such purpose and will not be placed in fresh market channels;

(iii) Report on shipments received as the committee may require and the Secretary approve.

(5) Each handler desiring to make shipments of potatoes for export shall:

(i) Notify the committee of intent to so ship potatoes by applying on forms furnished by the committee for a certificate applicable to such special purpose shipment. Such information shall include the quantity of potatoes to be shipped and the name and address of the exporter;

(ii) After the certificate is approved and the shipment is made, furnish the committee with a copy of the on-board bill of lading applicable to such shipment;

(iii) Before diverting any such special purpose shipment from the receiver of record as previously furnished to the committee by the handler such handler shall submit to the committee a revised special purpose shipment report.

(f) *Minimum quantity exemption.* Each handler may ship up to, but not to exceed 20 hundredweight of potatoes to any person without regard to the inspection and assessment requirements of this part, but this exemption shall not apply to any shipment over 20 hundredweight of potatoes.

(g) *Inspection.* Except when relieved by paragraphs (d) or (f) of this section, no person may handle any potatoes unless an appropriate inspection certificate covering them has been issued by an authorized representative of the Federal-State Inspection Service and the certificate is valid at the time of shipment.

(h) *Definitions.* The terms "U.S. No. 1," "U.S. No. 2," "not seriously damaged by dirt," "fairly clean," "slightly skinned" and "moderately skinned" shall have the same meaning as when used in the United States Standards for Grades of Potatoes (7 CFR 2851.1540–2851.1566), including the tolerances set forth in it. The term "prepeeling" means the commercial preparation in the prepeeling plant of clean, sound, fresh tubers by washing, peeling or otherwise removing the outer skin, trimming, sorting and properly treating to prevent discoloration preparatory to sale in one or more of the styles of peeled potatoes described in § 2852.2422 United States Standards for Grades of Peeled Potatoes (7 CFR 2852.2421–2852.2433). The term "other processing" has the same meaning as the term appearing in the act and includes, but is not restricted to, potatoes for dehydration, chips, shoestrings, starch and flour. It includes the application of heat or cold to such an extent that the natural form or stability of the commodity undergoes a substantial change. The act of peeling, cooling, slicing, or dicing, or applying material to prevent oxidation does not constitute "other processing." Other terms used in this section have the same meaning as when used in the marketing agreement, as amended, and this part.

(i) *Applicability to imports.* Pursuant to section 8e of the act and § 980.1 "Import regulations" (7 CFR 980.1), Irish potatoes of the red skinned round type imported during the months of July and August in the effective period of this section shall meet the minimum grade, size, quality and maturity requirements for round varieties specified in paragraphs (a) and (b) of this section.

Dated: April 24, 1980.

Charles R. Brader,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 80-13210 Filed 4-29-80; 8:45 am]

BILLING CODE 3410-02-M

---

7 CFR Parts 1071, 1073, 1104, 1106, 1126, and 1132

[Dockets Nos. AO-210-A43, etc.]

Milk in Oklahoma Metropolitan and Certain Other Marketing Areas; Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders

	Marketing area	Dockets Nos.
7 CFR Parts:		
1106	Oklahoma Metropolitan	AO-210-A43
1071	Neosho Valley	AO-227-A35
1073	Wichita, Kans	AO-173-A37
1104	Red River Valley	AO-298-A30
1126	Texas	AO-231-A48
1132	Texas Panhandle	AO-262-A32

AGENCY: Agricultural Marketing Service.

ACTION: Public hearing on proposed rules.

SUMMARY: The hearing is being held to consider proposals submitted by Associated Milk Producers, Inc., Kraft, Inc., and a group of producers supplying Colvert Dairy at Ardmore, Oklahoma. One of the proposals to be considered would merge the Oklahoma Metropolitan, Neosho Valley, and Wichita marketing areas and the Oklahoma counties of the Red River Valley marketing area under one order. The merged area also would be expanded to include all of the State of Oklahoma. The Oklahoma Metropolitan order provisions, with minor modifications, would be used as the basic regulatory provisions of the merged order. Another proposal would merge the Oklahoma Metropolitan and Red River Valley marketing areas, expand the merged marketing area to include all of the State of Oklahoma, and use the Oklahoma Metropolitan order provisions, with minor modifications, as the basic regulatory provisions of the merged order. Still another proposal would merge the Red River Valley and Texas marketing areas and use the Texas order provisions with minor modifications as the basic regulatory provisions of the merged order. Proponents contend that the changes are needed to reflect changed marketing conditions.

DATE: May 20, 1980.

ADDRESS: Hilton Inn West, Interstate Highway 40 at Meridian Avenue, Oklahoma City, Oklahoma 73108.

FOR FURTHER INFORMATION CONTACT: Robert F. Greene, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-4824.

SUPPLEMENTARY INFORMATION: Notice is hereby given of a public hearing to be held at the Hilton Inn West, Interstate Highway 40 at Meridian Avenue, Oklahoma City, Oklahoma 73108, beginning at 9:30 a.m., on May 20, 1980, with respect to proposed amendments to the tentative marketing agreements and to the orders, regulating the handling of milk in the aforesaid specified marketing areas.

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 in each of the aforesaid specified marketing areas which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreements and to the orders.

Proposal No. 1, a proposal to combine the Oklahoma Metropolitan, Neosho Valley, and Wichita marketing areas and the Oklahoma portion of the Red River Valley marketing area under one order, raises the issue of whether the

provisions set forth in that proposal, as possibly modified by Proposal No. 2, would tend to effectuate the declared policy of the Act if they are applied to the proposed merged and expanded marketing area, and, if not, what modifications of the proposals would be appropriate. Similarly, Proposal No. 4, a proposal to merge the Red River Valley and Oklahoma marketing areas, and Proposal No. 5, a proposal to merge the Red River Valley and Taxas marketing areas, under one order raises the issue of whether the provisions set forth in the separate proposals would tend to effectuate the declared policy of the Act if they are applied to the entire marketing areas as proposed, and if not, what modifications of the proposals would be appropriate.

The issues raised by the proposals set forth herein also include whether the declared policy of the Act would tend to be effectuated by:

(a) Merging under one order any two or more of the Oklahoma Metropolitan, Neosho Valley, Wichita, and Red River Valley (either all of the area or only the Oklahoma portion) marketing areas.

(b) Merging the Oklahoma Metropolitan marketing area with only the Oklahoma portion of the Red River Valley marketing area.

(c) Merging the Texas marketing area with only the Texas portion of the Red River Valley marketing area.

(d) By adding the presently unregulated territory set forth in Proposal No. 1 and Beckham County, Texas, to any combination of orders that might result from the hearing.

The provisions of the Texas Panhandle order are open only for the limited purpose of removing Beckham County, Oklahoma, from the marketing area of that order if it is concluded as a result of this proceeding that Beckham County should be included in the marketing area of another order.

The proposed merger of orders as specified in Proposals No. 1, 4, and 5 also raises the issue of the appropriate disposition of the producer-settlement funds, marketing service funds and administrative funds accumulated under the Oklahoma Metropolitan, Neosho Valley, Wichita, Red River Valley, and Texas marketing areas.

The proposed amendments, set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by Associated Milk Producers, Inc.

Proposal No. 1

PART 1106—MILK IN SOUTHWEST PLAINS MARKETING AREA

General Provisions

§ 1106.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

Definitions

§ 1106.2 Southwest Plains Marketing Area.

The "Southwest Plains Marketing Area", hereinafter called the "marketing area", means all territory within the boundaries of the following counties, and all territory occupied by government (Municipal, State or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed counties:

Zone I.—In the State of Oklahoma

Caddo	McClain
Canadian	McIntosh
Cleveland	Okfuskee
Coal	Oklahoma
Garvin	Pittsburg
Grady	Pontotoc
Haskell	Pottawatomie
Hughes	Seminole
Latimer	Sequoyah
LeFlore	

Zone II.—In the State of Oklahoma

Alfalfa	Jefferson
Atoka	Johnston
Beaver	Kiowa
Beckham	Love
Bryan	Major
Carter	Marshall
Choctaw	McCurtain
Cimarron	Murray
Commanche	Pushmataha
Cotton	Roger Mills
Custer	Stephens
Dewey	Texas
Ellis	Tillman
Greer	Washita
Harmon	Woods
Harper	Woodward
Jackson	

Zone III.—In the State of Oklahoma

Adair	Muskogee
Blaine	Noble
Cherokee	Nowata
Craig	Okmulgee
Creek	Osage
Delaware	Ottawa
Garfield	Pawnee
Grant	Payne
Kay	Rogers
Kingfisher	Tulsa
Lincoln	Wagoner
Logan	Washington
Mayes	

Zone IV.—

In the State of Kansas

Allen	Labette
Bourbon	Montgomery
Chautauqua	Neosho
Cherokee	Wilson
Crawford	

In the State of Missouri

Barton	Newton
Jasper	Vernon

Zone V.—In the State of Knasas

Barber	Marion
Barton	McPherson
Butler	Pawnee
Comanche	Pratt
Cowley	Reno
Edwards	Rice
Ellis	Rush
Harper	Russell
Harvey	Sedgwick
Kingman	Stafford
Kiowa	Sumner

Zone VI.—In the State of Kansas

Clark	Lane
Finney	Meade
Ford	Morton
Gove	Ness
Grant	Scott
Gray	Seward
Greeley	Stanton
Hamilton	Stevens
Haskell	Trego
Hodgeman	Wichita
Kearney	

§ 1106.3 Route disposition.

"Route disposition" means any delivery (including any delivery by a vendor or disposition at a plant store) of any fluid milk product classified as Class I milk other than a delivery to a plant.

§ 1106.4 Plant.

"Plant" means the land, buildings, facilities and equipment constituting a single operating unit or establishment at which milk or milk products (including filled milk) are received, processed, or packaged. Separate facilities used only as a reload point for transferring bulk milk from one tank truck to another or separate facilities used only as a distribution point for storing packaged fluid milk products in transit for route disposition shall not be a plant under this definition.

§ 1106.5 Distributing plant.

"Distributing plant" means any plant:

(a) Approved by a duly constituted regulatory agency for the handling of milk approved for fluid consumption;

(b) In which fluid milk products are processed or packaged; and

(c) From which there is route disposition of fluid milk products.

§ 1106.6 Supply plant.

"Supply plant" means a plant from which fluid milk products are

transferred to a distributing plant(s) during the month.

§ 1106.7 Pool plant.

Except as provided in paragraph (d) of this section, "pool plant" means:

(a) A distributing plant from which during the month there is:

(1) Total route disposition (except filled milk) in an amount not less than 50 percent of the total quantity of fluid milk products (except filled milk) received at the plant or diverted to a nonpool plant by the plant operator under the limitations of § 1106.13; and

(2) Route disposition (except filled milk) in the marketing area in an amount not less than 10 percent of the receipts of Grade A fluid milk products at such plant, including producer milk diverted from the plant.

(b) A supply plant from which fluid milk products (except filled milk) are transferred during the month to a plant(s) described in paragraph (a) of this section in an amount not less than 60 percent of milk received at the supply plant from dairy farmers who would be eligible as producers under § 1106.12 if such plant qualifies pursuant to this paragraph and milk of such dairy farmers diverted from such plant by the plant operator. Any plant that qualifies under this paragraph during each of the months of September through January shall continue so qualified in each of the following months of February through August until any month of such period in which less than 40 percent of the plant receipts and diverted milk specified previously herein is transferred to plants described in paragraph (a) of this section. A plant not meeting such 40 percent requirements in any month of such February-August period shall be qualified under this paragraph in any remaining month of the year only if transfers of fluid milk products (except filled milk) from the plant during the month to plant(s) described in paragraph (a) of this section are at least 60 percent of the plant receipts and diverted milk specified previously herein.

(c) Any plant located in the marketing area that is operated by a cooperative association if pool plant status under this paragraph is requested for such plant by the cooperative association and 60 percent or more of the producer milk of members of the cooperative association is physically received during the month in the form of bulk fluid milk products at pool plants described in paragraph (a) of this section either directly from farms or by transfer from plants of the cooperative association for which pool status under this paragraph has been requested, subject to the following conditions:

(1) The plant does not qualify as a pool plant under paragraph (a) or (b) of this section or under comparable provisions of another Federal order; and

(2) The plant is approved by a duly constituted regulatory agency for the handling of milk approved for fluid consumption in the marketing area.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant or governmental agency plant;

(2) A distributing plant qualified pursuant to paragraph (a) of this section which meets the pooling requirements of another Federal order and from which there is a greater quantity of route disposition, except filled milk, during the month in such other Federal order marketing area than in this marketing area, except that if such plant was subject to all the provisions of this part in the immediately preceding month, it shall continue to be subject to all the provisions of this part until the third consecutive month in which a greater portion of its route disposition, except filled milk, is made in such other marketing area unless, notwithstanding the provisions of this paragraph, it is regulated under such other order. On the basis of a written application made by the plant operator at least 15 days prior to the date for which a determination of the Secretary is to be effective, the Secretary may determine that the route dispositions in the respective marketing areas to be used for purposes of this paragraph shall exclude (for a specified period of time) route disposition made under limited term contracts to governmental bases and institutions;

(3) A distributing plant qualified pursuant to paragraph (a) of this section which meets the pooling requirements of another Federal order and from which there is a greater quantity of route disposition, except filled milk, during the month in this marketing area than in such other Federal order marketing area but which plant is, nevertheless, fully regulated under such other Federal order; or

(4) A supply plant qualified pursuant to paragraph (b) of this section which meets the pooling requirements of another Federal order and from which greater qualifying shipments are made during the month to plants regulated under such other order than are made to plants regulated under this part.

§ 1106.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither another order plant, a governmental agency plant, nor a producer-handler plant, from which there is route disposition in the marketing area in consumer-type packages or dispenser units during the month.

(d) "Unregulated supply plant" means a nonpool plant, except another order plant, a governmental agency plant, or a producer-handler plant, from which fluid milk products are moved during the month to a pool plant qualified pursuant to § 1106.7.

(e) "Governmental agency plant" means a plant owned and operated by a governmental agency or establishment which processes or packages milk or filled milk that is distributed in the marketing area. Such plant shall be exempt from all provisions of this part.

§ 1106.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of one or more pool plants;

(b) Any cooperative association with respect to the milk of producers which it causes to be diverted pursuant to § 1106.13 for the account of such cooperative association;

(c) Any cooperative association with respect to milk that it receives for its account from the farm of a producer for delivery to a pool plant of another handler in a tank truck owned and operated by, or under the control of, such cooperative association, unless both the cooperative association and the operator of the pool plant notify the market administrator prior to the time that such milk is delivered to the pool plant that the plant operator will be the handler for such milk and will purchase such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples. Milk for which the cooperative association is the handler pursuant to this paragraph shall be deemed to have been received by the cooperative association at the location of the pool plant to which such milk is delivered.

(d) Any person who operates a partially regulated distributing plant;

(e) Any person who is a producer-handler; and

(f) Any person who operates an other order plant described in § 1106.7(d).

§ 1106.10 Producer-handler.

"Producer-handler" means any person:

(a) Who operates a dairy farm and a processing plant from which there is route distribution in the marketing area;

(b) Who receives no fluid milk products from sources other than his own farm production, pool plants, and other order plants;

(c) Who disposes of no other source milk as Class I milk except receipts from other order plants and by increasing the nonfat milk solids content of the fluid milk products received from his own farm production, pool plants, or other order plants; and

(d) Who provides proof satisfactory to the market administrator that the care and management of the dairy farm and other resources necessary for his own farm production of milk and the management and operation of the processing plant are the personal enterprise and risk of such person.

§ 1106.11 [Reserved]

§ 1106.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk approved for fluid consumption by a duly constituted regulatory agency, which is:

(1) Received at a pool plant or by a handler described in § 1106.9(c); or

(2) Diverted pursuant to § 1106.13 by a handler for his account.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1106.44(a)(8)(iii) and the corresponding step of § 1106.44(b); and

(3) Any person with respect to milk produced by him which is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order; or

(4) Any person with respect to milk produced by him during the months of February through July that is caused to be delivered to a pool plant by a cooperative association or a pool plant operator if during any of the immediately preceding months of September through November more than one-third of the milk from the same farm was caused by such cooperative association or pool plant operator to be delivered to plants as other than producer milk (except milk that is not producer milk as a result of a temporary loss of Grade A approval or the application of § 1106.13(e)(3)) unless such pool plant was a nonpool plant during any of such immediately preceding months.

§ 1106.13 Producer milk.

"Producer milk" means skim milk and butterfat in milk from a producer that is:

(a) Received by the operator of a pool plant at such pool plant directly from such producer. Any milk picked up from the producer's farm tank in a tank truck owned and operated by, or under the control of, the operator of a pool plant but which is not received at a plant until the following month, shall be considered as having been received by the handler during the month in which it is picked up at the producer's farm and shall be priced at the location of the plant where it is physically received in the following month.

(b) Received by a handler described in § 1106.9(c). Such milk shall be considered as having been received by the handler during the month in which it is picked up at the producer's farm and shall be priced at the location of the plant where it is physically received in the following month.

(c) Diverted from a pool plant to a nonpool plant that is not a producer-handler plant, subject to the conditions of paragraph (e) of this section.

(d) Diverted by a cooperative association for its account from a pool plant to a nonpool plant that is not a producer-handler plant, subject to the conditions of paragraph (e) of this section.

(e) Milk diverted from a pool plant to a nonpool plant shall be subject to the following conditions:

(1) A cooperative association may divert for its account, subject to the conditions of paragraph (e)(3) of this section, a total quantity of milk not in excess of one-half of the milk of its member-producers received at all pool plants during the month. Diversions in excess of such quantity shall not be eligible under this section and the diverting cooperative shall specify the dairy farmers whose diverted milk is not so eligible. If the cooperative association fails to designate such persons, status under this section shall be forfeited with respect to all milk diverted by such cooperative association. If a dairy farmer loses his producer status under this order (except as a result of a temporary loss of Grade A approval), his milk shall not be eligible for diversion until milk of such dairy farmer has been physically received as producer milk at a pool plant;

(2) The operator of a pool plant other than a cooperative association may divert for his account, subject to the conditions of paragraph (e)(3) of this section, milk of producers not members of a cooperative association diverting milk pursuant to paragraph (e)(1) of this section, in a total quantity not in excess of one-half of the milk of producers not members of such cooperative association received at such pool plant(s) during the month. Milk diverted in excess of such quantity shall not be eligible under this section and the diverting handler shall specify the dairy farmers whose diverted milk is not so eligible. If a handler fails to designate such persons, status under this section shall be forfeited with respect to all milk diverted by such handler. If a dairy farmer loses his producer status under this order (except as a result of a temporary loss of Grade A approval), his milk shall not be eligible for diversion until milk of such dairy farmer has been physically received as producer milk at a pool plant;

(3) Milk of a producer shall not be eligible for diversion from a pool plant under this section if during the month less than 15 percent of the total milk of such person as a producer is received at a pool plant; and

(4) Milk qualified as a producer milk that is diverted by a handler to a nonpool plant pursuant to this section shall be accounted for and priced as received by the diverting handler at the location of the nonpool plant to which diverted.

§ 1106.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1106.40(b)(1) from any source other than producers, handlers described in § 1106.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1106.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1106.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1106.40(b)(1)) for which

the handler fails to establish a disposition.

§ 1106.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1106.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1106.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk products, and contains less than 6 percent nonmilk fat (or oil).

§ 1106.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines, after application by the association:

(a) To be qualified under the provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act";

(b) To have full authority in the sale of milk of its members; and

(c) To be engaged in making collective sales or marketing milk or its products for its members.

Handler Reports

§ 1106.30 Reports of receipts and utilization.

On or before the seventh day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1106.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1106.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1106.9(b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1106.31 Payroll reports.

(a) On or before the 23rd day after the end of each month, each handler who elects pursuant to § 1106.73(e) to pay producers shall report to the market administrator the following information with respect to the handler's partial and final payments for producer milk received during such month;

(1) The name and address of each producer;

(2) The amounts paid each producer; and

(3) The dates such payments were made.

(b) On or before the 20th day after the end of the month, each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1106.76(b) shall report to the market administrator with respect to milk received from each dairy farmer who would have been a producer if the plant had been fully regulated the following information for such month;

(1) The name and address of each dairy farmer;

(2) The total pounds of milk received from each dairy farmer;

(3) The average butterfat content of such milk;

(4) The amount and nature of any deductions, as authorized in writing by the dairy farmer, from the payment for such milk; and

(5) The rate of payment per hundredweight and the net amount paid each dairy farmer.

§ 1106.32 Other reports.

(a) On or before the 21st day of each month, each handler described in § 1106.9(a), (b), and (c), except a cooperative association with respect to producer milk for which it elects to collect payments, shall report to the market administrator the following information with respect to its receipts of milk during the first 15 days of the month;

(1) The name and address of each producer from whom milk was received;

(2) The total pounds of producer milk and pounds of base milk received from such producer;

(3) The amount and nature of any deductions, as authorized in writing by the producer, to be made from the partial payment for such milk;

(4) The total pounds of milk received from a handler described in § 1106.9(c); and

(5) The pounds of skim milk and butterfat in bulk fluid milk products received from a pool plant operated by a cooperative association.

(b) On or before the 6th day after the end of each month, each handler described in § 1106.9(a), (b), and (c), shall report to the market administrator the following information with respect to its receipts of milk during such month.

(1) The name and address of each producer from whom milk was received;

(2) The total pounds of producer milk received from such producer, its average

butterfat content and for the months of March through July the total pounds of milk and the pounds of base milk of such producer delivered to each pool plant (and diverted to each plant that is not a pool plant) under any of the orders specified in § 1106.92;

(3) Except in the case of producer milk for which a cooperative association is collecting payments, the amount and nature of any deductions, as authorized in writing by the producer, to be made from the final payment for such milk;

(4) The total pounds of skim milk and butterfat received from a handler described in § 1106.9(c); and

(5) The pounds of skim milk and butterfat in bulk fluid milk products received from a pool plant operated by a cooperative association.

(c) On or before the reporting dates specified in paragraphs (a) and (b) of this section, each cooperative association that operates a pool plant from which bulk fluid milk products were transferred to pool plants of other handlers within the time periods described in paragraphs (a) and (b) of this section shall report to each such pool plant operator the name and location of the transferor-plant and the total pounds and butterfat content of the bulk fluid milk products transferred from the plant.

(d) In addition to the reports required pursuant to paragraphs (a) through (c) of this section and §§ 1106.30 and 1106.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

(e) Each handler who causes milk to be diverted to a nonpool plant, shall, prior to such diversion, report to the market administrator his intention to divert such milk, the proposed date or dates of such diversion, and the plant to which such milk is to be diverted.

Classification of Milk

§ 1106.40 Classes of utilization.

Except as provided in § 1106.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1106.30 shall be classified as follows:

(a) Class I milk. Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) Class II milk. Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form other than that specified in paragraph (c) (1) (iv) of this section;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all metal containers.

(c) Class III milk. Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese);

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk, fluid form that is used to produce a Class III product;

(v) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any product not otherwise specified in this section;

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b) (1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (b) (1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b) (1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1106.15; and

(6) In shrinkage assigned pursuant to § 1106.41(a) to the receipts specified in § 1106.41(a)(2) and in shrinkage specified in § 1106.41(b) and (c).

§ 1106.41 Shrinkage.

For the purpose of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1106.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant);

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1106.9(c), except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurements at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid

milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraphs (b) (1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1106.9(b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1106.42 Classification of transfers and diversions.

(a) Transfers to pool plants. Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1106.44(a)(12) and the corresponding step of § 1106.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1106.44(a)(7) or the corresponding step § 1106.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1106.44(a)(11) or (12) or the corresponding steps of § 1106.44(b), the skim milk or butterfat so transferred, up to the total of skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) Transfers and diversions to other order plants. Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b)(1), (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocating provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to another order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1106.40.

(c) Transfers to producer-handlers and transfers and diversions to governmental agency plants. Skim milk butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order or transferred or diverted from a pool plant to a governmental agency plant shall be classified:

(1) As Class I milk, if so moved in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose the transferee's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to its receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) Transfers and diversions to other nonpool plants. Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not another order plant, a producer-handler plant, or a governmental agency plant shall be classified;

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product, or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraph (d) (2) (i) (a) and (b) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraph (d) (2) (ii) through (viii) of this section:

(A) The transferor-handler or diverter-handler claims such classification in his report of receipts and utilization filed pursuant to § 1106.30 for the month within which such transaction occurred; and

(B) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(A) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(B) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(C) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(D) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(A) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(B) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(A) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(B) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plants; and

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph.

(e) Skim milk and butterfat transferred in the form of bulk milk by a handler described in § 1106.9(c) to another handler's pool plant shall be classified pursuant to § 1106.44 pro rata with producer milk received at the transferee-handler's plant.

§ 1106.43 General classification rules.

In determining the classification of producer milk pursuant to § 1106.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1106.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1106.9 (b) or (c) that was not received at a pool plant, the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1106.40, 1106.41, and 1106.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all the water originally associated with such solids; and

(c) The classification of producer milk for which the cooperative association is the handler pursuant to § 1106.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1106.44 Classification of producer milk.

For each month the market administrator shall determine for each handler described in § 1106.9(a) for each of his pool plants separately the classification of producer milk and milk received from a handler described in § 1106.9(c), by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1106.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a)(7)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1106.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1106.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This subparagraph shall apply only if the pool plant was subject to the provisions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1106.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1106.40(b)(1) that was not

subtracted pursuant to paragraph (a) (4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order and from a governmental agency plant;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) of this section; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant;

(vii) Receipts of fluid milk products from a person described in § 1106.12(b)(4);

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) and (7)(v) of this section for which the handler requests a classification other than Class I, but no in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraph (a)(8)(ii) (a) through (c) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount:

(A) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler);

(B) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, milk from a handler described in § 1106.9(c), fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(7)(vi) of this section; and

(C) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1106.40 (b)(1) in inventory at the beginning of the accounting period that were not subtracted pursuant to paragraph (a)(5) and (7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraph (a)(11)(i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class II and in Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2), (7)(v), (8)(i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to this subparagraph exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class II and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which the Class I utilization is available;

(12) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) and (8)(iii) of this section:

(i) Subject to the provisions of paragraph (a)(12) (ii), (iii), and (iv) of this section such subtraction shall be pro rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(A) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1106.45(a); or

(B) The total pounds of skim milk remaining in each class at this

allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler):

(ii) Should the proration pursuant to paragraph (a)(12)(i) of this section result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received;

(iii) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12)(i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(iv) Except as provided in paragraph (a)(12)(i) of this section, should the computations pursuant to paragraph (a)(12)(i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available;

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant according to the classification of such products pursuant to § 1106.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, and milk received from a handler described in § 1106.9(c), 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";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk and milk received from a handler described in § 1106.9(c) in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

§ 1106.45 Market Administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1106.44(a)(12) and the corresponding step of § 1106.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be in final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1106.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 14th day after the end of each month, report to each cooperative association which so requests the amount and class utilization of milk received by each handler from producers who are members of such cooperative association. For the purposes of this report, the milk caused to be so delivered by a cooperative association shall be prorated to each class in the proportion that the total receipts of producer milk by such handler were used in each class.

Class Prices

§ 1106.50 Class prices.

Subject to the provisions of § 1106.52 the class prices per hundredweight of milk shall be as follows:

(a) *Class I price.* The Class I price in Zone I shall be the basic formula price for the second preceding month plus $1.98.

(b) *Class I price.* The Class II price shall be the basic formula price for the month plus 10 cents.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

§ 1106.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92 score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1106.52 Plant location adjustments for handlers.

(a) For milk received at a plant from producers or a handler described in § 1106.9(c) and which is classified as Class I milk without movement in bulk form to a pool distributing plant at which a higher Class I price applies, the price specified in § 1106.50(a) shall be adjusted by the amount stated in paragraph (a)(1) through (8) of this section for the location of such plant:

(1) For a plant located within one of the zone set forth in § 1106.2, the adjustment shall be as follows:

	Adjustment per hundredweight
Zone I	No adjustment.
Zone II	Plus 7 cents.
Zone III	Minus 10 cents.

	Adjustment per hundredweight
Zone IV	Minus 33 cents.
Zone V	Minus 18 cents.
Zone VI	Minus 13 cents.

(2) For a plant located in any of the following Kansas counties, the adjustmant shall be as follows:

(i) Minus 24 cents.

Anderson, Atchison, Brown, Chase, Clay, Cloud, Coffey, Dickinson, Doniphan, Douglas, Franklin, Geary, Jackson, Jefferson, Johnson, Leavenworth, Linn, Lyon, Marshall, Miami, Morris, Nemaha, Osage, Ottawa, Pottawatomie, Republic, Riley, Saline, Shawnee, Wabaunsee, Washington, Wyandotte.

(ii) Minus 23 cents

Elk, Greenwood, Woodson

(iii) Minus 18 cents.

Cheyenne, Decatur, Ellsworth, Graham, Jewell, Lincoln, Logan, Mitchell, Norton, Osborne, Phillips, Rawlins, Rooks, Sheridan, Sherman, Smith, Thomas, Wallace.

(3) For a plant located in any of the following Missouri counties, the adjustment shall be as follows:

(i) Minus 24 cents.

Adair, Andrew, Atchison, Audrain, Bates, Benton, Boone, Buchanan, Caldwell, Callaway, Camden, Carroll, Cass, Chariton, Clark, Clay, Clinton, Cole, Cooper, Daviess, Dekalb, Gentry, Grundy, Harrison, Henry, Hickory, Holt, Howard, Jackson, Johnson, Knox, Lafayette, Lewis, Lincoln, Linn, Livingston, Macon, Marion, Mercer, Miller, Moniteau, Monroe, Montgomery, Morgan, Nodaway, Osage, Pettis, Pike, Platte, Putman, Ralls, Randolph, Ray, Saline, Schuyler, Scotland, Shelby, Sullivan, St. Clair, Worth.

(ii) Minus 31 cents.

Bollinger, Cape Girardeau, Perry, St. Francois, Ste. Genevieve.

(iii) Minus 38 cents.

Barry, Butler, Carter, Cedar, Christian, Crawford, Dade, Dallas, Dent, Douglas, Dunklin, Franklin, Gasconade, Greene, Howell, Iron, Jefferson, Laclede, Lawrence, Madison, Maries, McDonald, Mississippi, New Madrid, Oregon, Ozark, Pemiscot, Phelps, Polk, Pulaski, Reynolds, Ripley, St. Charles, St. Louis, City of St. Louis, Scott, Shannon, Stoddard, Stone, Taney, Texas, Warren, Washington, Wayne Webster, Wright.

(4) For a plant located in any of the following Louisiana parishes the adjustments shall be as follows:

(i) Plus 49 cents.

Bienville, Bossier, Caddo, Caldwell, Catahoula, Claiborne, Concordia, DeSoto, East Carroll, Franklin, Grant, Jackson, LaSalle, Lincoln, Madison, Morehouse, Natchitoches, Ouachita, Red River, Richland, Sabine, Tensas, Unon, Webster, West Carroll, Winn.

(ii) Plus 68 cents.

Allen, Avoyelles, Beauregard, East Feliciana, Evangeline, Livington, Rapides, St. Helena, St. Tammany, Tangipahoa, Vernon, Washington, West Feliciana.

(iii) Plus 87 cents.

Acadia, Ascension, Assumption, Calcasieu, Cameron, East Baton Rouge, Iberia, Iberville, Jefferson Davis, Jefferson, Lafayette, Lafourche, Orleans, Plaquemines, Pointe Coupee, St. Bernard, St. Charles, St. James, St John the Baptist, St. Landry, St. Martin, St. Mary, Terrebonne, Vermilion, West Baton Rouge.

(5) For a plant located in any of the following Texas counties the adjustments shall be as follows:

(i) Plus 22 cents.

Archer, Baylor, Clay, Hardeman, Montague, Wichita, Wilbarger.

(ii) Plus 27 cents.

Armstrong, Briscoe, Carson, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hall, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Sherman, Swisher, and Wheeler.

(iii) Plus 34 cents.

Camp, Collin, Cooke, Dallas, Delta, Denton, Ellis, Fannin, Franklin, Grayson, Hill, Hood, Hopkins, Hunt, Johnson, Kaufman, Lamar, Morris, Parker, Rains, Red River, Rockwall, Somervell, Tarrant, Titus, Upshur, Van Zandt, Wise, Wood.

(iv) Plus 37 cents.

El Paso

(v) Plus 40 cents.

Gregg, Harrison, Marion, Panola, Rusk, Smith, Bowie, Cass.

(vi) Plus 44 cents.

Bailey, Castro, Cochran, Cottle, Crosby, Dickens, Floyd, Gaines, Garza, Hale, Hockley, Lamb, Lubbock, Lynn, Motley, Terry, Yoakum.

(vii) Plus 49 cents.

Anderson, Bell, Bosque, Cherokee, Comanche, Coryell, Erath, Falls, Freestone, Hamilton, Henderson, Lampasas, Limestone, McLennan, Mills, Navarro.

(viii) Plus 52 cents.

Angelina, Houston, Jasper, Leon, Nacogdoches, Newton, Polk, Sabine, San Augustine, Shelby, Trinity, Tyler.

(ix) Plus 54 cents.

Brazos, Burleson, Grimes, Madison, Milam, Robertson, Walker.

(x) Plus 59 cents.

Andrews, Borden, Brown, Callahan, Coke, Coleman, Dawson, Eastland, Ector, Fisher, Foard, Glasscock, Haskell, Howard, Jack, Jones, Kent, King, Knox, Martin, Midland, Mitchell, Nolan, Palo Pinto, Runnels, Scurry, Shackelford, Stephens, Sterling, Stonewall, Taylor, Throckmorton, Tom Green, Young.

(xi) Plus 64 cents.

Bastrop, Burnet, Lee, Travis, Williamson.

(xii) Plus 70 cents.

Austin, Brazoria, Chambers, Colorado, Fayette, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery Orange, San Jacinto, Walker, Washington.

(xiii) Plus 76 cents.

Bexar, Caldwell, Comal, DeWitt, Gonzales, Guadalupe, Hays, Jackson, Lavaca, Matagorda, Wharton, Wilson.

(xiv) Plus 87 cents

Aransas, Bee, Calhoun, Goliad, Karnes, Live Oak, Refugio, Victoria.

(xv) Plus 100 cents.

Brooks, Duval, Jim Wells, Kenedy, Kleberg, Nueces, San Patricio.

(xvi) Plus 109 cents.

Cameron, Hidalgo, Willacy.

(xvii) All other areas in the State of Texas not listed shall be plus 1.5 cents per hundredweight for each 10 miles or fraction thereof that such plant is from the city hall in Oklahoma City, Oklahoma, such distance to be based on the shortest hard-surfaced highway distance as determined by the market administrator.

(6) For a plant located in any of the following New Mexico counties the adjustments shall be as follows:

(i) Plus 22 cents.

Colfax, Eddy, Chaves, Curry, DeBaca, Lea, Quay, Roosevelt, San Juan, Union.

(ii) Plus 37 cents.

Bernalillo, Catron, Dona Ana, Grant, Guadalupe, Harding, Hidalgo, Lincoln, Los Alamos, Luna, McKinley, Mora, Otero, Rio Arriba, Sandoval, San Miguel, Santa Fe, Sierra, Socorro, Taos, Torrance, Valencia.

(7) For a plant located in any of the following Colorado counties the adjustments shall be as follows:

(i) Plus 10 cents.

Baca, Bent, Cheyenne, Kiowa, Kit Carson, Lincoln, Logan, Phillips, Prowers, Sedgwick, Washington, Yuma.

(ii) Plus 22 cents.

Archuleta, La Plata, Montezuma.

(iii) Plus 32 cents.

Adams, Arapahoe, Boulder, Clear Creek, Crowley, Custer, Denver, Douglas, Elbert, El Paso, Gilpin, Huerfano, Jefferson, Larimer, Las Animas, Morgan, Otero, Park, Pueblo, Teller, Weld.

(iv) For a plant located in the balance of the Colorado counties no adjustment shall apply.

(8) For a plant located outside the areas described in paragraph (a)(1) through (7) of this section, the adjustment shall be from the Zone III price and shall be minus 1.5 cents per

hundredweight for each 10 miles or fraction thereof that such plant is located from the nearer of the city halls in Tulsa or Ponca City, Oklahoma, such distance to be based on the shortest hard-surfaced highway distance as determined by the market administrator.

(b) For fluid milk products transferred in bulk from a pool plant to a pool distributing plant at which a higher Class I price applies and which are classifed as Class I milk, the Class I price shall be the Class I price applicable at the location of the transferee-plant subject to a location adjustment credit for the transferor-plant which shall be determined by the market administrator for skim milk and butterfat, respectively, as follows:

(1) Subtract from the pounds of skim milk remaining in Class I at the transferee-plant after the computations pursuant to § 1106.44(a)(12) an amount equal to:

(i) 95 percent of the pounds of skim milk in receipts of milk at the transferee-plant from producers and handlers described in § 1106.9(c); and

(ii) The pounds of skim milk in receipts of packaged fluid milk products from other pool plants;

(2) Assign any remaining pounds of skim milk Class I at the transferee-plant to the skim milk in receipts of bulk fluid milk products from other pool plants, first to the transferor-plants at which the highest Class I price applies and then to other plants in sequence beginning with the plant at which the next highest Class I price applies;

(3) Compute the total amount of location adjustment credits to be assigned to transferor-plants by multiplying the hundredweight of skim milk assigned pursuant to paragraph (b)(2) of this section to each transferor-plant at which the Class I price is lower than the Class I price at the transferee-plant by the difference in Class I prices applicable at the transferor-plant and transferee-plant, and add the resulting amounts;

(4) Assign the total amount of location adjustment credits computed pursuant to paragraph (b)(3) of this section to those transferor-plants that transferred fluid milk products containing skim milk classified as Class I milk pursuant to § 1106.42(a) and at which the applicable Class I price is less than the Class I price at the transferee-plant, in sequence beginning with the plant at which the highest Class I price applies. Subject to the availability of such credits, the credit assigned to each plant shall be equal to the hundredweight of such Class I skim milk multiplied by the applicable adjustment rate determined pursuant to paragraph (b)(3) of this section for such plant. If the aggregate of this computation for all plants having the same adjustment rate as determined pursuant to paragraph (b)(3) of this section exceeds the credits that are available to those plants, such credits shall be prorated to the volume of skim milk in Class I transfers from such plants; and

(5) Location adjustment credit for butterfat shall be determined in accordance with the procedure outlined for skim milk in paragraph (b)(1) through (4) of this section.

(c) The Class I price applicable to other source milk shall be adjusted at rates set forth in paragraphs (a)(1) through (a)(8) of this section, except that the adjusted Class I price shall not be less than the Class III price.

§ 1106.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

§ 1106.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

Uniform Price

§ 1106.60 Handler's value of milk for computing uniform price(s).

For the purpose of computing the uniform price(s), the market administrator shall determine for each month the value of milk of each handler utilizing the applicable class prices adjusted pursuant to §§ 1106.52 and 1106.74 with respect to each of his pool plants and of each handler described in § 1106.9 (b) and (c) with respect to milk that was not received at a pool plant as follows:

(a) Multiply the pounds of producer milk and milk received from a handler described in § 1106.9(c) that was classified in each class pursuant to §§ 1106.43 and 1106.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1106.44(a)(14) and the corresponding step of § 1106.44(b) by the respective class prices;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of the skim milk and butterfat subtracted from Class I and Class II pursuant to § 1106.44(a)(9) and the corresponding step of § 1106.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1106.44(a)(7) (i) through (iv) and (vii) and the corresponding step of § 1106.44(b) excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1106.44(a)(7) (v) and (vi) and the corresponding step of § 1106.44(b);

(f) Add the amout obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plant from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1106.44(a)(11) and the corresponding step of § 1106.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order; and

(g) Subtract for a handler described in § 1106.9(c) the amount obtained from multiplying the Class III price for the preceding month, as adjusted by the butterfat differential specified in § 1106.74, by the hundredweight of skim milk and butterfat contained in inventory at the beginning of the month that was delivered to a pool plant during the month.

§ 1106.61 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 of the months of August through February per hundredweight for milk of 3.5 percent butterfat content as follows:

(1) Combine into one total the values computed pursuant to § 1106.60 for all

handlers who made the reports prescribed in § 1106.30 and who made the payments pursuant to §§ 1106.71 and 1106.73 for the preceding month.

(2) Add the aggregate of the values of all allowable location adjustments to producers pursuant to § 1106.75.

(3) Add 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; and

(ii) The total hundredweight for which a value is computed pursuant to § 1106.60(f).

(5) Subtract not less than 4 cents nor more than 5 cents. The result shall be the "weighted average price", and the "uniform price" for milk received from producers.

(b) For each of the months of March through July, 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) The unform price for excess milk shall be the Class III price for the month.

(2) Compute the uniform price for base milk as follows:

(i) From the amount resulting from the computations pursuant to paragraphs (a)(1) through (4) 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;

(ii) Subtract an amount computed by multiplying the uniform price for excess milk for the month times the hundredweight of excess milk;

(iii) Divide the resulting amount by the total hundredweight of base milk included in these computations; and

(iv) Subtract not less than 4 cents nor more than 5 cents.

§ 1106.62 Announcement of uniform prices 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 13th day after the end of each month the applicable uniform prices for such month.

Payments for Milk

§ 1106.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund", into which he shall deposit all payments made by handlers pursuant to §§ 1106.71, 1106.73(h), 1106.76, and 1106.77 and from which he shall make all payments pursuant to §§ 1106.73 (a) through (f), 1106.73(h) and 1106.77, except that payments to a cooperative association pursuant to § 1106.73 (c) and (h) shall be offset by any payments due from such cooperative association pursuant to § 1106.71 that have not been received by the market administrator.

§ 1106.71 Payments to producer-settlement fund.

(a) Subject to paragraph (c) and (d) of this section, each handler shall pay to the market administrator on or before the 23rd day of each month an amount determined by multiplying the handler's receipts during the first 15 days of such month of producer milk (excluding, in the case of a handler described in § 1106.9(c), producer milk delivered to a pool plant) and milk from a handler described in § 1106.9(c) by the applicable partial payment rate; and on or before the 8th day of the following month an amount determined by multiplying the handler's receipts during the remainder of each month of producer milk (excluding, in the case of a handler described in § 1106.9(c), producer milk delivered to a pool plant) and milk from a handler described in § 1106.9(c) by the applicable partial payment rate; less any applicable amounts specified in subparagraphs (1) and (2) of this paragraph. In making the partial payments, a handler may omit partial payment for milk received from a producer during the months of March through July each year who has no base, and for milk received from a producer who is no longer shipping milk to said handler at the time such partial payment is due.

(1) Payments made by the handler direct to individual producers on or before such dates specified in paragraph (a) for milk received during each partial payment period; and

(2) Proper deductions authorized in writing by producers from whom the handler received milk, except that the amount deducted for each producer shall not exceed the value of the milk received from the producer during each partial payment period; provided, that the handler has paid such deductions to assignees by the date payment is otherwise due the producer.

(b) Subject to paragraphs (c) and (d) of this section, each handler shall pay to the market administrator on or before the 20th day after the end of each month an amount equal to such handler's value of milk for such month determined pursuant to § 1106.60(a), as adjusted by the butterfat differential specified in § 1106.74, and pursuant to § 1106.60(b) through (g), less:

(1) Payments made by the handler pursuant to paragraph (a) of this section for such month;

(2) Payments other than those specified in § 1106.73(e) that were made by the handler on or before such date to producers for milk received during such month;

(3) Proper deductions for the month that were authorized in writing by producers from whom the handler received milk, except that the amount deducted for each producer shall not exceed the value of the milk received from the producer during the month; and

(4) The value at the weighted average price applicable at the location of the plant from which received on other source milk for which a value was computed pursuant to § 1106.60(f).

(c) The following conditions shall apply with respect to the payments prescribed in paragraphs (a) and (b) of this section;

(1) Payments to the market administrator shall be deemed not to have been made until such payments have been received by the market administrator; and

(2) If the date by which payments must be received by the market administrator falls on a Saturday or Sunday or any Monday that is national holiday, payments shall not be due until the next day on which the market administrator's office is open for public business.

(d) Payments due the market administrator from a cooperative association handler may be offset by payments determined by the market administrator to be due the cooperative association pursuant to § 1106.73(c).

(e) On or before the 25th day after the end of the month, each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more marketwide pool orders, the reconstitued skim milk allocated to Class I shall be prorated to each each order according to such route dispositon in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (e)(1) of this section to route disposition in this marketing area by multiplying the quantity of such milk by the difference between the Class I price

under this part that is applicable at the location of the other order plant (but not to be less than Class III price) and the Class III price.

§ 1106.72 Rate of partial payments.

Partial payment rates shall be computed as follows:

(a) During the base operating months of March through July, the previous month's Class III price for milk testing 3.5 percent butterfat.

(b) For the month of August through February, the previous month's Class III price for milk testing 3.5 percent butterfat plus $1.00, and further adjusted by the zone or location adjustment applicable at the receiving plant.

§ 1106.73 Payments to producers and to cooperative associations.

(a) Subject to paragraphs (d) through (g) of this section, the market administrator shall pay each producer on or before the 25th day of each month for milk which was received during the first 15 days of each month; provided, payment pursuant to § 1106.71(a) has been received by the market administrator. Such payment shall be uniform to all suppliers of each plant at a rate per hundredweight equal to that received by the market administrator less than amounts specified in § 1106.71(a) (1) and (2).

(b) Subject to paragraphs (d) through (g) of this section, the market administrator shall pay each producer on or before the 10th day after the end of each month for milk received during the second half of each month; provided payment pursuant to § 1106.71(a) has been received by the market administrator. Such payment shall be uniform to all suppliers of each plant at a rate per hundredweight equal to that received by the market administrator, less the amounts specified in § 1106.71(a) (1) and (2).

(c) Subject to paragraphs (d) through (g) of this section, the market administrator shall pay each producer on or before the 25th day after the end of each month for milk for which payment pursuant to § 1106.71(b) has been received by the market administrator or offset pursuant to § 1106.71(d). Such payment shall be at the uniform price computed pursuant to § 1106.61 for the month, subject to the following adjustment.

(1) Any applicable adjustments pursuant to §§ 1106.74 and 1106.75;

(2) Less the payments described in paragraphs (a) and (b) of this section;

(3) Less deductions for marketing services pursuant to § 1106.86;

(4) Less the authorized deductions specified in § 1106.71(b)(3); and

(5) Any adjustments for errors in calculating payments to an individual producer for past months.

(d) In making payments to producers pursuant to paragraphs (a), (b) and (c) of this section, the market administrator, on or before the day prior to the dates specified in such paragraphs, shall pay to each cooperative association that so requests with respect to those producers for whom it markets milk and who are certified to the market adminstrator by the cooperative association as having authorized the cooperative association to receive such payment an amount equal to the sum of the individual payments otherwise due such producers pursuant to paragraphs (a), (b) and (c) of this section.

(e) In making payments to producers pursuant to paragraphs (a), (b) and (c) of this section, the market administrator, on or before the day prior to the dates specified in such paragraphs, shall pay to each handler who so requests for milk received by the handler from producers for whom a cooperative association is not collecting payments pursuant to paragraph (d) of this section an amount equal to the sum of the individual payments otherwise due such producers pursuant to paragraphs (a), (b) and (c) of this section. The handler then shall pay the individual producers the amounts due them by the respective dates specified in paragraphs (a), (b) and (c) of this section. Any handler who the market administrator determines is or was delinquent with respect to any payment obligation under this order shall not be eligible to make payments direct to any producer until the handler has met all prescribed payment obligations for three consecutive months. In making payments to producers pursuant to this paragraph, the handler shall furnish each producer the following information:

(1) The identity of the handler and the producer and the month to which the payment applies;

(2) The total pounds and, with respect to final payments, the average butterfat content of the milk for which payment is being made and for the months of March through July the pounds of base milk;

(3) The minimum rate of payment required by the order and rate of payment used if such rate is other than the applicable minimum rate;

(4) The amount and nature of any deductions from the amount otherwise due the producer; and

(5) The net amount of payment to the producer.

(f) The following conditions shall apply with respect to the payments prescribed in paragraph (a) through (e) of this section:

(1) If the date by which such payments are to be made falls on a Saturday or Sunday or on any Monday that is a national holiday, such payments need not be made until the next day on which the market administrator's office is open for public business; and

(2) If the application of § 1106.71(c)(2) or paragraph (f)(1) of this section results in a delay in the partial or final payments by handlers to the market administrator or by the market administrator to handlers, the corresponding partial or final payments prescribed in paragraphs (a) through (e) of this section may be delayed by the same number of days.

(g) If the market administrator does not receive the full payment required of a handler pursuant to § 1106.71, he shall reduce uniformly per hundredweight the payments due producers and cooperative associations for their milk received by such handler by a total amount not in excess of the amount due from such handlers. The market administrator shall complete such payments on or before the next date for making payments pursuant to this section following the date on which the remaining payment is received from such handler.

(h) Subject to § 1106.71(c), (1) and (2), each handler who received bulk fluid milk and bulk fluid cream products from a pool plant operated by a cooperative association shall pay the following amounts for such products to the market administrator, who in turn shall transmit such money on the first day thereafter to the cooperative association:

(1) On or before the 23rd day of each month, an amount determined by multiplying such receipts during the first 15 days of the month by the latest available class prices for 3.5 percent milk reflective of the classification pursuant to § 1106.42(a). Such prices shall be adjusted by the butterfat differential specified in § 1106.74; and on or before the 8th day of the following month an amount determined by multiplying the handler's receipts during the remainder of the month of bulk fluid milk and bulk fluid cream by the latest available class prices for 3.5 percent milk reflective of the classification pursuant to § 1106.42(a). Such price shall be adjusted by the differential specified in § 1106.74.

(2) On or before the 20th day after the end of each month, an amount determined by multiplying the quantity of such receipts during the month that was classified in each class pursuant to § 1106.42(a) by the applicable class price, including the applicable administrative assessment rate as

adjusted by the butterfat differential specified in § 1106.74, less any payments made by the handler pursuant to paragraph (h)(1) of this section for such month. For purpose of such computation, the applicable Class I price shall be the higher of the Class I prices applicable at the transferee-plant and the transferor-plant.

§ 1106.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform prices shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1106.75 Plant location adjustments for producers and on nonpool milk.

(a) In making payments required pursuant to § 1106.73, the uniform price and the uniform price for base milk computed pursuant to § 1106.61 shall be adjusted by the amounts set forth in § 1106.52 according to the location of the plant where the milk being priced was received.

(b) For the purpose of computations pursuant to §§ 1106.71 and 1106.73, the weighted average price shall be adjusted at the rates set forth in § 1106.52 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 III price).

§ 1106.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1106.30(b) and 1106.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant;

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the weighted average price, both prices to be applicable at the location of the partially regulated distributing plant (except that the Class I price and the weighted average price shall not be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1106.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifictions:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified of the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1106.60 shall be priced at the weighted average price of the respective order regulating the handling of milk at the transferee-plant, with such weighted average price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1106.60 for such handler shall include, in lieu of the value of other source milk specified in § 1106.60(f) less the value of such other source milk specified in § 1106.71(a)(2)(ii), a value of milk determined pursuant to § 1106.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1106.7(b) subject to the following conditions:

(A) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1106.30(b) and 1106.31(b) similar reports for each such nonpool supply plant;

(B) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(C) The value of skim milk determined pursuant to § 1106.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1106.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1106.74, for milk received at the plant during the month that would

been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) of this section applies.

§ 1106.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses adjustments to be made, for any reason, which result in monies due the market administrator from such handler, the market administrator shall promptly notify such handler of any such amount due, and payment thereof shall be made on or before the next day for making payment set forth in the provision under which such error occurred. Any monies found to be due a handler from the market administrator shall be paid promptly to such handler, except that the market administrator shall offset any monies due a handler against monies due from such handler.

§ 1106.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to § 1106.71, 1106.73(h), 1106.76, 1106.77, or 1106.85 shall be increased 1 percent per month beginning on the first day after the due date, and on each date of subsequent months following the day on which such type of obligation is normally due, subject to the following conditions:

(a) The amounts 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

(b) For the purpose of this section, 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.

Administrative Assessment and Marketing Service Deduction

§ 1106.85 Assessment for order administration.

As his prorata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 23rd day after the end of the month a rate per hundredweight determined pursuant to (e) of this secton, or such lesser amount as the Secretary may prescribe, with respect to:

(a) Receipts of producer milk (including such handler's own production) other than such receipts by a handler described in § 1106.9(c) that were delivered to pool plants of other handlers or held in inventory at the end of the month;

(b) Receipts from a handler described in § 1106.9(c);

(c) Other source milk allocated to Class I pursuant to § 1106.44(a)(7) and (11) and the corresponding steps of § 1106.44(b), except such other source milk that is excluded from the computations pursuant to § 1106.60(d) and (f); and

(d) Route disposition from a partially regulated distributing plant in the marketing area that exceeds the skim milk and butterfat specified in § 1106.76(a)(2).

(e) As soon as possible after the beginning of each year, compute the maximum administative assessment rate as follows:

(1) Compute a simple annual average of the monthly weighted average prices for producer milk for the preceding year; and

(2) Multiply this average price by 0.6 percent and round to the nearest one-half cent. this maximum rate would apply during the current year.

§ 1106.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, the market administrator, in making payments to producers pursuant to § 1106.73, shall deduct a rate per hundredweight, computed by multiplying the annual average producer milk price as computed in § 1106.85(e) by 0.7 percent, or such lesser amount as the Secretary may prescribe, with respect to the milk of such producer (except a handler's own farm production) for whom the marketing services set forth in this paragraph are not being performed by a cooperative association as determined by the Secretary. The monies shall be used by the market administrator to verify or establish weights, samples, and tests of producer milk and to provide producers with market information. the services shall be performed by the market administrator or an agent engaged by and responsible to him.

(b) In the case of producers for whom a cooperative association is actually performing the services set forth in paragraph (a) of this section, the market administrator shall make, in lieu of the deduction specified in paragraph (a) of this section, such deduction from the payments to be made to such producers as may be authorized by the memberhip agreement or marketing contract between such cooperative association and such producers and on or before the 22nd day after the end of the month pay such deduction to the cooperative association rendering such services, accompanied by a statement showing the quantity of milk for which a deduction was computed for each such producer.

Base-Excess Plan

§ 1106.90 Base milk.

"Base milk" means the producer milk of a producer under all of the orders specified in § 1106.92 in each of the months of March through July that is not in excess of the producer's base multiplied by the number of days in the month. If milk is received as producer milk (as defined under any order specified in § 1106.92) from the same producer during the month by a handler regulated under this order and by a handler fully regulated under any other order specified in § 1106.92, the amount of such producer's base milk received by the handler under this order at each plant location shall be determined by multiplying the producer's total base milk by the precentage of his total deliveries of producer milk under all of the orders specified in § 1106.92 that is delivered under this order at each respective plant location.

§ 1106.91 Excess milk.

"Excess milk" means the producer milk of a producer in each of the months of March through July that is in excess of the producer's base milk under this order for the month, and shall include all the producer milk of a producer for whom no base can be computed pursuant to § 1106.92.

§ 1106.92 Computation of daily average base for each producer.

(a) The base of each producer shall be determined by the market administrator by dividing the total pounds of producer milk (as defined under the respective orders) received from the producer by all handlers fully regulated under the terms of the respective orders regulating the handling of milk in the Southwest Plains (formerly Neosho Valley; Wichita, Kansas; Red River Valley, Oklahoma Metropolitan) ; Memphis, Tennessee; Fort Smith, Arkansas; Central Arkansas; Texas; Lubbock-Plainview, Texas; Texas Panhandle; and Rio Grande Valley marketing areas (parts 1106, (formerly parts 1071, 1073, 1104 and 1106) 1097, 1102, 1108, 1126, 1120, 1132, and 1138, respectively, of this chapter) during the immediately preceding period of September through December by the number of days' production represented by such

producer milk or by 90, whichever is greater.

(b) The base for a producer whose milk is delivered to a plant that did not become a pool plant under any of the orders specified in paragraph (a) of this section until after the beginning of the baseforming period shall be calculated as if the plant were a pool plant under such orders for the entire base-forming period. A base thus assigned shall not be transferrable.

§ 1106.93 Base rules.

(a) A base may be transferred in its entirey, or in amounts of not less than 100 pounds (unless the transfer involves the remaining portion of such base), effective on the first day of the month following the date on which an application for such transfer is received by the market administrator. Such application shall be on a form approved by the market administrator and signed by the baseholder or his heirs and the person to whom the base is to be transferred. If a base is held jointly, the application shall be signed by all joint holders or their heirs.

(b) If a base is held jointly and such joint holding is terminated, the base may be apportioned among the joint holders on any basis agreed to in writing by them. Written notification of the agreed upon division of base signed by each of the joint holders must be received by the market administrator prior to the first day of the month on which such division is to be effective.

§ 1106.94 Announcement of established bases.

On or before February 10, of each year the market administrator shall notify each producer, the handler receiving milk from him and, if requested, a cooperative association in behalf of each of its producer members of the base established by such producer.

Proposed by Kraft, Inc.

Proposal No. 2

In lieu of certain specific sections, or subsections, which appear in proposal No. 1, incorporate the following into a "Southwest Plains Marketing Order."

§ 1106.6 Supply plant.

"Supply plant" means a plant from which fluid milk products are transferred or diverted to a distributing plant(s) during the month.

§ 1106.7 Pool plant.

* * * * *

(b) A supply plant from which during the month not less than 50 percent of the total quantity of milk received from producers (except by diversion from other plants), or diverted therefrom pursuant to § 1106.13, is shipped as fluid milk products (except filled milk) to plants described in (b)(2) of this paragraph, subject to the following:

(1) A supply plant that has qualified as a pool plant during each of the immediately preceeding months of September through January shall continue to so qualify in each of the following months of February through August until any month of such period in which less than 20% of milk received or diverted, as previously specified, is shipped to plants described in paragraph (b)(2) of this section. A plant not meeting such 20 percent requirement in any month of such February–August period shall be qualified in any remaining month of the year only if shipments to plants described in paragraph (b)(2) of this section are not less than 50 percent of receipts or diversions, as previously specified.

(2) Qualifying shipments pursuant to this paragraph may be made to the following plants:

(i) Pool plants described in paragraph (a) of this section;

(ii) Plants of producer-handlers;

(iii) Partially regulated distributing plants, limited to the amount of milk in such shipment(s) which receive a Class I classification at the receiving plant; and

(iv) Distributing plants fully regulated under other Federal Orders except that credit for such shipments shall be no greater than the quantity of milk shipped to plants described in paragraph (a) of this section, and, such shipments to other order plants may not be made on the basis of an agreed-upon Class II or III utilization.

(3) The operator of such supply plant may include milk diverted pursuant to § 1106.13(c) from such plants to plants described in paragraph (a) of this section as qualifying shipments in meeting shipping percentages, but during such months as the supply plant may be required to ship 50 percent, diverted milk in excess of three-fifths of the shipping requirement shall not be included as qualifying shipments.

(c) Any plant located in the marketing area that is operated by a cooperative association if pool plant status under this paragraph is requested by the cooperative association and 50 percent or more of the producer milk of members of the cooperative association (and any producer milk of non-members and members of another cooperative association which may be marketed by the cooperative association) is physically received during the month in the form of bulk fluid milk products at plants specified in paragraph (b)(2) of this section either directly from farms or by transfer from plants of the cooperative association for which pool plant status has been requested under this paragraph, subject to the following conditions;

* * * * *

(d) The term "pool plant" shall not apply to the following plants:

* * * * *

(4) Milk receiving and storage facilities that are on the same premises as a pool plant, and are not approved by any regulatory agency for the receiving, processing, or packaging of any fluid milk product for Grade A disposition.

* * * * *

(f) Upon the request of any interested party, or upon his own initiative, the Director of the Dairy Division may, for good cause, modify the shipping requirements specified in paragraphs (b) and (c) of this section by up to plus or minus 10 percentage points.

* * * * *

§ 1106.13 Producer milk.

"Producer Milk" means the skim milk and butterfat in milk from a producer that is:

(a) Received by the operator of a pool plant directly from such producer, excluding such milk that is diverted from another pool plant. Any milk picked up from the producer's farm tank in a tank trucked owned and operated by, or under the control of, the operator of a pool plant but which is not received at a plant until the following month, shall be considered as having been received by the handler during the month in which it is picked up at the producer's farm and shall be priced at the location of the plant where it is physically received in the following month.

(b) Received by a handler described in § 1106.9(c). Such milk shall be considered as having been received by the handler during the month in which it is picked up at the producer's farm and shall be priced at the location of the plant where it is physically received in the following month.

(c) Diverted from a pool plant for the account of the handler operating such plant to another pool plant, without limit in any month; or

(d) Diverted by the operator of a pool plant or by a cooperative association from a pool plant to a non pool plant (other than a producer-handler plant), or to a partially regulated distributing plant subject to the following conditions:

(1) A cooperative association may divert for its account, subject to the conditions of paragraphs (d)(3) and (d)(4) of this section, a total quantity of milk, in any month of September through

January, not in excess of the total quantity of milk that the cooperative association caused to be delivered to and was physically received at pool plants during the month, and in any remaining month of February through August, not in excess of two times the total quantity of milk that the cooperative association caused to be delivered to and was physically received at pool plants during the month.

(2) The operator of a pool plant other than a cooperative association may divert for his account, subject to the conditions of paragraphs (d)(3) and (d)(4) of this section, a total quantity of milk of producers not members of a cooperative association diverting milk pursuant to paragraph (d)(1) of this section, in any month of September through January, not in excess of the total quantity of milk of such (non-member) producers that was physically received at pool plants as producer milk for which the plant operator is the handler, and in any remaining month of February through August, not in excess of two times the total quantity of milk of such (non-member) producers that was physically received at pool plants as producer milk for which the plant operator is the handler.

(3) In any month of September through January, milk of a producer shall not be eligible for diversion from a pool plant under this section unless at least one day's production from such producer is physically received at a pool plant during the month.

(4) Any milk diverted in excess of the limits prescribed in paragraphs (d)(2) and (3) of this section shall not be producer milk. In such event, the diverting handler may designate dairy farmer deliveries that shall not be producer milk. If the handler fails to so designate, milk diverted on the last day of the month, then the second-to-last-day of the month, and so on, shall be excluded until all diversions in excess of the prescribed limits are accounted for.

(5) If a dairy farmer loses his producer status under this order (except as a result of temporary loss of Grade A approval), his milk shall not be eligible for diversion until milk of such dairy farmer has been physically recieved as producer milk at a pool plant.

(6) Diverted milk shall be priced at the location of the plant to which diverted.

* * * * *

§ 1106.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1106.9(a), (b), and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer and during the months of March through July the pounds of base milk;

(3) The average butterfat content of such milk; and

(4) the price per hundredweight (during the months of March through July the price per hundredweight for base milk and for excess milk), the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1106.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1106.32 Other reports

(a) Each handler who causes milk to be diverted to a nonpool plant, shall, prior to such diversion, report to the market administrator and to the cooperative association of which such producer is a member his intention to divert such milk, the proposed date or dates of such diversion, and the plant to which such milk is to be diverted.

(b) In addition to the reports required pursuant to §§ 1106.30 and 1106.31 and paragraphs (a) and (c) of this section, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

(c) Each handler who receives milk from producers shall report to the market administrator on or before the seventh day after the end of each of the months of March through July the following information:

(1) The name and address or other appropriate identification of each producer; and

(2) The total pounds of milk and the pounds of base milk of such producer delivered to each pool plant (and diverted to each plant that is not a pool plant) under any of the orders specified in § 1106.92.

* * * * *

§ 1106.41 Shrinkage.

* * * * *

(b) * * *

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1106.9(c), and in milk diverted to such plant from another pool plant, except that in either case if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph shall be 2 percent.

* * * * *

§ 1106.42 Classification of transfers and diversions.

(a) Transfers and diversions to pool plants. Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers or diversions shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant or divertee plant after the computations pursuant to § 1106.44 (a)(12) and the corresponding step of § 1106.44 (b);

(2) If the transferor-plant or diverting plant received during the month other source milk to be allocated pursuant to § 1106.44 (a)(7) or the corresponding step of § 1106.44 (b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source; and

(3) If the transferor-handler or diverting handler received during the month other source milk to be allocated pursuant to § 1106.44 (a)(11) or (12) or the corresponding steps of § 1106.44 (b), the skim milk or butterfat so transferred or diverted, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extend than would be the case if the other source milk had been received at the transferee or divertee plant.

(b) Transfers and diversions to other order plants. Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as

described in paragraph (b)(1), or (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in classes to which allocated as a fluid milk product under the other order;

(2) If transferred or diverted in bulk form, classification shall be in classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers and diversions in bulk form shall be classified pursuant to the allocation provisions of the other order, or as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order.

* * * * *

§ 1106.52 Plant location adjustment for handlers.

* * * * *

(b) For fluid milk products transerred in bulk from a pool plant to a pool distributing plant at which a higher Class I price applies and which are classified as Class I milk, the Class I price shall be the Class I price applicable at the location of the transferee-plant subject to a location adjustment credit for the transferor-plant which shall be determined by the market administrator for skim milk and butterfat, respectively, as follows:

(1) Subtract from the pounds of skim milk remaining in Class I at the transferee-plant after the computations pursuant to § 1106.44 (a)(12) an amount equal to:

(i) 80 percent of the pounds of skim milk in receipts of milk at the transferee-plant from producers and handlers described in § 1106.9(c); and

(ii) The pounds of skim milk in receipts of packaged fluid milk products from other pool plants;

(2) Assign any remaining pounds of skim milk in Class I at the transferee-plant to the skim milk in receipts of bulk fluid milk products from other pool plants, first to the transferor-plants at which the highest Class I price applies and then to other plants in sequence beginning with the plant at which the next highest Class I price applies;

(3) Compute the total amount of location adjustment credits to be assigned to the transferor-plants by multiplying the hundredweight of skim milk assigned pursuant to paragraph (b)(2) of this section to each transferor-plant at which the Class I price is lower than the Class I price at the transferee-plant by the difference in Class I prices applicable at the transferor-plant and transferee-plant, add the resulting amounts;

(4) The total amount of location adjustment credits computed pursuant to paragraph (b)(3) of this section shall be assigned prorata to the volume of skim milk in Class I transfers from all transferor-plants.

(5) Location adjustment credit for butterfat shall be determined in accordance with the procedure outlined for skim milk in paragraph (b)(1) through (4) of this section.

(c) The class I price applicable to other source milk shall be adjusted at rates set forth in paragraphs (a)(1) through (a)(8) of this section, except that the adjusted Class I price shall not be less than the Class I price.

* * * * *

§ 1106.71 Payments to the producer-settlement fund.

(a) On or before the 13th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such months as determined pursuant to § 1106.60.

(2) The sum of:

(i) The value at the uniform prices, as adjusted pursuant to § 1106.75, of such handler's receipts of producer milk; and

(ii) The value of the weighted average price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1106.60(f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more marketwide pool orders, the reconstituted skim milk allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more marketwide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b)(1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

§ 1106.72 Payments from the producer-settlement fund.

On or before the 14th day after the end of each month the market administrator shall pay to each handler including a cooperative association which is a handler the amount, if any, by which the amount computed pursuant to § 1106.71(a)(2) exceeds the amount computed pursuant to § 1106.71 (a)(1). 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.

§ 1106.73 Payments to producers and to cooperative associations.

Each handler shall make payment as follows:

(a) On or before the 15th day after the end of the month during which the milk (or base milk and excess milk) was received, to each producer to whom payment is not made pursuant to paragraph (d) of this section, at not less than the applicable uniform price(s) for such month, as adjusted pursuant to §§ 1106.74 and 1106.75 and less the amount of the payment made pursuant to paragraph (b) of this section, and less proper deductions authorized in writing by the producer: Provided, That if by such date such handler has not received full payment pursuant to § 1106.72, he may reduce his total payments to all producers uniformly by not more than the amount of reduction in payment from the market administrator; he shall, however, complete such payments pursuant to this paragraph not later than the date for making such payments next following receipt of the balance from the market administrator;

(b) On or before the last day of each month, to each producer for whom payment is not made pursuant to paragraph (d) of this section for milk received from him during the first 15 days of the month at not less than the Class III price for the preceding month, less proper deductions authorized in writing by the producer.

(c) To a cooperative association with respect to milk for which the cooperative association is a handler on

or before the 10th day of each month for milk which is caused to be delivered to such handler during the preceding month at not less than the value of such milk at the class prices, as adjusted by the butterfat differential specified in § 1106.74, that are applicable at the location of the receiving handler's pool plant; and

(d)(1) Upon receipt of written request from a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk and receipt of a written promise to reimburse the handler for the amount of any actual loss incurred by him because of any improper claim on the part of the cooperative association, each handler shall:

(i) Pay to the cooperative association on or before the 13th and 27th days of each month in lieu of payments pursuant to paragraphs (a) and (b), respectively of this section, an amount equal to the gross sum due for all milk received from certified members, less amounts owed by each member producer to the handler for supplies purchased from him on prior written order or as evidence by a delivery ticket signed by the producer;

(ii) Submit to the cooperative association on or before the 10th day of each month written information which shows for each member producer:

(A) The total pounds of milk received during the preceding month and for the months of March through July the pounds of base milk;

(B) The total pounds of butterfat contained in such milk;

(C) The number of days on which milk was received; and

(D) The amounts withheld by the handler in payment for supplies sold; and

(iii) Submit to the cooperative association on or before the 25th day of each month, written information which shows for each member producer the total pounds of milk received during the first 15 days of the current month. The foregoing payment and submission of information shall be made with respect to milk of each producer, who the cooperative association certifies is a member, which is received on and after the first day of the calendar month next following the receipt of such certification through the last day of the month next preceding receipt of notice from the cooperative association of a termination of membership or until the original request is rescinded in writing by the association; and

(2) A copy of each such request, promise to reimburse, and certified list of members shall be filed simultaneously with the market administrator by the cooperative and shall be subject to verification at his discretion through audits of the records of the cooperative association pertaining thereto. Exceptions, if any, to the accuracy of such certification by a producer claimed to be a member or by a handler shall be made by written notice to the market administrator and shall be subject to his determination.

* * * * *

§ 1106.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month 5 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to the milk described in paragraphs (a), (b), and (c) of this section. For each handler using two accounting periods in a month, the rate of payment shall be twice the rate for monthly accounting periods, or such lesser rate as the Secretary may determine is demonstrated as appropriate in terms of the particular costs of administering the additional accounting period:

(a) Producer milk (including such handler's own production);

(b) Other source milk allocated to Class I pursuant to § 1106.44(a)(7) and (11) and the corresponding steps of § 1106.44(b), except such other source milk that is excluded from the computations pursuant to § 1106.60(d) and (f); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracter pursuant to § 1106.76(a)(2).

§ 1106.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers (other than himself) pursuant to § 1106.73 shall deduct 6 cents per hundredweight or such amount not exceeding 6 cents per hundredweight as may be prescribed by the Secretary, and shall pay such deductions to the market administrator on or before the 15th day after the end of each month. Such money shall be used by the market administrator to sample, test, and check the weights or milk received from producers and to provide producers with market information.

(b) In the case of producers for whom a cooperative association is actually performing the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deduction specified in paragraph (a) of this section, such deductions from the payments to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers and on or before the 15th day after the end of the month pay such deduction to the cooperative association rendering such services, identified by a statement showing for each such producer the information required to be reported to the market administrator pursuant to § 1106.31(a). In lieu of such statement a handler may authorize the market administrator to furnish such cooperative association the information with respect to such producers reported pursuant to § 1106.31(a).

Proposed by Carlyle C. Ring, Jr., Attorney for the Independent Producers Serving Colvert Dairy, Ardmore, Okla.

Proposal No. 3

Whatever action the Secretary may take in merging other orders (the Oklahoma Metropolitan, Neosho Valley and Wichita, Knasas, milk marketing orders) the Red River Valley Federal milk marketing order should be continued unchanged.

Proposal No. 4

As an alternative to Proposal No. 3, the Oklahoma metropolitan and Red River Valley Federal milk marketing orders should be merged, including in the merged order: (a) Beckham County, Oklahoma, and all currently unregulated territory in the State of Oklahoma as a part of the merged marketing area; (b) the same pricing zones as set forth in the AMPI proposal (Proposal No. 1) for a Southwest Plains marketing order, adding, however, a pricing zone for the counties of the Red River Valley marketing area located in the State of Texas at $2.20; and (c) all the other terms as presently contained in the Oklahoma Metropolitan Federal milk marketing order.

Proposal No. 5

As an alternative to Proposals No. 3 and No. 4, the Red River Valley and Texas Federal milk marketing orders should be merged including in the merged order (a) a new pricing zone of $2.20 for all the counties in the Red River Valley marketing area located in the State of Texas; a new pricing zone of $2.05 for all the counties in the Red River Valley marketing area located in the State of Oklahoma; and all the other terms as presently contained in the Texas Federal milk marketing order.

Proposed by the Dairy Division, Agricultural Marketing Service

Proposal No. 6

Make such changes as may be necessary to make the entire marketing agreements and the orders conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the orders may be procured from Market Administrators Richard E. Arnold, P.O. Box 45563, Tulsa, Oklahoma 74145, and C. E. Dunham, P.O. Box 29529, Dallas, Texas 75229; or from the Hearing Clerk, Room 1077–South Building, United States Department of Agricultural, 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, Oklahoma Metropolitan, Neosho Valley, Wichita, Red River Valley, and Texas Panhandle marketing areas.
Office of the Market Administrator, Texas marketing area.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Signed at Washington, D.C. on April 25, 1980.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 80-13333 Filed 4-29-80; 8:45 am]
BILLING CODE 3410-02-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 782 3070]

Fred Meyer, Inc.; Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Consent agreement.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order, accepted subject to final Commission approval, among other things, would require a Portland, Ore. operator of a chain of retail stores to provide each charge account customer having an outstanding credit balance with a periodic statement setting forth the amount of the credit balance; and enclose with regular monthly statements, a notice advising that credit balances are refundable upon request. Refunds of credit balances would have to be made upon request, or automatically at the end of a six-month period. The firm would be further required to refund, with interest, all unpaid credit balances existing between January 1, 1974 and the effective date of the order. The order would additionally require that the firm notify layaway customers who had not completed their purchases during the fourteen (14) months prior to entry of the order that they have the option of either completing the transaction or receiving a refund of the layaway account credit balance; refund credit balances to any customer who indicates, in response to a notice, that the purchase was not completed and the customer received no reimbursement or credit on other merchandise; and maintain specified records for at least three years.

DATE: Comments must be received on or before June 30, 1980.

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

FOR FURTHER INFORMATION CONTACT: Thomas Armitage, Director, 10R, Seattle Regional Office, Federal Trade Commission, 28th Floor, Federal Bldg., 915 Second Ave., Seattle, Wash. 98174. (206) 442–4655.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's rules of practice (16 CFR 4.9(b)(14)).

[File No. 782 3070]

Fred Meyer, Inc.; Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Fred Meyer, Inc., a corporation, and is now appearing that Fred Meyer, Inc., a corporation, hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It is hereby agreed by and between Fred Meyer, Inc., by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Fred Meyer, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Oregon, with its office and principal place of business located at 3800 SE. 22nd, Portland, Oregon.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become a part of the official record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixth (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it would take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstance may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft complaint here attached.

6. This agreement contemplates, that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the

Commission's rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that one the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalities in the amount provided by law for each violation of the order after it becomes final.

Order

I

Charge Account Credit Balances

It is ordered, That respondent Fred Meyer, Inc., a corporation, it successors and assigns, and its representatives, officers, agents, and employees, directly or through any corporation, subsidiary, division or other device, except for Fred Meyer Savings & Loan Association and the wholesale division of Round-up Company, in connection with the management of credit balances arising subsequent to the service of this Order, on charge accounts created or maintained incident to the sale of merchandise or services to credit customers for use or consumption, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall:

A. Mail or deliver to each credit customer before the end of the next billing cycle, for each credit customer's billing cycle at the end of which there is an outstanding credit balance in excess of one dollar ($1.00):

1. A periodic statement which clearly sets forth the amount of the credit balance, and

2. Include the following disclosure clearly and conspicuously in twelve-point or larger type, entirely on the front side of, or enclosed with, the periodic statement reflecting a credit balance, separated from any other written matter, and accompanied by a pre-addressed return envelope:

We Owe You Money

The enclosed statement shows a "credit balance". This is money we may owe you. If you want a refund now, please mail this statement back to us in the enclosed envelope. Write on it that you want a refund.

If you don't ask for a refund and if you don't buy anything more from us through your account, we will send you your refund automatically within 6 months if it's over $1 (and is still due you.)

If your credit balance is $1 or less, we won't send it to you if you don't ask for it. But even it we don't hear from you, we will credit it against your next purchase.

B. If a purchase is made on an account in which there is a credit balance, apply the amount of that balace to such purchase.

C. Refund the full amount of each credit balance within thirty (30) days after receiving a credit customer's written request except to the extent that such amount has already been credited against further purchases on the account.

D. Refund the full amount of each credit balance in excess of one dollar ($1.00) within thirty (30) days after the end of the sixth consecutive monthly billing cycle at the end of each of which a credit balance has existed. The amount to be refunded shall be the credit balance existing at the end of the sixth month.

E. Refrain from writing off, deleting or transferring any credit balance in excess of $1.00 until a refund has been made or until the credit customer has made a fully offsetting purchase unless respondent has taken all actions required by Paragraph III of this Order with respect to that account.

F. If respondent believes a credit balance to be not owed it need not:

1. Apply the amount of the credit balance to the purchase pursuant to I.B if respondent sends to the credit customer an individualized written explanation and supporting documentation in support of its belief. This documentation shall be provided in the manner described in III.B and shall be mailed within 30 days of the purchase. Respondent may, if it otherwise complies with this paragraph, send corrected billings to credit customers which respondent subsequently believes were sent erroneous billings.

2. Refund pursuant to I.C and I.D if respondent sends to the credit customer an individualized written explanation and supporting documentation. This documentation shall be provided in the manner described in III.B and within the time that Paragraphs I.C and I.D require that refunds be made.

G. Paragraph F does not permit respondent to collect or attempt to collect (including charging to a customer's account) any amounts paid to a customer which respondent subsequently believes were paid in error.

II

Definition

"Credit customer" as used in Section II only shall exclude all firms from which respondent purchased merchandise or services since January 1, 1974.

It is further ordered, That respondent shall:

A. Refund to each credit customer the amount of each credit balance in the amount of more than one dollar ($1.00):

1. Which was created or existed at any time between January 1, 1974 and the date of service of this Order,

2. And which has not been fully refunded to a credit customer prior to the date of the service of this Order,

3. Unless such credit balance is not owed to the credit customer as determined by the procedures provided in Paragraph II.D, or

4. Unless the credit customer makes or has made a fully offsetting purchase on the account between Januany 1, 1974 and the time provided in Paragraph VII.C for the filing of a compliance report.

B. Pay to each credit customer to whom a credit balance is refunded, interest on the amount of the credit balance computed at the rate of .5 percent per month.

C. Effect complete compliance with the provisions of Paragraphs II.A and B of this Order within one hundred eighty (180) days after the date of service of this Order.

D. For the purposes of II.A.3 of this Order, whether a credit balance is not owed to a credit customer shall be determined by a firm of Certified Public Accountants acceptable to the Regional Director of the Seattle Regional office of the Commission. Respondent shall retain such firm to examine such originals or copies of records and papers which respondent believes justify a

determination that any credit balance covered by this Order is not in fact owed to a credit customer. If the CPA firm agrees with respondent, respondent is not required to refund the credit balance. As an alternative to requesting a determination from a CPA firm, the respondent may pay the credit balance. All credit balances other than those which the CPA firm agrees are not owed shall be considered, for the purposes of this Order, to be owed to the credit customer and shall be refunded pursuant to Paragraph II.A. The CPA firm shall be directed by respondent to make a written report of each finding in agreement with respondent through use of the certifying form attached as Exhibit A. Such report shall be included as part of the compliance report required by Paragraph VII.

III

It is further ordered, That: A. Each refund required by this Order shall be given to the credit customer by mailing a check payable to the order of the customer.

B. Each check sent pursuant to Paragraphs I.C, I.D, II.A, II.B, IV.D, and V.B and each disclosure and letter sent pursuant to Paragraphs I.A and V.A of this Order, shall be mailed First Class in an envelope which clearly states respondent's name and address in the upper lefthand corner, to the customer's most recent address shown in respondent's records, with the notation "Address Correction Requested" on the envelope. In the event that any such check, disclosure or letter concerning a credit balance or payment in the amount of ten dollars ($10.00) or more is returned to respondent undelivered, respondent shall seek to obtain the most current address available for the customer by consulting, in the following order, (1) telephone directories and city directories, and (2) a consumer reporting agency. If a new address is obtained, respondent shall then remail such check, disclosure, or letter First Class to the customer at the most current address obtained.

C. For each credit balance unpaid despite performance of the steps set out in Paragraphs III.A and III.B, respondent:

1. Shall maintain the full amount of the credit balance in the customer's account for one year from the date on which the most recent mailing was returned; and

2. Need not send any additional disclosure or refund with respect to that credit balance except as provided in Paragraph III.D of this Order.

D. Respondent shall, within thirty (30) days of any credit customer's written request for a refund of a credit balance which had been reflected at any time on the customer's account, either refund the amount requested or send the customer an individualized written explanation, with supporting documentation, when available, of the reason(s) for refusing to refund the amount requested.

IV

Layaway Account Balance

For the purpose of this order, the term "layaway" shall mean any transaction whereby the customer agrees to purchase merchandise at the time of the transaction, by means of a downpayment and subsequent payment or payments, with the respondent retaining possession of the merchandise until the agreed payment or payments are completed.

It is ordered, That respondent Fred Meyers, Inc., a corporation, its successors and assigns, and its representatives, officers, agents, and employees, directly or through any corporation, subsidiary, division or other device, except for Fred Meyer Savings & Loan Association and the wholesale division of Round-Up Company, in connection with the management of layaway balances arising subsequent to the service of this Order, on layaway accounts created or maintained incident to the sale of merchandise to layaway customers, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall:

A. Mail to each layaway customer:

1. Within twenty (20) days after the end of the period designated in the layaway agreement to make full payment for the merchandise,

2. If the payments received by respondent have not been returned to the customer, and

3. If the merchandise has not be delivered to the customer, and

4. Before the merchandise is returned to stock and before making any entries in the layaway account which would close out the account,

the following disclosure clearly and conspicuously in twelve-point or larger type, entirely on one side of a single piece of paper, separate from any other written matter:

We Owe You Money

(Date of mailing to be inserted here)

You haven't fully paid for your recent layaway purchase at our (name of store) store. You can fully pay for your purchase within 10 days from the above date. Or you can get a refund from us for the amount you have paid (less 35¢ handling charge). If you want a refund, come to the department of the store where you have the layaway not later than (insert date 10 days from notice) and ask for your money. You also have the choice of getting a credit to purchase other merchandise. Please bring this notice with you. If you don't ask for a refund or a credit, we will send you a check automatically within 45 days if the amount we owe you is more than $1.00.

Respondent may insert in the above notice a different handling charge that is reasonable in comparison with a 35 cent charge.

B. Defer returning layaway merchandise to stock until 11 days after the mailing of the notice specified in IV.A. and allow completion of the layaway purchase within 10 days after the mailing of the notice.

C. Refund the full amount paid by the layaway customer (less 35 cents or other charge that is reasonable in comparison with a 35 cent charge) if the amount is in excess of one dollar ($1.00) within 45 days of the date of the notice specified in Paragraph IV.A unless the layaway customer has completed the purchase of the layaway merchandise. Such refund shall be made by sending a check in the amount of the layaway balance to each customer owed a refund. Respondent shall thereafter follow the provisions of Paragraph III.B (pertaining otherwise to credit balances) with respect to such checks. A credit issued by respondent at its store for the purchase of other merchandise in lieu of a cash refund, solely at the option of the layaway customer, shall be considered a refund for purposes of this Section IV.

D. Refrain from writing off, deleting, or transferring any layaway account balance until a refund has been made, or until 30 days after the procedures of Paragraph III.A and III.B are fully complied with, or until the customer has completed the purchase of the layaway merchandise.

V

It is further ordered, That respondent:

A. Identify all layaway accounts customers which are included in all the layaway account master listing printed out during the 14 months prior to the entry of this order as having layaway balances in excess of $1.00. Mail to each customer so identified a letter identical to Attachment B in form, spacing, and layout, without the inclusion of any other written material. In sending out Attachment B, respondent shall fill in at the end of question 1 the month or months and year that the layaway account first appeared on its records. Respondent shall thereafter follow the provisions of Paragraph III.B (pertaining otherwise to credit balances) with respect to each such letter.

B. Make payment in full by sending a check in the amount of the layaway balance to each customer identified by the procedure in Paragraph V.A who has responded negatively to questions 5(a) and 5(b) on Attachment B, unless question 1 is answered negatively or 4 is answered affirmatively. Respondent shall thereafter follow the provisions of Paragraph III.B (pertaining otherwise to

credit balances) with respect to each such check.

VI

It is further ordered, That respondent shall maintain complete business records relative to the manner and form of its continuing compliance with this Order, including but not limited to the name and address of each credit and layaway customer who requested a refund of a credit or layaway balance but whose request was refused, the date and amount of the request, and the date and reason(s) for the refusal. Respondent shall retain all such records and data for at least three years and shall, upon reasonable notice, make them available for examination and copying by representatives of the Federal Trade Commission. Upon the request of a representative of the Federal Trade Commission, respondent shall compile a list of the credit and layaway balances refunded, to include the account number and dollar amount of each such account.

VII

It is further ordered, That respondent shall:

A. Forthwith distribute a copy of this Order to each of its present and future personnel having policy responsibilities with respect to the subject matter of this Order, including but not limited to the Vice-President for Finance, Controller, Accounting Operations Manager, Accounts Payable Supervisor, Accounts Receivable Supervisory Clerk, and the assistants to the above.

B. Notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

C. File with the Commission a written report, within sixty (60) days after service of this Order, setting forth in detail the manner and form in which it has complied with this Order to that time; *Provided, however,* Respondent shall file with the Commission within 180 days after service of this Order, a written report setting forth the following data:

1. The number of accounts and total dollar amounts of credit balances identified pursuant to Paragraph II.A of this Order and:

a. Refunded by respondent;

b. Determined to be not owed pursuant to the procedures of Paragraph II.D;

c. Offset by further purchases made on the customer's account; or

d. Retained by respondent because the customer could not be located pursuant to the procedures of Paragraph III.B.

2. The number of accounts and total dollar amounts of layaway balances identified pursuant to Paragraph V.A of this Order and

a. Refunded by respondent;

b. Determined to be not owed because the layaway merchandise was received;

c. Determined to be not owed because a credit was issued for the purchase of other merchandise;

d. Determined to be not owed because a refund had already been received.

Attachment A

This certifies that I have reviewed the following accounts and find them to be excluded from the Consent Decree pursuant to Paragraph II.D for the reason indicated:

Account Number, Balance, and Reason

_____

_____

_____

Dated this ——— day of ————————, 19——.

_____

Attachment B

Dear Customer: We may owe you some money. Our records show that you may have started making payments on a layaway numbered ————————.

Please answer the questions below. Return the bottom part of this page in the enclosed envelope. We will then check our records. If we owe you money we will mail it to you. We will not try to collect any money from you.

Sincerely yours,
Fred Meyer, Inc.

Print Your Name ————————————
Address ————————————

1. Did you start a layaway purchase during the months of ———————— or ————————, 197——? Yes —— No ——

2. Name of store ————————————

3. Item ————————————

4. Did you complete the purchase and get the item? Yes —— No ——

5. If not, did you:

a. Get a refund of any payments you made? Yes —— No ——

b. Apply any payments to the purchase of some other item? Yes —— No——

c. Other? ————————————

Signed ————————————
Date ————————————

Analysis of Proposed Consent Order To Aid Public Comment

[782 3070]

The Federal Trade Commission has accepted an agreement to a proposed consent order from Fred Meyer, Inc., Portland, Oregon. The proposed consent order has been placed on the public record for sixty (60) days for receipt of comment by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission's compliant charges that Fred Meyer did not send statements notifying credit customers of credit balances in their accounts and that Fred Meyer kept credit balances unless customers requested a refund. Fred Meyer was also charged with retaining credit balances in layaway accounts unless the customer requested a refund.

The proposed order requires Fred Meyer to correct these practices in the future and to reimburse customers who have had credit balances taken from them. Fred Meyer must hereafter notify credit balance customers each month that they have a credit balance in their account, and enclose with the regular monthly statement a separate notice asking whether the customer wants the credit balance refunded. The notice gives instruction on how to get the refund. The notice also states that the amount will be automatically refunded within six (6) months if it is more than $1.00. The company must then refund the credit balance on request at any time and refund automatically at the end of the sixth (6th) consecutive month that a credit balance has existed. If Fred Meyer believes that a credit balance which shows on one of its statements is not in fact owed by it, and it is in error, the company may decline to refund the credit balance if it gives an individual written explanation and supporting documentation to the customer.

Fred Meyer must also refund all credit balances existing between January 1, 1974 and the effective date of the order. The order requires that interest at the rate of 6 percent per annum be paid on these balances. If a credit balance is shown on Fred Meyer's record, but Fred Meyer does not believe that it is owed, and that it is in error, it will not be required to pay if it can get the approval of an independent firm of certified public accountants acceptable to the Seattle Regional Office of the Commission.

As for layaway account credit balances, Fred Meyer must give notice to customers how have not completed their layaway purchase. The notice provides that a refund can be obtained or the customer has the option of completing the purchase. Fred Meyer will send a check within forty-five (45) days if the amount is more than $1.00. Layaway account credit balances previously retained by Fred Meyer will

be refunded to any customer who indicates, in respone to a notice, that the purchase was not completed and the customer received no reimbursement or credit on other merchandise. These notices will be sent to all customers who have an uncompleted layaway account during the fourteen (14) months prior to the entry of the order.

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

James A. Tobin,

Acting Secretary.

[FR Doc. 80-13229 Filed 4-29-80; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-200-78]

Work Incentive Program Credit; Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the revision of the work incentive program (WIN) credit. Changes to the applicable tax law were made by the Revenue Act of 1978, the Act of January 2, 1980 (Pub. L. 96-178), and the Technical Corrections Act of 1979. The regulations would provide necessary guidance to the public for compliance with the law.

DATES: Written comments and requests for a public hearing must be delivered or mailed by June 30, 1980. The amendments are proposed to be effective for WIN expenses paid or incurred after December 31, 1978, in taxable years ending after such date, with the following exceptions. The amendment increasing the limitation on the credit is proposed to be effective for taxable years beginning after December 31, 1978, the amendment providing that the rules for cooperatives should be similar to the rules in section 46(h) of the Code is proposed to be effective for taxable years ending after October 31, 1978, and the amendment relating to the requirements to be eligible employee for certain child day care services is proposed to be effective for taxable years beginning during 1979.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-200-78), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Barbara B. Coughlin of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-6618).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 50A, 50B, and 280C of the Internal Revenue Code of 1954. These amendments are proposed to conform the regulations to section 322 of the Revenue Act of 1978 (92 Stat. 2836), to sections 3 and 6 of the Act of January 2, 1980 (Pub. L. 96-178; 93 Stat. 1295), and to section 103(a)(5) of the Technical Corrections Act of 1979 (94 Stat. 194). The regulations do not reflect changes in the WIN credit that may be effected by enactment of the Adoption Assistance and Child Welfare Act of 1979 (H.R. 3434, 96th Cong.). The 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).

Determination of Amount of WIN Credit

The proposed regulations reflect the increase in the amount of the WIN credit to 50 percent of first-year WIN expenses and 25 percent of second-year WIN expenses, and the allowance of a credit of 35 percent of first-year WIN expenses (with a maximum of $12,000) for nonbusiness eligible employees, which changes apply to WIN expenses paid or incurred after December 31, 1978. Prior to January 1, 1979, the amount of the credit was 20 percent of wages paid eligible employees during the first 12 months of employment. The proposed regulations reflect the increase in the credit limitation to 100 percent of the taxpayer's tax liability for the taxable year, in the case of taxable years beginning after December 31, 1978. The proposed regulations would delete existing regulation sections relating to recapture of the WIN credit since those sections will be superfluous in light of the repeal by the Revenue Act of 1978 of section 50A(c) (relating to early termination of employment by employer) and section 50A(d) (relating to failure to pay comparable wages).

Definitions

The proposed regulations reflect the changes in section 50B(a). That section defines first-year and second-year WIN expenses and limits to $6,000 the amount of WIN expenses that may be taken into account for any eligible employee in either one-year period. Special rules relating to WIN expenses are provided for eligible employees hired before September 27, 1978, and for eligible employees hired after September 26, 1978.

The proposed regulations also reflect the definition of eligible employee. An eligible employee is an individual (1) who has been certified as being eligible for financial assistance under part A of title IV of the Social Security Act and as having received such financial assistance for the 90-day period before being hired or who has been certified as placed in employment under the work incentive program; (2) who has been employed by the taxpayer more than 30 consecutive days on a substantially full-time basis (an exception to this requirement is provided for taxable years beginning during 1979); (3) who has not displaced any other individual from employment by the employer; and (4) who is not a migrant worker.

Limitations With Respect To Certain Persons

The proposed regulations provide special rules for mutual savings institutions, regulated investment companies, and real estate investment trusts.

Special Rules for Controlled Groups

The proposed regulations provide rules for controlled groups. If any group of trades or businesses are under common control at any time during the calendar year, the WIN credit must be apportioned among the members of the group on the basis of each member's proportionate share of the WIN expenses giving rise to such credit.

Deduction for Wage and Salary Expenses

The proposed regulations reflect the rule, which was added by the Revenue Act of 1978, that no deduction is allowed for that portion of the WIN expenses paid or incurred in the taxable year that is equal to the amount of the credit allowable for the taxable year under section 40 (relating to credit for WIN expenses).

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 Barbara B. Coughlin, of the Legislation and Regulations Division, Office of the 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, effective with respect to WIN expenses paid or incurred after December 31, 1978 (except that the limitation on the amount of the WIN credit set forth in paragraph (b) of § 1.50A–1 shall be effective with respect to taxable years beginning after that date):

Paragraph 1. Section 1.50A–1 is amended to read as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

§ 1.50A–1 Determination of amount of credit for WIN expenses paid or incurred after December 31, 1978.

(a) *In general.* Except as otherwise provided in this section and in § 1.50A–2, the amount of the work incenetive program (WIN) credit allowed by section 40 for the taxable year with respect to WIN expenses paid or incurred after December 31, 1978, is equal to the sum of 50 percent of the taxpayer's first–year WIN expenses plus 25 percent of the taxpayer's second–year WIN expenses (as determined under paragraph (a)(2) of § 1.50B–1). This amount is referred to in this section and §§ 1.50A–2 through 1.50B–6 as the "credit earned".

(b) *Limitation based on amount of tax liability for taxable years beginning after December 31, 1978.* Notwithstanding the amount of the credit earned for the taxable year, for taxable years beginning after December 31, 1978, the credit allowed by section 40 for the taxable year is limited by section 50A (a)(2) to the liability for tax for the taxable year. The excess of the credit earned for the taxable year over the taxpayer's tax liability for the taxable year is an unused credit which may be carried back or forward to other taxable years in accordance with § 1.50A–2.

(c) *Liability for tax.* For the purpose of computing the limitation based on amount of tax, section 50A (a)(3) defines the liability for tax as the income tax imposed for the taxable year by chapter 1 of the Code, reduced by the sum of the credits allowable under—

(1) Section 33 (relating to taxes of foreign countries and possessions of the United States),

(2) Section 37 (relating to credit for the elderly),

(3) Section 38 (relating to investment in certain depreciable property), and

(4) Section 41 (relating to contributions to candidates for public office).

For purposes of this paragraph, the tax imposed for the taxable year by section 56 (relating to minimum tax for tax preferences), section 72 (m)(5)(B) (relating to 10 percent tax on premature distributions to owner-employees), section 402 (e) (relating to tax on lump sum distributions), section 408 (f) (relating to additional tax on income from certain retirement accounts), section 531 (relating to acumulated earning tax), section 541 (relating to personal holding company tax), or section 1378 (relating to tax on certain capital gains of subchapter S corporations), and any additional tax imposed for the taxable year by section 1351 (d)(1) (relating to recoveries of foreign expropriation losses), shall not be considered tax imposed by chapter 1 of the Code for such year.

(d) *Example.* The application of paragraphs (a), (b), and (c) of this section may be illustrated by the following example:

Example. For its taxable year ending December 31, 1980, X Corporation's first-year WIN expenses are $500,000 and second-year WIN expenses are $400,000. X Corporation's credit earned for its taxable year is $350,000 (50 percent of $500,000 plus 25 percent of $400,000). X Corporation's income tax for such year is $310,000, consisting of $300,000 imposed by section 11 and $10,000 imposed by section 56. The only credit X Corporation is allowed against that tax is a foreign tax credit of $50,000 under section 33. X Corporation's liability for tax is computed as follows:

Income tax before the section 33 credit and without regard to the tax imposed by section 56	$300,000
Less foreign tax credit	50,000
Liability for tax	$250,000

Under section 50A(a)(2) and paragraph (b) of this section, X Corporation's limitation based on the amount of tax liability for the taxable year is $250,000. X Corporation's credit allowed by section 40 for the taxable year therefore is $250,000. X Corporation has an unused credit for the year of $100,000 ($350,000 less $250,000) which it may carry back or forward to other taxable years in accordance with § 1.50A–2.

(e) *Limitations with respect to nonbusiness eligible employees*—(1) *In general.* In the case of any WIN expenses paid or incurred by the taxpayer after December 31, 1978, to eligible employees (as defined in paragraph (e) of § 1.50B–1) whose services are not performed in connection with the trade or business of the taxpayer, paragraph (a) of this section shall be applied by substituting "35 percent" for "50 percent". In addition, the aggregate amount of such nonbusiness first-year WIN expenses that may be taken into account shall not exceed $12,000 and no second-year nonbusiness WIN expenses may be taken into account.

(2) *Married individuals.* In the case of a husband or wife who files a separate return, the aggregate amount of nonbusiness WIN expenses that may be taken into account shall not exceed $6,000. If the spouse of the taxpayer has no nonbusiness WIN expenses for the taxable year, the preceding sentence shall not apply and the aggregate amount of such WIN expenses shall not exceed the $12,000 limit of paragraph (e)(1) of this section.

(3) *Dependent care credit may not be claimed.* No credit shall be allowed under section 44A (relating to expenses for household and dependent care services necessary for gainful employment) with respect to any amounts paid or incurred by the taxpayer with respect to which the taxpayer is allowed a credit under section 40.

Par. 2. Section 1.50A–2 is amended by adding at the end thereof new paragraph (g), to read as follows:

§ 1.50A–2 Carryback and carryover of unused credit.

* * * * *

(g) *Carrybacks and carryovers between taxable years beginning before January 1 1979, and taxable years beginning after December 31, 1978.* The provisions of section 50A(a)(2) of the Internal Revenue Code of 1954, as in effect prior to the enactment of the Revenue Act of 1978, apply for the purpose of determining the amount of an unused credit in a taxable year beginning before January 1, 1979, being carried over to a taxable year beginning after December 31, 1978. The rules of paragraph (b) of § 1.50A–1 apply for the purpose of determining the amount of an unused credit in a taxable year beginning after December 31, 1978, that may be carried back to a taxable year beginning before January 1, 1979, but the maximum amount of credit allowable

for each pre-1979 taxable year shall be determined by the tax liability limitation applicable to such year.

Example. X Corporation, a calendar year taxpayer, has $100,000 of WIN credit (before application of the limitation based on the amount of tax) and $100,000 of tax liability in 1978. Since the credit allowed by section 40 for taxable years beginning before January 1, 1979, must not exceed so much of the liability for tax as does not exceed $50,000, plus 50 percent of so much of the liability for tax for the taxable year as exceeds $50,000, X Corporation may only claim $75,000 of WIN credit on its 1978 income tax return. X Corporation claimed the maximum amount allowable as a WIN credit for 1975, 1976, and 1977; therefore, this unused credit for 1978 may be carried forward to 1979. X Corporation has $50,000 of WIN credit and $100,000 of tax liability for 1979. Accordingly, the unused credit for 1978 ($25,000) is allowable as a credit for 1979. The amount of the unused 1978 credit is determined by reference to the limitation based on the amount of tax (as in effect for 1978), even where the unused credit is carried over to 1979 when a different limitation is in effect. Similarly, if X Corporation were carrying back an unused WIN credit from 1979 to 1976, 1977 and 1978, the 1979 tax liability limitation would determine the amount of the unused credit to be carried back (but the maximum amount of credit allowable in each pre-1979 taxable year would be determined by the tax liability limitation applicable to such year).

* * * * *

§§ 1.50A-3—1.50A-7 [Deleted]

Par. 3. Sections 1.50A-3 through 1.50A-7 are deleted.

Par. 4. Section 1.50B-1 is amended to read as follows:

§ 1.50B-1 Definition of WIN expenses.

(a) *WIN expenses*—(1) *In general.* Except as otherwise provided in paragraphs (b), (c), and (d) of this section, for purposes of §§ 1.50A-1 through 1.50B-6, the term "work incentive program expenses" (referred to in §§ 1.50A-1 through 1.50B-6 as "WIN expenses") as applied to expenses paid or incurred after December 31, 1978, means the salaries and wages paid or incurred by the taxpayer for services rendered by employees who, during the course of their employment, become eligible employees (as defined in paragraph (e) of this section).

(2) *First-year and second-year WIN expenses.* The term "first-year work incentive program expenses" (first-year WIN expenses) means, with respect to any eligible employee, WIN expenses attributable to service rendered during the 1-year period that begins on the day the eligible employee first begins to perform services (including receiving training) for which the taxpayer compensates the employee. The term "second-year work incentive program expenses" (second-year WIN expenses) means, with respect to any eligible employee, WIN expenses attributable to service rendered during the 1-year period which begins on the day after the last day of the 1-year period described in the preceding sentence. The date on which the expenses are paid does not determine if the expenses are first-year or second-year WIN expenses; rather, the expenses are attributable to the period during which the services for which they are compensation were performed. In the absence of clear and convincing evidence to the contrary, it shall be presumed that WIN expenses are attributable to services performed during the pay period for which the taxpayer is paying wages at the time the expenses are paid.

(3) *Limitation on amount of WIN expenses.* The amount of the WIN expenses taken into account with respect to any eligible employee for either 1-year period described in paragraph (a) (2) shall not exceed $6,000.

(4) *Eligible employees hired before September 27, 1978.* No credit shall be allowed under section 40 with respect to second-year WIN expenses attributable to service performed by an eligible employee (as defined in paragraph (e) of this section) hired before September 27, 1978.

(5) *Eligible employees hired after September 26, 1978.* In the case of an eligible employee (as defined in paragraph (e) of this section) hired after September 26, 1978, for purposes of applying the WIN credit as amended by the Revenue Act of 1978, the taxpayer shall treat the employee as having first begun work for the taxpayer not earlier than January 1, 1979. Accordingly, in the case of eligible employees who are hired and commence work between those dates, first-year WIN expenses are those paid or incurred on or after January 1, 1979, as compensation for services performed during calendar year 1979 and second-year WIN expenses are those paid or incurred on or before January 1, 1980, as compensation for services performed during calendar year 1980. For purposes of this subparagraph, wages paid or incurred after December 31, 1978, shall be considered to be attributable to services rendered after that date. The determination of any WIN credit allowable with respect to wages paid or incurred before January 1, 1979, for services performed by such employees before that date shall be governed by the law in effect prior to the enactment of the Revenue Act of 1978.

(6) *Example.* The provisions of this paragraph may be illustrated by the following example:

Example (1). On August 1, 1979, X Corporation, a cash method taxpayer, hired A, an eligible employee as defined in § 1.50B-1 (e). A began to perform services as X Corporation's employee on August 6, 1979. Wages paid by X Corporation for services performed by A from August 6, 1979, through August 5, 1980, constitute first-year WIN expenses (even those not paid until after August 5, 1980). Wages paid by X Corporation for services performed by A from August 6, 1980, through August 5, 1981, constitute second-year WIN expenses (even those not paid until after August 5, 1981). The maximum amount of such expenses that may be taken into account in computing the WIN credit is $6,000 for each year.

Example (2). Assume the same facts as in example (1) and the following additional facts: X Corporation laid off A on January 1, 1980, and rehired A on January 1, 1981. Wages paid by X Corporation for services performed by A from August 6, 1979, through January 1, 1980, constitute first-year WIN expenses (even those not paid until after January 1, 1980). The wages paid by X Corporation for services performed by A from January 1, 1981, to August 5, 1981, constitute second-year WIN expenses (even those not paid until after August 5, 1981). Wages paid for services performed after August 5, 1981, are not second-year WIN expenses.

(b) *Salaries and wages.* For purposes of this section, the term "salaries and wages" means only cash remuneration, including a check. Amounts deducted and withheld from the employee's pay (for example, taxes and contributions to health and retirement plans) shall be deemed to be cash remuneration even though not actually paid directly to the employee.

(c) *Reimbursed expenses*—(1) *In general.* The term "WIN expenses" does not include salaries and wages to the extent that the taxpayer is reimbursed for such salaries or wages from any source, except as provided in section 50B (i) (2) for taxable years beginning after December 31, 1978, and before January 1, 1980, in the case of certain child day care services.

(2) *Examples.* Paragraph (c) (1) of this section may be illustrated by the following examples:

Example (1). X Company, which makes its return on the basis of the calendar year, hired eligible employees on January 1, 1979. X Company has a cost-plus construction contract with the Federal Government. The fact that X has a construction contract with the Federal Government or anyone else does not change its character from a normal business transaction in which there has been a sale of materials and services. Thus, the salaries or wages paid or incurred for services rendered by these employees would not be reimbursed expenses, and X Company would be entitled to the credit provided by section 40.

Example (2). Y Company, which makes its return on the basis of the calendar year, hires an eligible employee, A, on January 1, 1979. Y

Company provides A with an unusually large amount of supervision and training. Federal funds allocated through the WIN Program under section 431 of the Social Security Act (42 U.S.C. 631) reimburse the company for the extraordinary costs of this training and supervison. Since under 29 CFR 56.15 the payments are not to be used for any reimbursement to Y Company for time spent by A in work, the salaries and wages paid or incurred for services rendered by A are not reimbursed expenses. Y Company would be entitled to the credit provided by section 40.

(d) *Geographical limitation*—(1) *In general.* The term "WIN expenses" does not include salaries and wages paid or incurred for services rendered outside the United States (as defined in sections 638 (relating to Continental Shelf areas) and 7701(a)(9)). However, services rendered by any WIN employee outside the United States (as defined in sections 638 (relating to Continental Shelf areas) and 7701(a)(9)) shall be taken into account for purposes of paragraph (a) (2) of this section in determining the employee's first and second years of employment with the employer.

(2) *Example.* Paragraph (d)(1) of this section may be illustrated by the following example:

Example. On January 1, 1979, A (an eligible employee) was hired by and began performing services for X Corporation, an accrual method taxpayer. X Corporation continuously employed A for the following 24-month period. During February and March of 1979, X Corporation incurred wages with respect to A while he received training conducted in Puerto Rico. For January and April through December 1979, A performed services for X Corporation within the United States. For purposes of section 50B(a) and § 1.50B–1(a)(2), A's first one-year period of employment is January 1, 1979, to December 31, 1979. Under § 1.50B–1(d)(1), no wages incurred with respect to A for services rendered during the months of February and March of 1979 may be taken into account by X as first-year WIN expenses because the services were rendered outside the United States. However, X Corporation may take into account as first-year WIN expenses the other wages X Corporation incurred with respect to A for services rendered during 1979.

(e) *Eligible employee.* For purposes of §§ 1.50A–1 through 1.50B–6 the term "eligible employee" means an individual (other than an ineligible individual as defined in paragraph (f) of this section)—

(1) Who has been certified by the Secretary of Labor or by the appropriate agency of State or local government as either—

(i) Being eligible for financial assistance under part A of title IV of § 1.508–1(e)(1)(i) the Social Security Act and as having continually received such financial assistance during the 90-day period that immediately precedes the date on which such individual is first hired by the employer, or

(ii) Having been placed in employment under a work incentive program established under section 432(b)(1) of the Social Security Act, and

(2) Who has been employed by the taxpayer for a period in excess of 30 consecutive days on a substantially full-time basis, and

(3) Who has not displaced any other individual from employment by the taxpayer, and

(4) Who is not an migrant worker (as defined in section 50B(h)(2)).

The term "eligible employee" includes an employee of the taxpayer whose services are not performed in connection with a trade or business of the taxpayer. The reference in paragraph (e)(2) of this section to employment on a "substantially full-time basis" means that during each period of 7 consecutive days in the period of "30 consecutive days" of employment referred to in that paragraph the employee's work schedule must contain a minimum of three-fourths the number of hours of work that are normal to the occupation or 22.5 hours, whichever is greater. For taxable years beginning after December 31, 1978, and before January 1, 1980, an exception for certain child day care services is provided in section 50B(i)(1) to the requirement that an individual's employment be on a substantially full-time basis.

(f) *Ineligible individuals.* The term "ineligible individual" means an individual who—

(1) Bears any of the relationships described in paragraphs (1) through (8) of section 152 (a) of the Code to the taxpayer, or, if the taxpayer is a corporation, to an individual who owns, directly or indirectly, more than 50 percent in value of the outstanding stock of the corporation (determined with the application of section 267(c) of the Code),

(2) If the taxpayer is an estate or trust, is a grantor, beneficiary, or fiduciary of the estate or trust, or is an individual who bears any of the relationships described in paragraphs (1) through (8) of section 152(a) of the Code to a grantor, beneficiary, or fiduciary of the estate or trust, or

(3) Is a dependent (described in section 152(a)(9) of the Code) of the taxpayer, or, if the taxpayer is a corporation, of an individual described in paragraph (f)(1), or, if the taxpayer is an estate or trust, of a grantor, beneficiary, or fiduciary of the estate or trust.

Par. 5. Section 1. 50B–2 is amended to read as follows:

§ 1.50B–2 Electing small business corporations.

(a) *General rule*—(1) *In general.* In the case of an electing small business corporation (as defined in section 1371(b)), WIN expenses (as defined in paragraph (a) of § 1.50B–1) shall be apportioned pro rata among the persons who are shareholders of such corporation on the last day of such corporation's taxable year, and shall be taken into account for the taxable years of such shareholders within which or with which the taxable year of such corporation ends. The WIN expenses for each employee shall be apportioned separately. In determining who are shareholders of an electing small business corporation on the last day of its taxable year, the rules of paragraph (d)(1) of § 1.1371–1 and of paragraph (a)(2) of § 1.1373–1 shall apply.

(2) *Shareholder as taxpayer.* A shareholder to whom WIN expenses are apportioned shall, for purposes of the credit allowed by section 40, be treated as the taxpayer who paid or incurred the expenses allocated to him.

(3) *Computation of first-year and second-year WIN expenses.* The dates of the two 1-year periods described in paragraph (a)(2) of § 1.50B–1 shall not be affected by a change in the shareholders of such corporation and shall not be affected by a reduction in any shareholder's proportionate stock interest in such corporation (for example, by a sale or redemption or by the issuance of additional shares). Those dates shall be the same with respect to any shareholder of such corporation claiming a credit under section 40 for salaries and wages paid or incurred for services rendered by any eligible employee. Also, with respect to any eligible employee, those one-year periods shall not be deemed to begin again because of the making of a valid election under section 1372.

(b) *Summary statement.* An electing small business corporation shall attach to its return a statement showing the apportionment to each shareholder of its WIN expenses with respect to each eligible employee.

(c) *Example.* Paragraph (a) of this section may be illustrated by the following example:

Example. (a) X Corporation, an electing small business corporation, is an accrual method taxpayer filing its return on the basis of the calendar year. X Corporation hires five eligible employees in 1979. The WIN expenses incurred in 1979 with respect to each eligible employee are as follows:

WIn employee number	Wages	WIN expenses
1	$6,500	[1]$6,000
2	5,000	5,000
3	4,000	4,000
4	4,000	4,000
5	3,000	3,000
Total	22,500	22,000

[1] Limited under section 50B(a)(4).

On December 31, 1979, X Corporation has 10 shares of stock outstanding which are owned as follows: A owns 3 shares, B owns 2 shares, and C owns 5 shares.

(b) Under this section, the WIN expenses are apportioned to the shareholders of X Corporation as follows:

Eligible employees	1	2	3	4	5	Total
Total WIN expenses	$6,000	$5,000	$4,000	$4,000	$3,000	
Shareholder A (3/10)	1,800	1,500	1,200	1,200	900	$6,600
Shareholder B (2/10)	1,200	1,000	800	800	600	4,400
Shareholder C (5/10)	3,000	2,500	2,000	2,000	1,500	11,000

Assume that shareholders A, B, and C did not directly pay or incur any other WIN expenses during any of their taxable years in which falls December 31, 1979 (the last day of X Corporation's taxable year), and that such shareholders did not own any interests in other electing small business corporations, partnerships, estates or trusts that paid or incurred WIN expenses. The total first-year WIN expenses of shareholder A are $6,600, of shareholder B are $4,400, and of shareholder C are $11,000.

Par. 6. Section 1.50B–3 is amended to read as follows:

§ 1.50B–3 Estates and trusts.

(a) *General rule*—(1) *In general.* In the case of an estate or trust, WIN expenses (as difined in paragraph (a) of § 1.50B–1) shall be apportioned among the estate or trust and its beneficiaries on the basis of the income of such estate or trust allocable to each. There shall be apportioned to the estate or trust for its taxable year, and to each beneficiary of such estate or trust for his taxable year in which or with which the taxable year of such estate or trust ends, his share (as determined under paragraph (b) of this section) of the total WIN expenses. The WIN expenses for each employee shall be apportioned separately.

(2) *Beneficiary as taxpayer.* A beneficiary to whom WIN expenses are apportioned shall, for purposes of the credit allowed by section 40, be treated as the taxpayer who paid or incurred such WIN expenses allocated to him. For purposes of this section, the term "beneficiary" includes heir, legatee, and devisee.

(3) *Special rule for termination of interest.* If during the taxable year of an estate or trust a beneficiary's interest in the income of such estate or trust terminates, WIN expenses paid or incurred by such estate or trust after such termination shall not be apportioned to such beneficiary.

(b) *Share.* A trust's, estate's, or beneficiary's share of either the first-year or second-year WIN expenses with respect to each employee shall be:

(1) The total of such first-year or second-year WIN expenses for the taxable year of the estate or trust with respect to such employee (not to exceed the limitation described in paragraph (a)(3) of § 1.50B–1) multiplied by

(2) The amount of income allocable to such estate or trust or to such beneficiary for such taxable year, divided by

(3) The sum of the amounts of income allocable to such estate or trust and all its beneficiaries taken into account under paragraph (b)(2) of this section.

(c) *Computation of first-year and second-year WIN expenses.* The dates of the two 1-year periods described in paragraph (a)(2) of § 1.50B–1 shall not be affected by a change in the beneficiaries of an estate or trust and shall not be affected by a reduction or a termination of a beneficiary's interest in the income of such estate or trust. Those dates shall be the same with respect to the trust or estate, and any beneficiary of such trust or estate claiming a credit under section 40 for salaries and wages paid or incurred for services rendered by any eligible employee.

(d) *Summary statement.* An estate or trust shall attach to its return a statement showing the apportionment to such estate or trust and to each beneficiary of WIN expenses with respect to each eligible employee.

(e) *Example.* This section may be illustrated by the following example:

Example. (a) XYZ trust, which makes its return on the basis of the calendar year, hires five eligible employees in 1979. The WIN expenses for 1979 with respect to each employee are as follows:

Eligible employee	Wages	WIN expenses
1	$6,500	[1]$6,000
2	5,000	5,000
3	4,000	4,000
4	4,000	4,000
5	3,000	3,000
Total	22,500	22,000

[1] Limit under section 50B(a)(4).

For the taxable year 1979 the income of XYZ trust is $10,000 that is allocable as follows: $5,000 to XYZ trust, $2,000 to beneficiary A, and $3,000 to beneficiary B. Beneficiaries A and B make their returns on the basis of a calendar year.

(b) Under this section, the WIN expenses are apportioned to XYZ trust and to its beneficiaries as follows:

Eligible employees	1	2	3	4	5	Total
Total WIN expenses	$6,000	$5,000	$4,000	$4,000	$3,000	
XYZ Trust: $5,000/$10,000	3,000	2,500	2,000	2,000	1,500	$11,000
Beneficiary A: $2,000/$10,000	1,200	1,000	800	800	600	4,400
Beneficiary B: $3,000/$10,000	1,800	1,500	1,200	1,200	900	6,600

Assume that beneficiary A hired an eligible employee during his taxable year 1979 with respect to whom A had $6,000 in WIN expenses in 1979. Also, assume that beneficiary B did not hire any eligible employees during his taxable year 1979 and that beneficiaries A and B did not own any interests in other trusts, estates, partnerships, or electing small business corporations that hired eligible employees. The total first-year WIN expenses of XYZ trust are $11,000, of beneficiary A are $10,400 ($4,400 plus $6,000), and of beneficiary B are $6,600.

Par. 7. Section 1.50B–4 is amended to read as follows:

§ 1.50B–4 Partnerships.

(a) *General rule*—(1) *In general.* In the case of a partnership, each partner shall take into account separately, for his taxable year with or within which the partnership taxable year ends, his share (as determined under paragraph (a)(3) of this section) of the WIN expenses (as defined in paragraph (a) of § 1.50B–1) of employees employed by the partnership during such partnership's taxable year. The WIN expenses for each employee shall be allocated separately.

(2) *Partnership as taxpayer.* Each partner shall be treated as the taxpayer

who paid or incurred the share of the WIN expenses allocated to him.

(3) *Determination of partner's share.*

(i) Each partner's share of the WIN expenses shall be determined in accordance with the partner's interest in the partnership as defined in section 704(b) and the regulations thereunder. However, if the partner's interest in the partnership changes during the taxable year of the partnership, the partner's interest on the date of the performance of the services to which the WIN expenses are attributable shall control.

(ii) Notwithstanding subdivision (i) of this subparagraph, if the deduction with respect to any WIN expenses is specially allocated and if such special allocation is recognized under section 704 (a) and (b), then each partner's share of the WIN expenses shall be determined by reference to such special allocation effective for the date on which the WIN expenses are paid or incurred.

(4) *Computation of first-year and second-year WIN expenses.* The dates of the two 1-year periods described in paragraph (a)(2) of § 1.50B–1 shall not be affected by a change in the partners of such partnership and shall not be affected by a change in the ratio in which the partners divide the general profits of the partnership. Those dates shall be the same with respect to any partner of such partnership claiming a credit under section 40 for salaries and wages paid or incurred for services rendered by such eligible employee.

(b) *Summary statement.* A partnership shall attach to its return a statement showing the allocation to each partner of its WIN credit with respect to each WIN employee.

(c) *Examples.* Paragraph (a) of this section may be illustrated by the following examples:

Example (1). Partnership ABCD hires an eligible employee on January 1, 1980, and hires a second eligible employee on October 1, 1980. The ABCD partnership and each of its partners are cash method taxpayers reporting income on the basis of the calendar year. Each partner has a 25 percent interest in the partnership during 1980. Each partner's share of the WIN expenses paid during 1980 with respect to these employees is 25 percent.

Example (2). Assume the same facts as in example (1) and the following additional facts: B purchases A's interest on June 30, 1980. Each partner has a 25 percent interest in the partnership from January 1 to June 30. From July 1 to December 31, B's interest in the partnership is 50 percent, and C and D's interests in the partnership are each 25 percent. B shall take into account 25 percent of the WIN expenses paid for services performed during the period beginning January 1 and ending June 30, 1980, and 50 percent of the WIN expenses paid for services performed during the remainder of the year with respect to the employee hired on January 1, 1980. Also B shall take into account 50 percent of the WIN expenses paid with respect to the employee hired on October 1, 1980. C and D shall each take into account 25 percent of the WIN expenses paid with respect to the employees employed by the partnership in 1980.

Par. 8. Section 1.50B–5 is amended to read as follows:

§ 1.50B–5 Limitations with respect to certain persons.

(a) *Mutual savings institutions.* In the case of an organization to which section 593 applies (that is, a mutual savings bank, a cooperative bank, or a domestic building and loan association) WIN expenses shall be 50 percent of the amount otherwise determined under paragraph (a) of § 1.50B–1. For example, a domestic building and loan association incurs $30,000 in WIN expenses (as determined under paragraph (a) of § 1.50B–1) during its taxable year. However, under this paragraph such amount is reduced to $15,000 (50 percent of $30,000).

(b) *Regulated investment companies and real estate investment trusts.* (1) In the case of a regulated investment company or a real estate investment trust subject to taxation under subchapter M, chapter 1 of the Code, the WIN expenses determined under paragraph (a) of § 1.50B–1 shall be reduced to the company's or trust's ratable share of each such amount.

(2) The ratable share of the WIN expenses determined under paragraph (a) of § 1.50B–1 shall be the ratio which—

(i) Taxable income for the taxable year, bears to,

(ii) Taxable income for the taxable year plus the amount of the deduction for dividends paid taken into account under section 852(b)(2)(D) in computing investment company taxable income, or under section 857(b)(2)(B) in computing real estate investment trust taxable income, as the case may be.

For purposes of the preceding sentence, the term "taxable income" means, in the case of a regulated investment company, its investment company taxable income (within the meaning of section 852(b)(2)) and, in the case of a real estate investment trust, its real estate investment trust taxable income (within the meaning of section 857(b)(2)) determined by excluding any net capital gain, and by computing the deduction for dividends paid without regard to capital gains dividends (as defined in section 857(b)(3)(C)). For both regulated investment companies and real estate investment trusts, the amount of the deduction for dividends paid includes the amount of deficiency dividends (other than capital gains deficiency dividends) taken into account in computing regulated investment company taxable income and real estate investment trust taxable income, respectively, for the taxable year. See section 860(f) for the definition of deficiency dividends. For purposes of computing the ratable share, section 280C shall be disregarded.

(3) This paragraph may be illustrated by the following example:

Example. (a) X Corporation, a regulated investment company subject to taxation under section 852 of the Code, which makes its return on the basis of the calendar year, has first-year WIN expenses of $5,000 during the year 1979. X Corporation's investment company taxable income under section 852(b)(2) is $10,000 after taking into account a deduction for dividends paid of $90,000.

(b) Under this paragraph, X Corporation's first-year WIN expenses for 1979 are $500 computed as follows: $5,000 (WIN expenses) multiplied by

$10,000 (taxable income)

$100,000 (taxable income plus the deduction for dividends paid).

(c) *Cooperatives.* In the case of a cooperative organization described in section 3181(a), the principles set forth in section 46(h)(1) and the regulations thereunder shall apply for taxable years ending after October 31, 1978, to allocate to the patrons of the organization that portion of the credit allowable to the organization under section 40 that the organization cannot use for the taxable year.

Par. 9. A new § 1.50B–6 is added immediately after revised § 1.50B–5. This new section reads as follows:

§ 1.50B–6 Special rules for controlled groups.

(a) *Apportionment of work incentive program credit among members of a group of trades or businesses that are under common control*—(1) *General rule.* In the case of a group of trades or businesses that are under common control at any time during the calendar year, the amount of the work incentive program (WIN) credit (Computed under section 50A and section 50B as if all the organizations that are under common control are one trade or business) must be apportioned among the members of the group on the basis of each member's proportionate share of the WIN expenses giving rise to such credit. However, the limitations in section 50A(a) (2) and (3), section 50A(b), and section 50B(c) apply to each organization individually (although, in applying these limitations, an affiliated group of corporations electing to make a

consolidated return shall be treated as one organization).

(2) *Example.* Subparagraph (1) of this paragraph may be illustrated by the following examples:

Example (1). (a) W Company and its three subsidiaries, X, Y, and Z Companies, are a group of businesses that are under common control. Each company is a cash method taxpayer and makes its return on the basis of the calendar year. W, X, Y, and Z Companies paid to each eligible employee during 1979 the following WIN expenses, attributable to services performed in 1979:

Wages Paid Eligible Employees

Eligible employee number	W company	X company	Y company	Z company	Total salary for each employee
1	$3,000	$3,000	$3,000	$3,000	$12,000
2	9,000				9,000
3		6,000	1,000	1,000	8,000
Total WIN expenses for each company	12,000	9,000	4,000	4,000	29,000

The three eligible employees were hired in 1979. Assume W, X, Y, and Z Companies all have tax liabilities in excess of their WIN expenses.

(b) Since all employees of trades or businesses that are under common control are treated as employed by a single employer, the computations in section 50A and 50B are performed as if all the organizations which are under common control are one trade or business. Consequently, the limitation on the amount of WIN expenses with respect to any eligible employee for any one-year period (as defined in § 1.50B—1 (a) (2)) shall not exceed $6,000. Since W, X, Y and Z Companies paid employee 1 a total of $12,000, each company's first-year WIN expenses for employee 1 are as follows: Wages paid to eligible employee 1 by member of the controlled group multiplied by $6,000 divided by total wages paid to eligible employee 1 by all members of the controlled group. Consequently, the first-year WIN expenses that may be taken into account by each company (W, X, Y, and Z) with respect to employee 1 are $1,500 ($3,000 × $6,000/$12,000). Since W Company paid employee 2 more than $6,000 in wages, only $6,000 can be taken into account by W Company as first-year WIN expenses with respect to employee 2. Since X, Y, and Z Companies paid employee 3 a total of $8,000, each company's first-year WIN expenses with respect to employee 3 are as follows: X has $4,500 ($6,000 × $6,000/$8,000), Y has $750 ($1,000 × $6,000/$8,000), and Z has $750 ($1,000 × $6,000/$8,000).

(c) W, X, Y, and Z Companies have the following first-year WIN expenses for 1979:

Eligible employee number	W company	X company	Y company	Z company	Total salary for each employee
1	$1,500	$1,500	$1,500	$1,500	$6,000
2	$6,000				6,000
3		4,500	750	750	6,000
Total WIN expenses for each company.	7,500	6,000	2,250	2,250	18,000

[1] Allowable WIN expenses for each employee.

Example (2). The profit interest in partnership ABC is owned 15 percent by A, 35 percent by B and 50 percent by C. The profit interest in partnership BC is owned 50 percent by B and 50 percent by C. Thus, partnerships ABC and BC are a "brother-sister group under common control" (as defined in § 1.50B–6 (d)). Partnerships ABC and BC are cash method taxpayers filing their returns on the basis of the calendar year. The partnerships paid the following expenses, attributable to services performed in the year of payment, with respect to employee 1:

Eligible employee number	ABC partnership		BC partnership	
	1979	1980	1979	1980
1	$6,000			$6,000

On January 1, 1979, partnership ABC hired employee 1, who did not work for partnership BC at any time during or before 1979. Employee 1 began work for ABC on January 1, 1979. ABC has $6,000 of first-year WIN expenses with respect to employee 1 in 1979. Then on January 1, 1980, partnership BC hires employee 1. Since all employees of trades or businesses that are under common control are treated as employed by a single employer, BC's WIN expenses with respect to employee 1 in 1980 are second-year WIN expenses.

(b) *Trades or businesses that are under common control.* For purposes of this section, the term "trades or businesses that are under common control" means any group of trades or businesses that is either a "parent-subsidiary group under common control" as defined in paragraph (c) of this section, a "brother-sister group under common control" as defined in paragraph (d) of this section, or a "combined group under common control" as defined in paragraph (e) of this section. For purposes of this section, the term "organization" means a sole proprietorship, a partnership, a trust, an estate, or a corporation. An organization may be a member of only one group of trades or businesses under common control. If, without the application of this paragraph, an organization would be a member of more than one such group, that organization shall indicate in its timely filed return the group in which it is being included. If the organization does not so indicate, then the district director with audit jurisdiction of the organization's return will determine the group in which the organization is to be included.

(c) *Parent-subsidiary group under common control*—(1) *In general.* The term "parent-subsidiary group under common control" means one or more chains of organizations conducting trades or businesses that are connected through ownership of a controlling interest with a common parent organization if—

(i) A controlling interest in each of the organizations, except the common parent organization, is owned (directly and with the application of § 11.414(c)–4(b)(1), relating to options) by one or more of the other organizations; and

(ii) The common parent organization owns (directly and with the application of § 11.414(c)–4(b)(1) relating to options) a controlling interest in at least one of the other organizations, excluding, in computing the controlling interest, any direct ownership interest by the other organizations.

(2) *Controlling interest defined.* For purposes of this paragraph, the term "controlling interest" means:

(i) In the case of a corporation, ownership of stock possessing more than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of the shares of all classes of stock of the corporation;

(ii) In the case of a trust or estate, ownership of an actuarial interest (determined under paragraph (f) of this section) of more than 50 percent of the trust or estate;

(iii) In the case of a partnership, ownership of more than 50 percent of the profit interest of capital interest of the partnership; and

(iv) In the case of a sole proprietorship, ownership of the sole proprietorship.

(d) *Brother-sister group under common control*—(1) *In general.* The term "brother-sister group under common control" means two or more organiations conducting trades or businesses if—

(i) The same five or fewer persons who are individuals, estates, or trusts own (directly and with the application of § 11.414(c)–4), singly or in combination, a controlling interest of each organization; and

(ii) Taking into account the ownership of each person only to the extent that person's ownership is identical with respect to each organization, such persons are in effective control of each organization.

(2) *Controlling interest defined.* For purposes of this paragraph, the term "controlling interest" means:

(i) In the case of a corporation, ownership of stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of the shares of all classes of stock of the corporation;

(ii) In the case of a trust or estate, ownership of an actuarial interest (determined under paragraph (f) of this section) of at least 80 percent of the trust or estate;

(iii) In the case of a partnership, ownership of at least 80 percent of the profit interest or capital interest of the partnership; and

(iv) In the case of a sole proprietorship, ownership of the sole proprietorship.

(3) *Effective control defined.* For purposes of this paragraph, "effective control" means:

(i) In the case of a corporation, ownership of stock possessing more than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of the shares of all classes of stock of the corporation;

(ii) In the case of a trust or estate, ownership of an actuarial interest (determined under paragraph (f) of this section, of more than 50 percent of the trust or estate;

(iii) In the case of a partnership, ownership of more than 50 percent of the profit interest or capital interest of the partnership; and

(iv) In the case of a sole proprietorship, ownership of the sole proprietorship.

(e) *Combined group under common control.* The term "combined group under common control" means a group of three or more organizations in which (1) each organization is a member of either a parent-subsidiary group under common control or a brother-sister group under common control, and (2) at least one organization is the common parent organization of a parent-subsidiary group under common control and also a member of a brother-sister group under common control.

(f) *Actuarial interest.* For purposes of this section, the actuarial interest of each beneficiary of a trust or estate shall be determined by assuming the maximum exercise of discretion by the fiduciary in favor of the beneficiary. The factors and method prescribed in § 20.2031–10 of this chapter (Estate Tax Regulations) for use in ascertaining the value of an interest in property for estate tax purposes shall be used to determine a beneficiary's actuarial interest.

(g) *Exclusion of certain interests and stock in determining control.* In determining control under this paragraph, the term "interest" and the term "stock" do not include an interest that is treated as not outstanding under § 11.414(c)–3. In addition, the term "stock" does not include treasury stock or nonvoting stock that is limited and preferred regarding dividends.

Par. 10. Section 1.280C–1 is amended by redesignating it as § 1.280C–2 and by revising its heading to read as follows:

§ 1.280C–2 Disallowance of certain deductions for wage or salary expenses when section 44B credit allowed.

* * * * *

Par. 11. A new § 1.280C–1 is inserted immediately before redesignated § 1.280C–2, to read as follows:

§ 1.280C–2 Disallowance of certain deductions for wage or salary expenses when section 40 credit allowed.

If an employer is entitled to a credit under section 40 for work incentive program (WIN) expenses paid or incurred after December 31, 1978, in taxable years ending after such date, it must reduce its deduction for wage or salary expenses paid or incurred in the year the credit is earned by the amount allowable as credit (determined without regard to the provisions of section 50A(a)(2)). In the case in which wages and salaries are capitalized, the amount subject to depreciation must be reduced by the amount of the credit (determined without regard to the provisions of section 50(a)(2)) in determining the depreciation deduction. In the case of an employer who uses the full absorption method of inventory costing under § 1.471–11, the portion of the basis of the inventory attributable to the wage or salary expenses giving rise to the credit and paid or incurred in the year the credit is earned must be reduced by the amount of the credit allowable (determined without regard to the provisions of section 50A(a)(2)). If the employer is an organization that is under common control (as described in § 1.50B–6), it must reduce its deduction for wage or salary expenses by the amount of the credit that it is allowed under section 50B(g) (1) and (2). The deduction for wage and salary expenses must be reduced in the year the WIN credit is earned, even if the employer is unable to use the credit in that year because of the limitation imposed by section 50A(a)(2).

Jerome Kurtz,

Commissioner of Internal Revenue.

[FR Doc. 80–13291 Filed 4–29–80; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

Abandoned Mine Lands Reclamation Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), U.S. Department of the Interior, Washington, D.C. 20240.

ACTION: Notice of intent and proposed rule: receipt of the abandoned mine lands reclamation plan submission from the State of Texas.

SUMMARY: On April 24, 1980, the State of Texas submitted to OSM its proposed abandoned mine land reclamation plan under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). OSM is seeking public comment on the adequacy of the State plan.

DATES: Written comments on the plan must be received on or before 9:00 p.m., May 29, 1980. Written comments on whether OSM should hold a public hearing on the plan must be received by 5:00 p.m., May 14, 1980. A public hearing will be held on May 29, 1980 from 10:00 a.m. to 12:00 noon and 7:00 p.m. to 9:00 p.m. or until all discussions has been completed. The hearing may be cancelled, as discussed under Supplementary Information, below.

ADDRESS: The public hearing, if held will be at the Quality Inn, 1601 East Division, Arlington, Texas 76011. The hearing may be cancelled, as discussed under Supplementary Information, below. Copies of the full text of the proposed Texas plan are available for review during regular business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Region IV, 818 Grand Avenue, Scarritt Building, Kansas City, Missouri 64106

The Railroad Commission of Texas, Surface Mining and Reclamation Division, 1124 South IH 35, Austin, Texas

Written comments should be sent to:

Raymond Lowrie, Regional Director, Office of Surface Mining, 818 Grand Avenue, Scarritt Building, Kansas City, Missouri 64106

The Administrative Record will be available for public review at the OSM Region IV Office above, on Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays.

FOR FURTHER INFORMATION CONTACT: Dan Jones, Assistant Regional Director, Office of Surface Mining, 818 Grand Avenue, Scarritt Building, Kansas City, Missouri 64106, Telephone: 816/374–5162

SUPPLEMENTARY INFORMATION: On April 24, 1980, OSM received a proposed abandoned mine reclamation plan from the State of Texas. The purpose of this submission is to demonstrate both the intent and capability to assume responsibility for administering and conducting the provisions of SMCRA and OSM's Abandoned Mine Lands (AML) Reclamation Program (30 CFR Chapter 7, Subchapter R) as published in the **Federal Register** (FR) on October 25, 1978, 44 FR 49932–49952.

This notice describes the nature of the proposed program and sets forth information concerning public participation in the Director's determination of whether or not the submitted plan may be approved. The public participation requirements for the consideration of a State AML Reclamation Plan are found in 30 CFR Sections 884.13 and 884.14 (44 FR 49948). Additional information may be found under corresponding sections of the preamble to OSM's AML Reclamation Program Final Rules (44 FR 49932–49940).

The receipt of the Texas submission is the first step in the process which will result in the establishment of a comprehensive program for the reclamation of abandoned mine lands in Texas.

By submitting a proposed plan Texas has indicated that it wishes to be primarily responsible for this program. If the submission as hereafter modified, is approved by the Director of OSM, the State will have primary responsibility for the reclamation of abandoned mine lands in Texas. If the program is disapproved and the States does not choose to revise the plan, a Federal AML program will be implemented and OSM will have primary responsibility for these activities.

All written comments must be mailed or hand carried to the Regional Director's Office above or may be hand carried to the public hearing, if a public hearing is found to be necessary and submitted as exhibits to the proceedings.

If the Regional Director finds that the State has given the public adequate notice and opportunity to comment in public hearings, and that the record of such hearing does not reflect major unresolved controversies and there are not a significant number of requests during the 15-day period to comment on the need for a hearing, the hearing will be cancelled by a notice published in the **Federal Register** cancelling the scheduled hearing.

Written comments on the issue of waiver of the public hearing must be received by 5:00 p.m., May 14, 1980.

The comment period will close at the conclusion of the public hearing, if any, or at 9:00 p.m. on May 29, 1980 whichever is later. Comments received after that time will not be considered. Representatives of the Regional Director's Office will be available to meet between 8:00 a.m. and 4:00 p.m. at the request of members of the public to receive their advice and recommendations concerning the proposed State AML reclamation program.

Persons wishing to meet with representatives of the Regional Director's Office during this time period may place such 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.

The Department intends to continue to discuss the State's plan with representatives of the State throughout the review process. All contacts between Departmental personnel and representatives of the State will be conducted in accordance with OSM's guidelines on contacts with States published September 19, 1979 at 44 F.R. 54444.

No Environmental Impact Statement is being prepared in connection with the process leading to the approval or disapproval of the proposed program. The approval of State AML reclamation plans does not have significant evironmental impact, but is only a procedural change in terms of the governmental entity that will be performing the work.

The Director has determined that this is not a significant rule within the meaning of 43 CFR Part 14 and no regulatory analysis is being prepared on the Director's decision relating to Texas' AML plan.

The Texas AML Reclamation Plan can be approved if:

1. The Director finds that the public has been given adequate notice and opportunity to comment, and the record does not reflect major unresolved controversies.

2. Views of other Federal agencies have been solicited and considered.

3. The State has the legal authority, policies and administrative structure to carry out the plan.

4. The plan meets all the requirements of the OSM, AML Reclamation Program Provisions.

5. The State has an approved Regulatory Program, and

6. Determined that the plan is in compliance with all applicable State and Federal laws and regulations.

The following constitutes a summary of the contents of the Texas submission:

The Railroad Commission of Texas, Surface Mining and Reclamation Division has been designated by the Governor of the State of Texas to implement and enforce the Texas Abandoned Mine Plan in accordance with SMCRA (P.L. 95–87). The Railroad Commission of Texas has developed State regulations to carry out State mandate.

Contents of the State Plan Submission include:

(a) Designation of authorized State Agency to administer the program.

(b) State's Chief Legal Officers opinion of designated Agency to operate the program.

(c) Description of the policies and procedures to be followed in conducting the program including:

(1) Goals and objectives.

(2) Project ranking and selection procedures.

(3) Coordination with other reclamation programs.

(4) Land acquisition, management and disposal.

(5) Reclamation on private land.

(6) Rights of Entry.

(7) Public participation in the program.

(d) Description of the Administrative and Mangement structure to be used in the program including:

(1) Description of the organization of the designated agency and its relationship to other organizations that will participate in the program.

(2) Personnel staffing policies.

(3) Purchasing and procurement systems and policies.

(4) Description of the accounting system including specific procedures for operation of the reclamation fund.

(e) Description of the public's participation in preparation of the plan.

(f) A general description of activities to be conducted under the reclamation plan including:

(1) Known or suspected eligible lands and water requiring reclamation, including a map.

(2) General description of the problems identified and how the plan proposes to deal with them.

(3) General description of how the lands to be reclaimed and proposed reclamation relate to the surrounding lands and land uses.

(4) A table summarizing the quantities of land and water affected and an estimate of the quantities to be reclaimed during each year covered by the plan.

(5) General description of the social, economic, and environmental conditions in the different geographic areas where reclamation is planned, including:

(i) The economic base.

(ii) Sociologic and demographic characteristics.

(iii) Significant esthetic, historic or cultural, and recreational values.

(iv) Hydrology including water quality and quantity problems associated with past mining.

(v) Flora and fauna including endangered or threatened species and their habitat.

(vi) Underlying or adjacent coal beds and other minerals and projected methods of extraction.

(vii) Anticipated benefits from reclamation.

Dated: April 25, 1980.

Paul L. Reeves,

Acting Director.

[FR Doc. 80-13297 Filed 4-29-80; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[FRL 1481-1]

Attainment Status Designations of Clermont and Defiance Counties in Ohio; Extension of Comment Period

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of extension of comment period.

SUMMARY: The purpose of this notice is to give notice that the comment period for the notice published March 19, 1980 (45 FR 17596) has been extended from April 18, 1980 to April 30, 1980.

FOR FURTHER INFORMATION CONTACT: Delores Sieja, Environmental Protection Specialist, Air Programs Branch, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, 312-886-6053.

SUPPLEMENTARY INFORMATION: This notice extends the period for comments to the notice published March 19, 1980 (45 FR 17596) proposing to change the attainment status designations of Clermont and Defiance Counties in Ohio. For Clermont County, USEPA proposed to revise the boundaries of the secondary nonattainment area for total suspended particulates (TSP) to reduce the size of the nonattainment area. For Defiance County, USEPA proposed to change the primary nonattainment designation of a portion of Richland Township to secondary nonattainment of the National Ambient Air Quality Standards for TSP.

Cincinnati Gas Electric Company and General Motors Corporation have requested an extension of time for filing their comments regarding the redesignations.

USEPA has decided that the extension of the public comment period is reasonable and the comment period is hereby extended to April 30, 1980.

Dated: April 22, 1980.

John McGuire,

Regional Administrator.

[FR Doc. 80-13305 Filed 4-29-80; 8:45 am]

BILLING CODE 6560-01-M

VETERANS ADMINISTRATION

41 CFR Part 8-4

Special Types and Methods of Procurement; Mortuary Services

AGENCY: Veterans Administration.

ACTION: Proposed regulation.

SUMMARY: The Veterans Administration is proposing to amend its procurement regulations by revising provisions relating to transportation allowances for the burial of unclaimed deceased veterans. The amendment proposes to make transportation allowance a separate cost item of a contract for burial services which will not be limited by the statutory limit of $300 for a burial package, and will not be limited by the distance to the nearest National Cemetery.

DATES: Comments must be received on or before May 29, 1980. It is proposed to make this change effective 30 days after final approval.

ADDRESSES: Send written comments to: Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420. Comments will be available for inspection at the address shown above during the normal business hours until June 9, 1980.

FOR FURTHER INFORMATION CONTACT: T. J. Ganous (202-389-2918).

SUPPLEMENTARY INFORMATION: This section is being revised to remove the restriction of the additional burial allowance to "other than local burials," and to eliminate transportation costs as an item covered under the $300 ceiling for a burial package as designated in 38 U.S.C. 903(a). Clarification is added so that arrangements will be made with the nearest National Cemetery "having available gravespace."

Additional Comment Information

Interested persons are invited to submit written comments, suggestions or objections regarding these documents to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420. All written comments received will be available for public inspection at the above address only between the hours of 8 am and 4:30 pm Monday through Friday (except holidays) until June 9, 1980.

Any person visiting Central Office for the purpose of inspecting any such comments will be received by the Central Office Veterans Services Unit in room 132. Such visitors to any VA field station will be informed that the records are available for inspection only in Central Office and furnished the above address and room number.

Approved: April 22, 1980.

By direction of the Administrator.

Rufus H. Wilson,

Deputy Administrator.

Section 8-4.5102, "Funeral Authorization." is revised to read as follows:

§ 8-4.5102 Funeral authorization.

(a) When a veteran dies while receiving care in a Veterans Administration health care facility or in a non-Veterans Administration institution at Veterans Administration expense and the decedent's remains are unclaimed, the Chief, Medical Administration Service, will forward to the Chief, Supply Service, a properly executed VA Form 10-2065, Funeral Arrangements, requesting that funeral and burial services for the deceased be procured. Burial will be made in the nearest National Cemetery having available gravespace.

(b) The contracting officer will enter into negotiations with local funeral directors to procure a complete funeral and burial service within the statutory allowance of $300. This service will consist of:

(1) Preparation of the body, embalming.

(2) Clothing.

(3) Casket.

(4) Outside box.[1]

(5) Securing all necessary permits.

(c) An additional allowance for transportation of the body to the place of burial is provided in 38 U.S.C. 903(a)(2). This allowance will cover the transportation cost of shipment of the body by common carrier or by hearse to the place of burial, any charges for an outside (shipment) box,[1] and the charges for securing all necessary permits for removal or shipment of the body. These costs are not chargeable against the $300 allowance.

(38 U.S.C. 210(c); 40 U.S.C. 486(c))

[FR Doc. 80-13184 Filed 4-29-80; 8:45 am]

BILLING CODE 8320-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[BC Docket No. 80-169; RM-3371]

FM Broadcast Stations in Lewisburg and Ronceverte, W. Va.; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Action taken herein proposes the assignment of FM Channel 249A to Ronceverte, West Virginia, as that community's first FM assignment, in response to a petition filed by Radio Greenbrier, Inc. We are also proposing the reassignment of Channel 288A from Ronceverte to Lewisburg, West Virginia, to reflect its actual use in that community.

DATES: Comments must be filed on or before June 16, 1980, and reply comments must be filed on or before July 7, 1980.

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

FOR FURTHER INFORMATION CONTACT: Mildred B. Nesterak, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

Adopted: April 16, 1980.

Released: April 24, 1980.

In the matter of Amendment of Section 73.202(b), Table of Assignments, FM Broadcast Stations. (Lewisburg and Ronceverte, West Virginia)

By the Chief, Policy and Rules Division:

1. *Petitioner, Proposal, Comments:* (a) A petition for rulemaking [1] was filed by Radio Greenbrier, Inc. ("petitioner"), proposing the assignment of FM Channel 249A to either Ronceverte [2] or Lewisburg, West Virginia. Petitioner filed a supplement in which it stated that in view of the construction permit granted on Channel 288A to operate in Lewisburg, it requests that Channel 249A be assigned to Ronceverte.

(b) The assignment can be made in conformity with the minimum distance separation requirements.

(c) Petitioner states it will apply for the channel, if assigned.

2. *Community Data:* (a) *Location:* Ronceverte, in Greenbrier County, is located approximately 126 kilometers (78 miles) southeast of Charleston, West Virginia.

(b) *Population:* Ronceverte—1,982;[3] Greenbrier County—32,090.

(c) *Local Aural Broadcast Service:* Ronceverte is served locally by fulltime AM Station WRON.

3. *Economic Considerations:* Petitioner states that Ronceverte is the agricultural supply center for eastern Greenbrier County, and is the site for several small factories. Petitioner has submitted information with respect to Ronceverte in order to show a need for an FM assignment.

4. In view of the apparent need for a first FM channel in Ronceverte, the Commission believes it would be in the public interest to propose the assignment of Channel 249A to that community. We also propose to reassign Channel 288A from Ronceverte to Lewisburg, West Virginia, to reflect its current usage.

5. Accordingly, it is proposed to amend the FM Table of Assignments, (Section 73.202(b) of the Commission's Rules) with regard to the communities listed below:

City	Channel No.	
	Present	Proposed
Lewisburg, West Virginia		288A
Ronceverte, West Virginia	288A	249A

6. The Commission's authority to institute rulemaking proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

7. Interested parties may file comments on or before June 16, 1980, and reply comments on or before July 7, 1980.

8. For further information concerning this proceeding, contact Mildred B. Nesterak, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a notice of proposed rulemaking is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rulemaking other than comments officially filed at the Commission or oral presentation required by the Commission.

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Section 0.281(b)(6) of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Assignments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rulemaking* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rulemaking to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission Rules.)

---

[1] A wooden shipping box will be provided and chargeable against the $300 allowance specified in paragraph (b) of this section when the National Cemetery in which the remains are to be interred does not provide a graveliner. When a shipping box is required for transportation purposes only, it will be chargeable against the transportation allowance specified in paragraph (c) of this section.

[1] Public Notice of the petition was given on May 4, 1979, Report No. 1176.

[2] Channel 288A is assigned to Ronceverte. However, on February 13, 1980, a construction permit was granted to Lewisburg FM Broadcasters to operate a station on that channel in Lewisburg, West Virginia, under the 10 mile rule (Section 73.203(b) of the Commission's Rules).

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

(b) With respect to petitions for rulemaking which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rulemaking* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission Rules.)

5. *Number of copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 80-13152 Filed 4-29-80; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[BC Docket No. 70-119; RM-3362; RM-3598]

FM Broadcast Stations in Rohnert Park and Sebastopol, Calif.; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Action taken herein proposes the assignment of a first Class A FM channel to Rohnert Park, California, in response to a petition filed by Juhl-White. Another petition requesting the same channel to Sebastopol, California, as a first FM assignment, was filed by Jean Harrison. We are proposing the channel only for Rohnert Park since it is the larger of the two communities and the channel would be available for application for Sebastopol under the 10-mile rule.

DATES: Comments must be filed on or before June 16, 1980, and reply comments must be filed on or before July 7, 1980.

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

FOR FURTHER INFORMATION CONTACT: Mildred B. Nesterak, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

Adopted: April 16, 1980.

Released: April 24, 1980.

In the Matter of Amendment of Section 73.202(b), Table of Assignments, FM Broadcast Stations. (Rohnert Park and Sebastopol, California)

By the Chief, Policy and Rules Division:

1. The Commission herein considers two separate petitions, each requesting the institution of rulemaking looking toward the assignment of Channel 285A as a first FM assignment to Rohnert Park, California (RM-3362), and Sebastopol, California (RM-3598). The proposals are mutually exclusive because the communities are only 13 kilometers (8 miles) apart, whereas 105 kilometers (65 miles) is required. We will therefore consider them together.

Rohnert Park, California

2. Juhl-White ("J-W"), filed a petition [1] proposing the assignment of FM Channel 285A to Rohnert Park, California. No responses to the petition were filed.

3. Rohnert Park (pop. 6,133),[2] in Sonoma County (pop. 204,885), is situated approximately 56 kilometers (35 miles) north of San Francisco. It has no local aural broadcast service.

4. J-W asserts that Rohnert Park is a fast growing community with large areas of land zoned for commercial and industrial development. J-W submitted sufficient demographic data to demonstrate the need for a first FM assignment to Rohnert Park.

Sebastopol, California

5. Jean Harrison ("Harrison") filed a petition,[3] requesting the assignment of Channel 285A to Sebastopol, California. J-W filed a response to this petition contending that this request was submitted too late to be considered in this proceeding. However, counterproposals are accepted until the comment deadline to this *Notice*.

6. Sebastopol (pop. 3,993), in Sonoma county (pop. 204,885), is located approximately 13 kilometers (8 miles) from Rohnert Park. It has no local aural broadcast service.

7. Harrison states that Sebastopol is situated in an agricultural area of small ranches, apple, truck and Christmas tree farms, and serves a market area of approximately 40,000 people. She assets that a broadcast facility in Sebastopol would offer the benefits of radio communication to an audience which is either underserved or not served at all. Harrison has submitted a community profile which sufficiently shows a need for a first local service.

8. We have determined that there is no other FM channel available for assignment to either community. Each proposal is similar in that it would provide a first local service. Since Rohnert Park is the larger of the two communities, we will propose the channel there. In any event, if the channel is assigned to Rohnert Park, it would not prevent its usage at Sebastopol as the channel would be available for application under the provisions of Section 73.203(b) of the Commission's Rules (10-mile rule).

9. In view of the foregoing, it is proposed to amend the FM Table of Assignments, Section 73.202(b) of the Commission's Rules, with regard to Rohnert Park, California, as follows:

City	Channel No.	
	Present	Proposed
Rohnert Park, California		285A

10. The Commission's authority to institute rulemaking proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. *NOTE:* A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

11. Interested parties may file comments on or before June 16, 1980, and reply comments on or before July 7, 1980.

12. For further information concerning this proceeding, contact Mildred B. Nesterak, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a notice of proposed rulemaking is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a

[1] Public Notice of the petition was given on April 16, 1979, Report No. 1172.

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

[3] Public Notice of this petition was given on February 27, 1980, Report No. 1218.

message (spoken or written) concerning the merits of a pending rulemaking other than comments officially filed at the Commission or oral presentation required by the Commission.

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and section 0.281(b)(6) of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Assignments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission Rules.)

(b) With respect to petitions for rulemaking which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission Rules.)

5. *Number of copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 80-13151 Filed 4-29-80; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 80-157; RM-3363]

Television Broadcast Station in Santa Barbara, Calif.; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rule making.

SUMMARY: Action taken herein proposes the assignment of television Channel 10 to Santa Barbara, California, for noncommercial educational use, in response to a petition filed by KCPB, Inc. The proposed channel would provide for a first local non-commercial educational service at Santa Barbara. This action also proposes to delete the reservation on Channel 32 to make it available for commercial use.

DATES: Comments must be filed on or before June 16, 1980, and reply comments must be filed on or before July 7, 1980.

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

FOR FURTHER INFORMATION CONTACT: Myra G. Kovey, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

In the Matter of Amendment of Section 73.606(b), Table of Assignments, Television Broadcast Station. (Santa Barbara, California)

Adopted: April 11, 1980.

Released: April 24, 1980.

By the Chief, Policy and Rules Division:

1. *Petitioner, Proposal, Comments:* (a) A petition for rule making [1] has been filed by KCPB, Inc. ("KCPB" or "petitioner"), proposing assignment of VHF television Channel 10 to Santa Barbara, California, with a reservation for noncommercial educational use. Key Television, Inc., licensee of Station KEYT-TV, Santa Barbara, and Blair Broadcasting of California, Inc., licensee of Station KSBY-TV, San Luis Obispo, California, have filed comments, while McGraw-Hill Broadcasting Company, Inc., licensee of Station KGTV-TV, San Diego, California, has filed an opposition. KCPB has replied to the McGraw-Hill pleading.

(b) KCPB is a non-profit corporation incorporated under the laws of California and qualified for exemption from Federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1954, as amended. It affirms that it will apply for the channel, if assigned.

2. *Community Data:* (a) Santa Barbara (pop. 70,215),[2] seat of Santa Barbara County (pop. 264,324), is located on the California coast approximately 120 kilometers (75 miles) northwest of Los Angeles.

(b) Five AM stations and five FM stations, including a noncommercial educational station, are licensed to Santa Barbara. Television Channels 3 and *32 are assigned to the City,[3] but only Channel 3 is occupied by KEYT-TV, and ABC affiliate. According to petitioner, no noncommercial educational television station places a Grade B on better signal over Santa Barbara.

(c) Petitioner describes Santa Barbara as a "uniquely acculturated city" with its own museums, theaters, ballet companies and symphony. A campus of the University of California adjoins the city, while a community college, three private colleges and the Center for the Study of Democratic Institutions are located within its boundaries, according to petitioner. Many artists, scientists, musicians and scholars have made this "noteworthy cultural community" their home, KCPB observes.

3. *Site Restriction, Preclusion and Interference Considerations.*

(a) To meet the 190-mile spacing requirement to the Channel 10 station at San Diego (KGTV), a site at least 25 kilometers (15 miles) northwest of Santa Barbara would be needed.

(b) According to petitioner's engineering statement, the proposed assignment would preclude use of Channel 10 in Bakersfield, San Luis Obispo, and Santa Maria, California, all of which have other channel assignments.

(c) It is McGraw-Hill's contention that unusual propagation characteristics along the California coast will result in mutually destructive interference between its KGTV, Channel 10 operation in San Diego and the proposed Channel 10 station at Santa Barbara. In the *Bakersfield Deintermixture Case,* 21 RR 1549 (1961), we considered, in connection with a then proposed Channel 10 assignment to Santa Barbara, the engineering statement now

[1] Public Notice of the petition was given on April 16, 1979, Report No. 1172.

[2] Population data are taken from the 1970 U.S. Census.

[3] Channels 14 and *20 are also assigned to the city, but are not available for television use under the action taken by the Commission in docket No. 18261.

submitted by McGraw-Hill here. We concluded: ". . . No showing has been made which convinces us that the resulting service areas would be inadequate when the required 190-mile separation between co-channel stations in this zone are maintained." 21 RR at 1572. From the information which has been submitted herein, we are not inclined to change that judgement. However, we will not dismiss McGraw-Hill's claims at this time. Rather, given the context of our 1961 decision—we determined ultimately that only one channel assignment was warranted in the area[4] and that, as between the possible Channels 10 and 12, the latter was the preferable choice—we think it appropriate to reexamine McGraw-Hill's engineering statement, and such supplemental or opposing information as the parties care to submit, with only a Channel 10 assignment in mind. Of particular concern to us in connection with this reexamination are (i) whether unusual propagation characteristics along the coast can be assumed to exist inland, and if so, for how far inland; and (ii) whether, and if so, to what extent consideration of existing adjacent channel interference from Los Angeles stations would reduce McGraw-Hill's predicted San Diego Channel 10 service loss.

4. Since there has been no indication of need for two noncommercial educational channels at Santa Barbara, we are also proposing to remove the educational reservation on Channel 32.

5. Mexican concurrence in the proposal to add Channel 10 to Santa Barbara will be necessary.

6. In view of the foregoing, the Commission proposes to amend the Television Table of Assignments, Section 73.606(b), of the Commission Rules, as it pertains to Santa Barbara, California, as follows:

City	Channel No.	
	Present	Proposed
Santa Barbara, California	3-, 14,[1] *20,[1]*32	3-, *10-, 14,[1] *20,[1] 32

[1] Following the decision in Docket No. 18261, channels so indicated will not be available for television use until further action by the Commission.

7. Authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

8. Interested parties may file comments on or before June 16, 1980, and reply comments on or before July 7, 1980.

9. For further information concerning this proceedings, contact Myra G. Kovey, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a notice of proposed rule making is issued until it is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission.

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy, and Rules Division, Broadcast Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Section 0.281(b)(6) of the Commission's Rules, IT IS PROPOSED TO AMEND the TV Table of Assignments, Section 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission Rules.)

5. *Number of copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings make in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 80-13150 Filed 4-29-80; 8:45 am]

BILLING CODE 6712-01-M

[4] Population growth since 1961 clearly justifies assignment of an additional channel. For example, Santa Barbara's population has increased from 58,768 in 1960 to 70,215 in 1970.

---

47 CFR Part 73

[BC Docket No. 80-158; FM-3374]

FM Broadcast Station in Eagle, Colo.; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Action taken herein proposes the assignment of a Class C channel to Eagle, Colorado, in response to a petition filed by Gloria and George Jones. The proposed channel could be used to bring a first local aural broadcast service to Eagle in addition to significant first and second FM and nighttime aural services to the surrounding area.

DATES: Comments must be filed on or before June 16, 1980, and reply comments must be filed on or before July 7, 1980.

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

FOR FURTHER INFORMATION CONTACT: Mildred B. Nesterak, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

Adopted: April 11, 1980.

Released: April 24, 1980.

In the matter of Amendment of Section 73.202(b), Table of Assignments, FM Broadcast Stations (Eagle, Colorado).

By the Chief, Policy and Rules Division:

1. *Petitioner, Proposal, Comments:* (a) A petition for rulemaking [1] was filed by Gloria and George Jones ("petitioners"), proposing the assignment of Class C FM Channel 268 to Eagle, Colorado, as that community's first FM assignment.

(b) Channel 268 can be assigned to Eagle in conformity with the minimum distance separation requirements.

(c) Petitioners state they will apply for the channel, if assigned.

2. *Community Data*: (a) *Location*: Eagle, seat of Eagle County, is located approximately 154 kilometers (96 miles) west of Denver, Colorado.

(b) *Population*: Eagle—790; [2] Eagle County—7,498.

(c) *Local Aural Broadcast Service*: None.

3. *Economic Considerations*: Petitioners estimate the 1977 population of Eagle at 1,249. They assert that the present and proposed recreational developments, including skiing and other activities, will continue to provide the primary base for the future growth of western Eagle County and the town of Eagle. Petitioners state there are no radio stations in Eagle or the western half of Eagle County. They claim that the proposed station would fill a real need for news of interest to local residents, including ranchers and farmers in isolated areas, and to travelers on Interstate 70 and other highways bisecting the area. Petitioners note that Eagle and the western part of Eagle County are served by a weekly newspaper.

4. *Preclusion Study*: Assignment of Channel 268 to Eagle would cause preclusion to sixteen communities with populations greater than 1,000. Of these, seven have no FM assignments.[3] Two of the seven have AM stations; Roosevelt, Utah (Station KNEU) and Rifle, Colorado (Station KWSR).[4] Petitioners state that Channels 292A and 296A can be assigned to either Meeker, Colorado, or Maeser, Utah. Petitioners should indicate whether alternate channels are available for assignment to Rangely, Paonia, and Orchard City, Colorado, and Roosevelt, Utah.

5. Generally, a community as small as Eagle would be assigned a Class A channel. However, an exception is made where the Class C proposal could bring a significant amount of first or second FM service or when a Class C channel represents the best means of serving a sparsely populated area. In their *Roanoke Rapids/Anamosa* study, petitioners indicate that a first nighttime aural service would be provided to approximately 2,822 persons in a 1,216 square kilometer (475 square miles) area, a second FM service to 19,999 persons in a 10,426 square kilometers (4,073 square miles) area, a first nighttime aural service to approximately 2,587 persons in a 1,085 square kilometer (424 square miles) area, and a second nighttime aural service to 3,441 persons in a 3,238 square kilometer (1,265 square miles) area. These calculations were reached assuming parameters of a proposed station with 100 kW at 1,000 feet.

6. Accordingly, in view of the proposed first and second FM and nighttime aural services which can be provided, comments are invited on the following proposal to amend the FM Table of Assignments with regard to the community of Eagle, Colorado:

City	Channel No.	
	Present	Proposed
Eagle, Colorado		268

7. The Commission's authority to institute rulemaking proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

8. Interested parties may file comments on or before June 16, 1980, and reply comments on or before July 7, 1980.

9. For further information concerning this proceeding, contact Mildred B. Nesterak, Broadcast Bureau (202) 632-7792. However, members of the public should note that from the time a notice of proposed rule making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission.

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

[BC Docket No. 80-158 RM-3374]

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Section 0.281(b)(6) of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Assignments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commisstion's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission Rules.)

5. *Number of copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an

[1] Public Notice of the petition was given on May 4, 1979, Report No 1176.

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

[3] *Colorado*: Rifle (pop. 2,150) (Channels 265A, 268, 269A); Meeker (1,597) (Channels 265A, 268, 269A); Rangely (1,591) (Channels 267, 268); Paonia (1,161) (Channel 269A); Orchard City (1,163) (Channel 269A); *Utah*: Roosevelt (2,005) (Channel 268); Maeser (1,248) (Channel 268).

[4] A petition (RM-3599) proposing the assignment of Class C Channel 287 to Rifle, Colorado, is pending before the Commission.

original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 80-13149 Filed 4-29-80; 8:45 am]
BILLING CODE 6712-01-M

47 CFR PART 73

[BC Docket No. 80-146; RM-3356]

FM Broadcast Station in the Dalles, Oreg.; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Action taken herein proposes the assignment of a second FM channel to The Dalles, Oregon. Petitioner, Nugent Broadcasting Corporation, is willing to operate a Class A channel in competition with the already present Class C FM station in the community.

DATES: Comments must be filed on or before June 13, 1980, and reply comments must be filed on or before July 3, 1980.

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

FOR FURTHER INFORMATION CONTACT: Mildred B. Nesterak, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

Adopted: April 7, 1980.

Released: April 23, 1980.

In the matter of Amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (The Dalles, Oregon), BC Docket No. 80-146 RM-3356.

By the Chief, Policy and Rules Division:

1. *Petitioner, Proposal, Comments:* (a) A petition for rule making[1] was filed by Nugent Broadcasting Corporation, licensee of daytime-only AM Station KACI, The Dalles, Oregon, proposing the assignment of Channel 249A to The Dalles as its second FM assignment.

(b) The channel can be assigned without affecting any existing FM assignments in the Table. No responses to the proposal have been received.

(c) Petitioner states it will apply for the channel, if assigned.

2. *Community Data:* (a) *Location:* The Dalles, seat of Wasco County, is located on the Oregon-Washington border, approximately 113 kilometers (70 miles) east of Portland, Oregon.

(b) *Population:* The Dalles—10,980;[2] Wasco County—20,300.

(c) *Local Aural Broadcast Service:* The Dalles is served locally by daytime-only AM Station KACI, fulltime Station KODL and FM Station KCIV (Channel 283).

3. Petitioner states that the proposed channel would bring much needed FM service to this underserved community and area, including some service to Washington County communities located across the Columbia River.

4. A preclusion study indicates that only one community (Madras, Oregon (pop. 1,910)), which does not have an existing FM assignment would be precluded if Channel 249A were assigned to The Dalles. Petitioner indicated that four available Class A channels (224A, 240A, 244A and 272A) were available for assignment to the precluded area, should the need arise. Petitioner also states that a second FM service would be provided to 20,028 persons in a 1,750 square kilometer (660 square miles) area, if the proposed channel were assigned.

5. The assignment of Channel 249A to The Dalles would result in intermixing a Class A channel with a Class C channel (283). The Commission has a policy of permitting such intermixture where, as here, no other Class C channel is available for assignment and the petitioner is willing to apply for the Class A channel despite the unfavorable competitive situation. *Yakima, Wash.*, 42 F.C.C. 2d 548, 550 (1973); *Key West, Fla.*, 45 F.C.C. 2d 142, 145 (1974).

6. Since The Dalles is located within 402 kilometers (250 miles) of the U.S.-Canada border, the proposed assignment of Channel 249A to The Dalles, Oregon, requires coordination with the Canadian Government.

7. In light of the foregoing information and the fact that the proposed assignment would provide the community an opportunity to develop a second local FM broadcast service, the Commission proposes to amend the FM Table of Assignments, Section 73.202(b) of the Commission's Rules, with regard to The Dallas, Oregon:

City	Channel No.	
	Present	Proposed
The Dalles, Oreg.	283	249A, 283

8. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. *NOTE:* A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

Interested parties may file comments on or before June 13, 1980, and reply comments on or before July 3, 1980.

10. For further information concerning this proceeding, contact Mildred B. Nesterak, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a notice of proposed rule making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. A *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission.

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules Division, Broadcast Bureau.

[BC Docket No. 80-146 RM-3356]

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Section 0.281(b)(6) of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Assignments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as

[1] Public Notice of the petition was given on April 16, 1979, Report No. 1172.

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

they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission Rules.)

5. *Number of copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 80-13233 Filed 4-29-80; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 80-147; RM-3424]

FM Broadcast Station in Manchester, Vt.; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Action taken herein proposes the assignment of Class B FM Channel 274 to Manchester, Vermont, as that community's first FM assignment, in response to a petition filed by Northshire Communications, Inc. The proposed channel could provide first and second FM and second nighttime aural services to a substantial surrounding area and population as well as a first local aural broadcast service to Manchester.

DATES: Comments must be filed on or before June 13, 1980, and reply comments must be filed on or before July 3, 1980.

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

FOR FURTHER INFORMATION CONTACT: Mildred B. Nesterak, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

Adopted: April 7, 1980.

Released: April 23, 1980.

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations, (Manchester, Vermont).

By the Chief, Policy and Rules Division:

1. *Petitioner, Proposal, Comments:* (a) A petition for rulemaking [1] was filed on June 12, 1979, by Northshire Communications, Inc. ("petitioner"), proposing the assignment of Class B Channel 274 to Manchester, Vermont, as its first FM assignment.

(b) The channel can be assigned to Manchester, provided the transmitter site is located approximately 6 kilometers (4 miles) east of the community. Petitioner states that the proposed channel would involve a short-spacing of approximately 26 kilometers (16 miles) to a co-channel Canadian station in Sherbrooke, Quebec (CHLT). However, it notes that the Canadian authorities have agreed to waive the short-spacing and permit operation on Channel 274 at Manchester.

2. *Community Data:* (a) *Location:* Manchester, in Bennington County, is located approximately 149 kilometers (93 miles) south of Burlington, Vermont.

(b) *Population:* Manchester—2,919; [2] Bennington County—29,282.

(c) *Local Aural Broadcast Service:* None.

3. Manchester's economy is based on tourism, recreation, agriculture, farming, and small industry, according to petitioner. Petitioner states that the proposed channel would permit a first local aural service to Manchester as well as wide-area coverage to a portion of Vermont relatively underserved by radio. It notes that the area to be served is comprised of four counties (Bennington, Windham, Rutland and Windsor) known as the Northshire region of Vermont. Petitioner has submitted demographic and economic information with respect to Manchester in order to demonstrate a need for the assignment of a Class B channel.

4. *Preclusion:* A preclusion study indicates that the assignment of Channel 274 to Manchester would create no preclusion to any communities with population greater than 1,000.

5. Petitioner states that, using maximum facilities, the proposed channel would provide a first FM service to 9,235 persons in a 507 square kilometer (198 square miles) area, a second FM service to 50,448 persons in a 2,782 kilometer (1,087 square miles) area, and a second nighttime aural service to 9,235 persons in a 507 square kilometer (198 square miles) area. In making the *Roanoke Rapids* study, petitioner used actual facilities in all cases. Since at least some stations should have been analyzed assuming reasonable facilities, the above service figures would be somewhat less than stated.

6. As stated before, Canada has already given its concurrence to this proposal as a specially negotiated short-spaced allocation.

7. Based on our examination of petitioner's proposal, there appears to be a basis for considering an exception to our general policy of assigning Class B channels only to larger communities. Since the proposed assignment of an FM channel could provide for a first local aural broadcast service to the community in addition to rendering significant first and second FM and second nighttime aural services to the surrounding area, the Commission proposes to amend the FM Table of Assignments, § 73.202(b) of the Rules, with regard to the community listed below, as follows:

City	Channel No.	
	Present	Proposed
Manchester, Vermont		274

8. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. *NOTE:* A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

9. Interested parties may file comments on or before June 13, 1980, and reply comments on or before July 3, 1980.

10. For further information concerning this proceeding, contact Mildred B. Nesterak, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a notice of proposed rule making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission.

[1] Public Notice of the petition was given on August 3, 1979, Report No. 1187.

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

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g), and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission Rules.)

5. *Number of copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW., Washington, D.C.

[FR Doc. 80-13228 Filed 4-29-80; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[BC Docket No. 80-67; RM-3297]

FM Broadcast Station in Anchorage, Alaska: Order Extending Time for Filing Comments

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: Action taken herein extends the time for filing comments in a proceeding involving the proposed assignment of an FM channel to Anchorage, Alaska. Petitioner, Sourdough Broadcasters, Inc., states that the additional time is needed so that comments can be prepared for submission in this proceeding.

DATE: Comments must be filed on or before April 18, 1980.

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

FOR FURTHER INFORMATION CONTACT: Mildred B. Nesterak, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

In the matter of Amendment of § 73.202(b), *Table of Assignments,* FM Broadcast Stations. (Anchorage, Alaska), BC Docket No. 80-67, RM-3297.

Adopted: April 15, 1980.

Released: April 21, 1980.

1. On February 13, 1980, the Commission adopted a *Notice of Proposed Rule Making,* 45 FR 13145, concerning the above-entitled proceeding. The dates for filing comments and reply comments are April 15 and May 5, 1980, respectively.

2. On April 14, 1980, Sourdough Broadcasters, Inc. ("Sourdough") filed a request seeking a 3-day extension of time for filing comments to and including April 18, 1980. Sourdough states that its counsel has been away from his office for almost a month and has not had an opportunity to prepare comments in this proceeding.

3. Section 1.46 of the Commission's rules states that extension requests must be filed seven days in advance of the deadline date. Although this request was not received within the required time period, it appears that no other party would be prejudiced by the short extension requested. We will therefore grant the request.

4. Accordingly, it is ordered, that the date for filing comments in BC Docket 80-67 is extended to and including April 18, 1980.

5. This action is taken pursuant to authority found in Sections 4(i), 5(d)(1) and 303(r) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's rules.

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 80-13183 Filed 4-29-80; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[BC Docket No. 80-143]

Television Broadcast Stations in Lansing and Saginaw, Mich., and Newark, Sandusky and Toledo, Ohio; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Action taken herein proposes substitution of commercial UHF-TV channels at several communities in Michigan and Ohio and the deletion of one commercial UHF-TV assignment at Toledo, Ohio. The action is taken on the Commission's own motion to accommodate land mobile use of the 806-890 MHz band in the U.S.-Canada border area.

DATES: Comments must be filed on or before June 13, 1980, and reply comments on or before July 3, 1980.

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

FOR FURTHER INFORMATION CONTACT: Gordon Godfrey, Broadcast Bureau, (202) 632-9660.

SUPPLEMENTARY INFORMATION:

Adopted: April 7, 1980.

Released: April 23, 1980.

In the matter of amendment of § 73.606(b), *Table of Assignments,* Television Broadcast Stations. (Lansing and Saginaw, Michigan; Newark, Sandusky and Toledo, Ohio), BC Docket No. 80-143.

1. The Commission, on its own motion, proposes to amend the Television Table of Assignments, § 73.606(b) of the Commission's Rules for the following communities: Lansing and Saginaw, Michigan; Newark, Sandusky and Toledo, Ohio.

2. These changes in the Table are needed because of negotiations with the Canadian Government concerning the

use of the 806–890 MHz frequency band along the United States-Canada border.

3. Several years ago the Commission reallocated the frequency spectrum between 806 and 890 MHz [1] from television broadcasting (UHF Channels 70 to 83) to the land mobile radio services. Since that time negotiations between the Commission and the Canadian Department of Communications have been ongoing directed toward reaching agreement concerning the use of this band along the border. These negotiations were needed since this band was being used in Canada for television broadcasting and there was concern that land mobile radio transmitters used in the United States would interfere with television reception in Canada.

4. In 1979, the Canadian Government made a major policy decision to use the 806 to 890 MHz band in Canada for land mobile radio. This decision required the substitution of a number of channels at Canadian communities having assignments above Channel 69. In order to accommodate these changes, we are proposing to substitute for certain vacant assignments near the border. In one case, Toledo, Ohio, one channel is to be deleted, as follows:

City	Channel No.	
	Add	Delete
Lansing, Mich	47	36
Saginaw, Mich	49	45
Newark, Ohio	51	52
Sandusky, Ohio	52	51
Toledo, Ohio	36	54, 60

5. There are three applications on file for use of Channel 36 in Lansing, Michigan. None of the applications specify a site which would be acceptable for a Channel 47 station. However, Channel 53 is currently assigned to Lansing and is unoccupied and unapplied for. All three proposed sites would meet the spacing requirements for use of Channel 53. We would expect each applicant to therefore amend its application to specify either Channel 53 or Channel 47 at a site meeting applicable spacing requirements. A construction permit has been issued to the applicant for Channel 52 at Newark, Ohio on the condition that he specify operation on Channel 51 if this proposed change in the Table of Assignments is adopted. The site specified on the application would be short-spaced by 2.3 miles to Station WOVC–TV operating on Channel *44, Cambridge, Ohio. Because of the low power and antenna height proposed, no service degradation to either station would be expected from this minor short-spacing. Under these circumstances, a waiver appears to be appropriate. There is also an application on file for the use of Channel 51 at Sandusky, Ohio. The site specified in that application meets the spacing requirements for the use of Channel 52 and we anticipate no problems with the applications modification. There are no applications on file for the Saginaw, Michigan, assignment or for either of the Toledo, Ohio assignments.

6. The Commission believes that the proposed changes in the Television Table of Assignments are necessary to accomodate land mobile radio use of the 806–890 MHz frequency band in the border area. While the proposed changes result in the loss of a vacant commercial assignment in Toledo, there is still one remaining vacant commercial assignment.

7. The specific Canadian proposals are contained in a list attached to a Public Notice that will be released simultaneously with this *Notice*. Protection of the Canadian proposals by applicants for U.S. assignments and by persons submitting petitions to amend the TV Table of Assignments will be required.

8. Accordingly, it is proposed to amend the Television Table of Assignments § 73.606(b) of the Commission's rules as follows:

City	Channel No.	
	Present	Proposed
Lansing, Mich	6–, 36+, 53–	6–, 47, 53–
Saginaw, Mich	25–, 45–	25–, 49–
Newark, Ohio	*31–, 52	*31–, 51
Sandusky, Ohio	51–	52
Toledo, Ohio	11–, 13, 24–, *30+, 54, 60–	11–, 13, 24–, *30+, 36–

9. Authority to institute rule making proceedings, showings required, cut-off procedure, and filing requirements are contained in the attached Appendix below and are incorporated by reference herein.

10. Interested parties may file comments on or before June 13, 1980, and reply comments on or before July 3, 1980.

11. For further information concerning this proceeding, contact Gordon Godfrey, Broadcast Bureau, (202) 632–9660. However, members of the public should note that from the time a *Notice of Proposed Rule Making* is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission.

12. It is ordered, That copies of this document SHALL BE SENT by Certified Mail, Return, Receipt Requested, to the following applicants for affected channel assignments: Benko Broadcasting Company, 1503 Jolley Rd., Okemos, Michigan 48864; Kare-Kim Broadcasting Company, Inc., 2405 W. McNichols, Detroit, Michigan 48221; F & S Communications/News, Inc., 4280 West Saginaw Highway, Lansing, Michigan 48917; Christian Television of Ohio, Inc., c/o Michael F. Riley, 8869 National Rd. SW., Pataskalia, Ohio 43062, and Christian Faith Broadcast, Inc., 3809 Maple Ave., Castalia, Ohio 44824.

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules Division.

Appendix

[BC Docket No. 80–143]

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's rules and regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings required.* Comments are invited in the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even it it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it's assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's rules.)

(b) With respect to petitions for rule making which conflicts with the proposal(s) in this *Notice*, they will be considered as comments in the proceedings, and Public

[1] See, *Land Mobile Use of 806–890 MHz Band, Notice of Proposed Rule Making*, Docket 18262, 14 FCC 2nd 311 (1968); *First Report and Second Notice of Inquiry*, Docket 18262, 35 FR 86 44 (1970); *Land Mobile Service, Second Report and Order*, Docket 18262, 46 FCC 2nd 752 (1974); Land Mobile Service, *Memorandum Opinion and Order*, Docket 18262, 51 FCC 2nd 945 (1975).

Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments' service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission rules.)

5. *Number of copies.* In accordance with the provisions of § 1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All findings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C. 20554.

[FR Doc. 80-13177 Filed 4-29-80; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[BC Docket No. 80-159; RM-3326]

FM Broadcast Station in Falmouth, Mass.; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Action taken herein proposes the assignment of a Class A FM channel at Falmouth, Massachusetts, as that community's second FM assignment, in response to a request filed by Marshfield Broadcasting Co., Inc. The proposed channel could provide for a second local FM broadcast service at Falmouth.

DATES: Comments must be filed on or before June 16, 1980, and reply comments must be filed on or before July 7, 1980.

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

FOR FURTHER INFORMATION CONTACT: Molly Pauker, Broacast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

Adopted: April 11, 1980.

Released: April 25, 1980.

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Falmouth, Massachusetts), BC Docket No. 80-159, RM-3326.

1. The Commission has under consideration a petition filed by Marshfield Broadcasting Co. ("Marshfield B/C"), to assign FM Channel 265A to Falmouth, Massachusetts, as its second local broadcast service.[1] Central Vermont Radio Corporation ("Central Vermont"), licensee of WOCB(AM) and WSOX-FM, West Yarmouth, Massachusetts, and New England Media Corporation ("New England"), licensee of WCIB (Channel 270), Falmouth, Massachusetts, have filed comments in opposition to the assignment. Marshfield has filed reply comments. Channel 265A can be assigned to Falmouth in compliance with the minimum distance separation requirements. Marshfield B/C states that it will apply for the channel, if assigned.

2. Falmouth Township (pop. 17,500),[2] in Barnstable County (pop. 96,656), is located approximately 96 kilometers (60 miles) southeast of Boston, Massachusetts. Marshfield B/C states that Falmouth is a rapidly growing community which serves as the economic focal point of Western Cape Cod. Falmouth is currently served locally by Station WCIB (Channel 270).

3. Central Vermont and New England, in opposing the assignment, direct our attention to the history of broadcasting in the Falmouth area. They relate that there have been previous unsuccessful attempts to operate a broadcast station in the Falmouth area. In 1969, when Cape and Islands Broadcasting Company, Inc. ("Cape and Islands") started operating WCIB, Falmouth Broadcasting Company, Inc., applied to use Channel 240A in Falmouth, in connection with a proposed daytime-only AM station. Neither station was built. Subsequently, Station WVOI was granted approval to use the channel at Tisbury, Massachusetts, under the 10-mile rule (§ 73.203(b) of the Commission's rules). After Station WVOI went bankrupt, Marshfield B/C petitioned successfully for reassignment of Channel 240A to Marshfield and substitution of Channel 224A at Tisbury.

4. In view of the previous failure at Falmouth, New England argues that the intermixture of a Class A and Class B station is not economically viable. New England further asserts that the economy of the region will not support new stations in both Tisbury and Falmouth, and that the assignment of an additional channel to Falmouth will preclude Tisbury from ever receiving local service on Channel 224A.[3] We must point out that it is not appropriate for us to take such competitive considerations into account in evaluating a petition for assignment. Rather the allegation of economic harm should be deferred for treatment in connection with processing of an application. As regards the question of intermixture, we must bow to Marshfield B/C's evident willingness to compete with a Class B station in Falmouth, using the only channel available, a Class A channel. If Marshfield B/C succeeds, the public will be served by increased competition in the Falmouth market. We lack both the authority and acumen to second guess the business judgment of Marshfield B/C's president, who has been involved in the lower Cape and South Shore radio market for a number of years.

5. New England recites that Edward F. Perry, Jr. ("Perry"), President of Marshfield B/C, was technical director, a principal stockholder and general manager of Station WCIB (Channel 270), Falmouth, prior to New England's acquisition in bankruptcy of the station from Cape and Islands in 1974. Perry's other radio interests purportedly raise the question of whether he would be disqualified from applying to use Channel 265A, should we assign it to Falmouth, under the Commission's policy against undue concentration of media control.[4] Such concerns are somewhat premature at the assignment stage. See *Caldwell, Ohio,* Dkt. 78-176, 45 FR 12439 (1980). Serious doubt has not been cast on Marshfield's representation that it will apply for the channel, if assigned. Marshfield B/C's (and Perry's) qualifications to hold a license to operate in Falmouth will

---

[1] Public Notice of the petition was given on March 2, 1979, Report No. 1166.

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

[3] We note that an application for a new station on Channel 224A at Tisbury is pending. The applicant's apparent desire to operate at Tisbury, regardless of the outcome of the instant petition, calls into question New England's premise.

[4] See § 73.240(a)(2) of the Commission's rules. In particular, New England calls into question the current operation of an FM station on Channel 240A at Marshfield and Perry's interests in four other stations within a fifty-mile radius, Middleborough, Amherst and Webster, Massachusetts, and Vernon, Connecticut. New England notes that Middleborough, Amherst and Vernon are in the application stage, and that Webster represents a construction permit. Perry apparently has an option to purchase an ownership interest in the Middleborough station. New England states that Perry would be precluded from applying for Channel 265A, if the Middleborough option were exercised, since Middleborough and Marshfield are within 100 miles of Falmouth and their primary service contours would overlap.

undoubtedly be given due consideration in connection with the processing of their license application. If, at the time of application, Perry has in fact acquired an ownership interest in Middleborough (see footnote 4, *supra*), and his involvement at Marshfield continues, Commission rules will preclude our granting an additional license at Falmouth. However, New England asks us to foresee an outcome which is by no means the sole possible configuration of future events.[5] Our present knowledge about Marshfield B/C and Perry does not foreclose us from proposing the assignment which is sought.

6. The assignment of Channel 265A to Falmount, Massachusetts, will cause preclusion on Channel 265A to three communities of over 1,000 population: Hyannis (8,100); Edgartown (1,100); and Nantucket (2,600), Massachusetts. Of these, only Edgartown has no current local aural service. Marsfield B/C states that there is at least one other Class A channel available for assignment to the precluded communities, while no other channel is said to be available for assignment to Falmount.

7. Based on careful examination of Marshfield B/C's petition and the opposition thereto, we believe that the public interest would be served by our proposing to assign Channel 265A to Falmount, Massachusetts, as its second local FM service.

8. Canadian concurrence in the proposed assignment must be obtained.

9. Accordingly, the Commission proposes to amend the FM Table of Assignments (§ 73.202(b) of the Commission's rules) with respect to Falmount, Massachusetts, as follows:

City	Channel No.	
	Present	Proposed
Falmouth, Massachusetts	270	265A, 270

10. Authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix below and are incorporated by reference herein

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

11. Interested parties may file comments on or before June 16, 1980, and reply comments on or before July 7, 1980.

12. For further information concerning this proceeding, contact Molly Pauker, Broadcast Bureau (202) 632-7792. However, members of the public should note that from the time a notice of proposed rule making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission.

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules Division, Broadcast Bureau.

[BC Docket No. 80-159; RM-3326]

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules and regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission rules.)

5. *Number of copies.* In accordance with the provisions of § 1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 80-13178 Filed 4-29-80; 8:45 am]

BILLING CODE 6712-01-M

[5] If any party, including Perry himself, wishes to further inform the Commission regarding the extent of Perry's broadcasting interests and intent in comments to this *Notice*, careful consideration will be given. Indeed, a reaffirmation of Marshfield B/C's commitment to apply for the channel is required at this time.

---

47 CFR Part 73

[BC Docket No. 80-160; RM-3144]

FM Broadcast Stations in Alameda and Albuquerque, N. Mex.; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Action taken herein proposes the assignment of a Class C FM channel to either Alameda, New Mexico, or Albuquerque, New Mexico, in response to a petition filed by D. Garry Munson and John Charles Larsh. The proposed channel could provide a first local aural service to Alameda or an additional FM service to Albuquerque. As a further alternative, we have proposed a Class A channel assignment for Alameda as its first FM assignment.

DATES: Comments must be filed on or before June 16, 1980, and reply comments must be filed on or before July 7, 1980.

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

FOR FURTHER INFORMATION CONTACT: Myra G. Kovey, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

Adopted: April 11, 1980.

Released: April 25, 1980.

In the Matter of amendment of § 73.202(b), *Table of Assignments*, FM Broadcast Stations. (Alameda and Albuquerque, Mew Mexico), BC Docket No. 80-160, RM-3144.

1. *Petitioner, Proposal, Comments.* (a) A petition for rulemaking [1] was filed by D. Garry Munson and John Charles Larsh ("petitioners"), proposing the assignment of Channel 279 to Alameda, New Mexico. Oppositions were filed by Hubbard Broadcasting, Inc., licensee of Stations KOB(AM) and KOB–FM, Albuquerque, New Mexico, and Gaylord Broadcasting Company, licensee of Stations KRKE(AM) and KRKE-FM, Albuquerque. Petitioners filed reply comments.

(b) The requested channel assignment would be short-spaced to a pending request for Channel 281 at Santa Fe, New Mexico (RM–3185), since the communities are 80 kilometers (50 miles) apart while the required spacing is 104 kilometers (65 miles). To avoid the conflict, we have substituted Channel 277 at Alameda for consideration herein. This channel can be assigned in conformity with the minimum distance requirements.

(c) Petitioners state that they will apply for the channel, if assigned.

2. *Community Data*—(a) *Location.* Alameda is located in Bernalillo County, 11 kilometers (7 miles) north of Albuquerque.

(b) *Population.* Alameda (listed in the 1970 U.S. Census as North Valley)—10,366; Albuquerque—243,751; Bernalillo County—315,744.[2]

(c) *Local Aural Broadcast Service.* Alameda has no local aural broadcast service; Albuquerque has 11 AM stations, and 7 commercial and 4 noncommercial educational FM stations.

3. *Economic Considerations.* Petitioners have submitted statistical data concerning the population and economy of Bernalillo County but little specific information about Alameda. This omission should be corrected in its comments. In addition, as we discuss herein, data is requested concerning Albuquerque's demographics.

4. *Preclusion Considerations.* Twenty-five communities of greater than 1,000 population would sustain preclusion on one or more channels as a result of the proposed Channel 277 assignment. The following ten of these communities have neither AM nor FM assignments: Mountainair, Bernalillo, San Felipe Pueblo, Questa, Springer, Carrizozo (all in New Mexico); St. Johns, Springerville (both in Arizona); Antonito, Del Norte (both in Colorado). A staff study indicates that alternate channels are available for assignment to Mountainair, Bernalillo, and San Felipe Pueblo. Petitioners comments should consider the availability of channels to the other communities.

5. *Other Considerations.* Both Hubbard Broadcasting, Inc. and Gaylord Broadcasting Company cite petitioners' failure to describe Alameda—as opposed to Bernalillo County—as proof that Alameda is not a community for allocation purposes. Petitioners' response to our request for additional community data (paragraph 3, *supra*) should resolve this issue one way or the other.

6. Our established policy is to reserve Class C channels for large urban areas, a category into which Alameda clearly does not fall. In fact, Alameda is recognized by the Census as being a part of the Albuquerque urbanized area. Whether petitioners' proposed first FM and nighttime aural service to 1000 [3] persons in a 650 square kilometer (250 square miles) area is a special circumstance warranting departure from this policy, is, as both opposition pleadings argue, subject to doubt. Moreover, given the proximity of Alameda to Albuquerque, we must question which city the proposed Class C facility would actually serve. In light of these considerations, all of which petitioners should address in their comments, a Class C assignment may not be appropriate at Alameda. Petitioners argue that from their proposed transmitter site, approximately 30 kilometers (19 miles) northwest of Alameda, they intend to serve the northern New Mexico area in Sandoval County where service is greatly needed. However, we observe that a city-grade signal will nevertheless reach Albuquerque, 40 kilometers (25 miles) to the southeast. Hence, if it can be determined that another Class C channel is warranted for this area, we believe the larger and more important city of Albuquerque may be the more appropriate location for the assignment. In so doing, we are cognizant of our previous denials (Dkt. 18481, 16 RR 2d 1631 (1969) and Dkt. 19287, 35 F.C.C. 2d 230 (1972)) of an additional assignment at Albuquerque based on the then current needs of Albuquerque. However, in view of the recent policy pronouncements in situations where our population criteria would be exceeded (see *Poplar Bluff, Ark.*, Dkt. 78–188, 45 FR 21638 (1980), and *Waycross, Ga.*, Dkt. 79–149, Mimeo No. 27160, 45 FR ——— (1980), we are providing this opportunity to demonstrate that preclusion would be insignificant, *i.e.*, that alternate channels are available to precluded communities. Moreover, if Albuquerque's population has grown to 250,000, our population criteria would not be an obstacle to an additional Albuquerque assignment. In addition, the 15-mile rule, § 73.203(b), could be utilized to permit the filing of an application to serve Alameda, if desired. Finally, we are also proposing, as an alternative, a Class A channel for Alameda which we believe to be more appropriate for assignment to this relatively small suburban community.

7. In view of the foregoing, we find it in the public interest to explore the possible assignment of Channel 277 to Albuquerque or Alameda, New Mexico, or Channel 292A to Alameda, New Mexico, in a rule making proceeding. Accordingly, we propose the following alternative revisions in our FM Table of Assignments (§ 73.202(b) of the rules) with respect to the communities listed below:

City	Channel No.	
	Present	Proposed
ALTERNATIVE I		
Albuquerque, N. Mex	222, 227, 231, 242, 258, 262, and 300.	222, 227, 231, 242, 258, 262, 277, and 300.
or ALTERNATIVE II		
Alameda, N. Mex		292A.
or ALTERNATIVE III		
Alameda, N. Mex		277.

8. Authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

9. Interested parties may file comments on or before June 16, 1980, and reply comments on or before July 7, 1980.

10. For further information concerning this proceeding, contact Myra G. Kovey, Broadcast Bureau, (202) 632–7792. However, members of the public should note that from the time a notice of proposed rule making is issued until it is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this

[1] Public Notice of the petition was given on July 18, 1978, Report No. 1134.

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

[3] Petitioners propose to provide these services to unserved and underserved areas by operating from a site approximately 30 kilometers (19 miles) northwest of Alameda.

one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission.

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

[BC Docket No. 80–160 RM–3144]

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules and regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission rules.)

5. *Number of copies.* In accordance with the provisions of § 1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 80–13179 Filed 4–29–80; 8:45 am]

BILLING CODE 6712–01–M

---

47 CFR Part 76

[Docket No. 21006]

Adding Frequency Channelling Requirements and Restrictions and To Require Monitoring for Signal Leakage From Cable Television Systems; Order Extending Time for Filing Comments and Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Extension of comment and reply comment time.

SUMMARY: In response to a petition from the National Cable Television Association, a 60 day extension of time for filing of comments and reply comments in Docket 21006, which proposed to add frequency channeling requirements and restrictions and to require monitoring for signal leakage from cable television systems is granted.

DATES: Comment and reply comments dates extended until June 25, 1980 and July 10, 1980, respectively.

FOR FURTHER INFORMATION CONTACT: Mr. Clifford H. Paul, Cable Television Bureau, (202) 254–3420.

Order

Adopted: April 22, 1980.

Released: April 23, 1980.

In the matter of: amendment of Part 76 of the Commission's Rules to Add Frequency Channeling Requirements and Restrictions and to Require Monitoring for Signal Leakage From Cable Television Systems (See 45 FR 19578).

By the Chief, Cable Television Bureau:

1. The Commission released on March 24, 1980 in Docket No. 21006, a *Further Notice of Proposed Rulemaking* (FCC 80–125, 15698). The Notice proposes a new set of Rules designed to control interference to aeronautical radio services due to signal leakage from cable television systems using aeronautical radio frequencies. All interested parties were invited to file written comments on this rulemaking proposal on or before April 25, 1980, and reply comments on or before May 12, 1980.

2. The National Cable Television Association (NCTA), by its attorneys has requested an additional 60 days to file comments in response to the Commission's Further Notice of Proposed Rulemaking in Docket No. 21006.[1]

3. NCTA believes that it will be able to make a meaningful contribution to the Commission's analysis of the issues involved. NCTA states that its Engineering subcommittee on Cable Signal Leakage has been reconvened recently to consider the proposals contained in the *Notice* and to establish plans for gathering necessary technical information and data. NCTA proposes that the subcommittee's findings be presented to the full Engineering committee during the upcoming annual convention beginning May 18, 1980. NCTA wishes to use the information and recommendations of the Engineering Committee as the basis for is comments to the Commission. However, the 30 day period offered by the Notice has proven insufficient to analyze fully the Commission's proposals and coordinate with the Engineering Committee.

4. In view of the considerations set forth above, good cause for the extension appears to exist.

Accordingly, it is ordered, That the dates for comments and reply comments in the captioned proceeding are extended to June 25, 1980 and July 10, 1980, respectively.

This action is taken by the Chief, Cable Television Bureau, pursuant to authority delegated by Section 0.288(a) of the Commission's Rules.

Federal Communications Commission.

Willard R. Nichols

Chief, Cable Television Bureau.

[FR Doc. 80–13274 Filed 4–29–80; 8:45 am]

BILLING CODE 6712–01–M

---

[1] By separate pleading Aeronautical Radio, Inc. (ARINC) has requested an extension of 30 days. ARINC states that the 30–day period offered by the Notice has proven to be insufficient to analyze fully the proposals and coordinate with the air traffic industry.

47 CFR Part 81

[PR Docket No. 80-144; SS Docket No. 78-145; FCC 80-192]

Deleting Provisions That Limit the Entry of New Stations Into the VHF Public Coast Station Market

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to delete from the Commission's rules those provisions which limit the establishment of new Class III–B (VHF) public coast stations. In the past, these provisions were necessary to ensure the financial viability of existing stations. In view of the Commission's desire to deregulate and to encourage competition within the communications industry, the Commission believes that these provisions now serve no useful purpose and should be deleted.

DATES: Comments must be received on or before June 30, 1980 and Reply Comments must be received on or before July 30, 1980.

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

FOR FURTHER INFORMATION CONTACT: John C. K. Hays, Private Radio Bureau, (202) 632-7175.

SUPPLEMENTARY INFORMATION:

Adopted: April 9, 1980.

Released: April 24, 1980.

By the Commission: Commissioner Lee absent.

In the matter of Amendment of the Commission rules to delete those provisions that limit the entry of new stations into the VHF public coast station market, PR Docket No. 80-144; Amendment of Part 81 of the Commission's rules to require applicants for public coast stations to meet certain financial qualifications, SS Docket No. 78-145.

1. The Commission is proposing to delete from its rules those provisions which limit the establishment of new Class III–B (VHF) public coast stations. This proposal reflects the present Commission policy to deregulate various aspects of the communication industry and to allow for entry, when practicable, into the communications markets.

Background

2. Public coast radiotelephone stations are common carrier operators in the maritime mobile service that are open to public correspondence. In general these stations are interconnected to the public wireline telephone system. By utilizing the services of these stations, ships may make and receive telephone calls to and from any telephone which has access to the nationwide telephone network, including calls overseas and to other ships. Public coast stations are classified under the Commission's rules as Class I, II or III depending upon the frequency bands from which their channel assignments are drawn. For radio operators aboard ship, the important difference between these classes of stations is the distances over which each can communicate and this, in turn, is a function of the frequencies available to each class of station.

3. Class III–B public coast stations, which are the subject of this proposal, provide service which is local in coverage. These stations operate in the VHF–FM band of 156–162 MHz and are capable of good transmission quality over relatively short distances up to 30–80 kilometers (20–50 miles). Generally, propagation in the marine VHF band follows a nearly line-of-sight path between the antennas of the two stations desiring to communicate with each other. Thus, VHF coverage is limited by the height of the antennas of the two stations communicating.

4. Under present Commission rules, there are nine VHF public correspondence channels which are assigned on a priority basis to public coast station applicants. Initially, only one public correspondence channel is assigned to a station. The channels are assigned on a priority basis as set forth in § 81.304(22). Channels 26 and 28 are assigned interchangeably as the first priority number and are considered the primary public correspondence channels. The Commission will attempt to assign one of these two channels to a public coast station before it assigns one of the remaining seven channels. Consequently, these two channels will be the first choice for cruising vessels having limited channel capacity and will be utilized more than the seven remaining channels. If channel occupancy reaches a certain level, the Commission will allow an additional channel.

5. Because of the limited range of UHF and the number of VHF channels available, Class III–B public coast stations offer greater possibilities for superior marine radiotelephone communications along the seacoasts and inland waterways than the other two classes with longer range propagation.[1] Stations can be spaced along the coasts and waterways at intervals necessary to eliminate interference between stations operating on the same channel. The short range characteristic of the stations allows the same channel to be used at many different localities, thus, making more stations possible. Moreover, the fact that there are nine different VHF public correspondence channels permits a maximum of nine different stations to be located relatively close to each other.

6. Because marine VHF–FM radio communication developed later than marine communications in the medium and high frequencies, the Class III–B public coast stations were the last of the three classes of stations to be established. Even after marine VHF–FM radio communictions became feasible, common carriers were reluctant to establish VHF public coast stations until traffic potential became sufficient to sustain the expense of operating such facilities. On the other hand, vessel owners were reluctant to invest in VHF radio installations which would not, in the absence of sufficient VHF public coast stations, afford them the communication service they required. To remedy this situation, the Commission amended its rules to encourage the use of marine VHF and to relieve the congestion that was becoming prevalent on the medium and high frequencies. First, the rules were amended to require ship stations having the capacity to transmit on 2 MHz frequencies or the medium frequency band to also have the capacity to operate on VHF and, further to prohibit the use of 2 MHz by vessels within VHF range of the stations with which they want to communicate. Second, in Docket No. 19360, the Commission rules were amended to limit overlap of the coverage areas between Class III–B stations to not more than 20%, with certain exceptions.[2] This latter amendment is contained in § 81.303(b) of the Commission's rules. It was intended to allow "* * * for the establishment of adequate coast station facilities in as many localities as possible without wasteful duplication provided the localities have sufficient maritime activities to reasonably insure the economic viability and survival of the stations and provided the establishment of additional stations do

[1] Class I–B public coast stations provide a telecommunication service which is world-wide in coverage and is known as the "high seas" service. This service is primarily used by ocean-going vessels for both commercial and personal traffic. Class II–B public coast stations provide coastal harbor service which is regional in coverage. The coverage varies widely with the time of day and other factors which affect propagation such as season, atmospheric conditions, sun spots, etc. Distances in excess of 1,000 miles are possible at certain times, but may be limited to less than 100 miles at other times.

[2] See Report and Order, Docket No. 19360, 35 FCC 2d 642 (1972).

not have an unreasonable adverse economic impact on existing stations." [3] In Docket No. 19360 the Commission further stated that "* * * in the interest of maritime safety and public service we believe these new stations should be given a reasonable opportunity to commence and continue operations and, along with earlier stations, become economically viable. As our VHF program develops and the nature and extent of the need for additional types of service becomes more clear we can reconsider the matter." [4]

7. Since Docket 19360 was adopted and released, Class III–B (VHF) public coast stations have become well established along the seacoasts and inland waterways of the contiguous 48 states, and provide the public correspondance service that most small noncommercial and recreational vessels now use. Commercial vessels and their related interests also use these stations extensively. This use will substantially increase in the future because of the automated VHF maritime radiocommunication systems of interconnected and centrally controlled public coast stations which are being developed and established to provide new services such as dial and automatic calling, teleprinter and facsimile communications on VHF frequencies. In view of this, the Commission considers this an appropriate time to reevaluate its VHF program as it applies to Class III–B (VHF) public coast stations and to reconsider the restrictions in the Commission's present rules which limit the establishment of new stations.

Present Restrictive Provisions

8. The present Commission rules offer protection to licensees of existing stations from encroachment on their service areas by applicants for new stations. Section 81.303(b) of the Commission's rules bars the application for a public coast station which would duplicate more than 20% of the service area of an existing station, with two exceptions. The first exception, § 81.303(b)(1), requires a showing by the applicant that the proposed station is at least 30 miles from the existing station and will primarily serve another boating locality. A boating locality is a port, marina or harbor with docking facilities for not less than 10 commercial or 50 noncommercial radio equipped vessels. The second exception, § 81.303(b)(2), requires a detailed showing that the channel occupancy rate of the existing station exceeds 50% during its busiest hours of operation. Essentially, these rules provide protection for an existing station for 30 miles or for 80% of its coverage area.

9. When considering § 81.303(b) and its exceptions, one should be aware of § 81.303(a) and § 81.304(b)(22)(ii) of the rules. Section 81.303(a) prohibits two or more Class III–B public coast stations from operating on the same public correspondence channel in the same service area. Its primary purpose is to prevent congestion and interference resulting from two or more public coast stations operating on the same public correspondence channel. As stated above, in the United States there are 9 VHF public correspondance channels. If the signal of a new public coast station will interfere with the signal of an existing station on the same channel, the FCC recommends to the applicant that he amend his application and choose a new public correspondance channel for his proposed station. An application for a new public coast station can be accepted under § 81.303(b) either because the proposed station would not duplicate more than 20% of the service area of an existing station or because the applicant has satisfied one of the two exceptions to § 81.303(b), but can be dismissed under § 81.303(a) because the proposed station would operate on the same channel as an existing station and would interfere with it.

10. Section 81.304(b)(22)(ii) applies to existing public coast stations, not to new or proposed stations. Usually, only one public correspondance channel is assigned to a Class III–B public coast station. Section 81.304(b)(22)(ii) sets forth the showing that a licensee must make to be assigned a second public correspondance channel. Although this showing is similar in the showing required under the second exception to § 81.303(b), it is less severe, requiring only a 40% channel occupancy rate rather than a 50% rate which is required under § 81.303(b)(2). Also, the showing on occupancy rate must be made only for each of 2 months immediately prior to the filing of the application rather than for each of 3 months as under § 81.303(b)(2). This rule section, in effect, allows licensees of existing stations to apply for new channels at an occupancy level lower than that required of new applicants and, thus, can be used to permanently exclude new applicants from a service area.

The Proposal

11. In line with its policy of deregulation and to allow entry, when practicable, into the marine communications market, the Commission is proposing to delete from its rules § 81.303(b) and its two exceptions. This should provide multiple coverage, especially in high density areas, thus, permitting a choice of service to users which could operate to reduce costs and generally improve service. All applicants desiring to establish public coast stations and to compete in a specific service area would be licensed until the nine channels are exhausted without regard to duplication of service. Channels would be assigned on a first-come first-served basis, and no showing of channel occupancy would be required of an applicant intending to establish a new station in the service area of an existing station. Initially, only one channel would be assigned to a station. To be assigned a second channel, the station licensee would be required to make the showing set forth under § 81.304(b)(22)(ii). Since a new applicant could receive a frequency without any showing, this section would not give the existing licensee any advantage over the new applicant as it does under existing rules and, in fact, would favor entry of new stations.

SS Docket No. 78–145

12. On May 9, 1978, the Commission issued a Notice of Proposed Rule Making in SS Docket No. 78–145 to amend its rules to require an applicant for a new public coast station to demonstrate his or her financial ability to construct the station, and to operate the station for one year.[5] The financial ability to construct a station and to operate it for a reasonable period time without expected normal revenues has been an important factor to be decided in granting a station license. In comparative hearing to determine which mutually exclusive application should be granted, it has been considered a basic factor, not a comparative one, and all applicants must qualify. Whether one applicant has more money than another applicant is not a deciding factor in granting the station license. The standard under consideration in that Notice of Proposed Rule Making has been applied to past applicants for public coast stations to determine their financial qualifications and, in effect, has become Commission policy.

13. Because financial qualifications restrict entry into the VHF public coast station market, the Commission feels that such restrictions should be reconsidered in the context of the present proposal to encourage competition and that interested parties should be given the opportunity to readdress the issues involved in SS Docket No. 78–145. Moreover, during the comment period in Docket No. 78–145,

[3] Id. at 647.
[4] Id. at 648.
[5] See SS Docket No. 78–145, 43 FR 20028.

only two interested parties filed comments and these were submitted by the same attorney who represented both parties. Accordingly, the Commission is reopening the comment periods in SS Docket No. 78–145 to run concurrently with the comment periods for the present proposal and is inviting additional comments concerning the financial qualifications proposed in SS Docket No. 78–145, as discussed above.

14. The proposed amendments to the rules as set forth in the Appendix are issued pursuant to authority contained in Sections 4(i) and 303(c)(d) and (r) of the Communications Act of 1934, as amended.

15. Interested persons who desire to submit comments on these, or related matters may do so on or before June 30, 1980. Replies to any suggestions or comments may be submitted not later than July 30, 1980. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order. An original and 5 copies will be furnished of all statements, briefs or comments filed in response to this Notice.

16. For further information on this proceeding, contact John Hays at (202) 632–7175.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Part 81 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

PART 81—STATIONS ON LAND IN THE MARITIME SERVICES AND ALASKA-PUBLIC FIXED STATIONS

§ 81.303 [Amended]

1. In § 81.303, paragraph (b) (d) and (e) are deleted and designated as [Reserved].

[FR Doc. 80–13181 Filed 4–29–80; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 45, No. 85
Wednesday, April 30, 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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Enforcement of Petroleum Price Regulations; Committee Meeting

AGENCY: Administrative Conference of the United States; Committee on Ratemaking and Economic Regulation.

ACTION: Committee meeting.

AGENDA FOR MEETING: The Committee will consider its final proposal to the Administative Conference relating to procedures for the enforcement of petroleum price regulations under the Emergency Petroleum Allocation Act of 1973.

DATE; TIME; PLACE: May 5, 1980, 1:30 p.m.; Library, Suite 500, 2120 L Street NW, Washington D.C.

PUBLIC PARTICIPATION: Attendance at the Committee's meeting is open to the public, but limited to the space available. Persons wishing to attend should notify the contact person at least one day in advance of the meeting. The Committee chairman may permit members of the public to present appropriate oral statements at the meeting. Any member of the public may file a written statement with the Committee before, during, or after the meeting. Minutes of the meeting will be available on request to the contact person.

COMMENTS: Comments on the matters before the Committee (see Supplementary Information) are invited. In order to receive consideration at the meeting, comments, either oral or written, must be received by the contact person before 5:30 p.m. on April 29, 1980.

FOR FURTHER INFORMATION CONTACT: William C. Bush, Administrative Conference of the United States, 2120 L Street NW, Suite 500, Washington, DC 20037. Telephone (202) 254–7065.

SUPPLEMENTARY INFORMATION: By **Federal Register** notice of October 3, 1979 (44 FR 56972) the Administrative Conference Committee on Ratemaking and Economic Regulation requested comments on tentative recommendations relating to procedures for the enforcement of remedial orders issued under section 503 of the Department of Energy Organization Act. The tentative recommendations proposed that review of remedial orders by the Federal Energy Regulatory Commission and by district courts be abolished. On November 8, 1979, the Committee invited interested persons to address the Committee at a public hearing on November 28, 1979. (44 FR 64852). The Committee has received several written comments. At the public hearing, the Committee heard presentations on behalf of the regulated industry and on behalf of the Department of Energy.

At its most recent meeting on April 21, 1980, the Committee considered a new proposal which responded to the public comments that have been received. The new proposal, which would entirely supersede the earlier tentative recommendation of October 3, 1979, would recommend that, in order to eliminate problems of inefficiency and unfairness, the Departmentof Energy bring enforcement cases directly in district courts while foregoing administrative adjudication of the cases.

At its upcoming meeting on May 5, the Committee expects to decide on a final committee proposal which then will be forwarded for consideration by the full Administrative Conference meeting in plenary session in June of 1980.

The Committee particularly invites comments addressed to the new proposal now before the Committee, as set out immediately below.

Forum for Enforcement of Petroleum Price Regulations

Adjudication of enforcement actions under the Emergency Petroleum Allocation Act of 1973 (EPAA) in the administrative forums provided by the Department of Energy Organization Act (DOE Act): (1) Is overly cumbersome by virtue of unnecessarily duplicative administrative review steps; (2) is slow to provide definitive resolutions of important legal issues arising during the course of litigation; and (3) has created in the respondents a very strong perception that they will not have a fair opportunity to defend against the government's case or to receive objective consideration of their evidence or arguments.

Proposed Recommendation

1. Judicial enforcement. Both the efficiency and the fairness of many, if not all, EPAA enforcement cases can be enhanced if the Department of Energy foregoes administrative adjudication of the cases and instead brings the cases directly in United States district courts. Except under the circumstances noted in part 2 below, the Secretary of Energy should use the authority afforded by section 209 of the Economic Stabilization Act of 1970 to bring enforcement cases in district courts.

2. Administrative enforcement. Administrative enforcement of the EPAA (through the issuance of remedial orders under section 503 of the DOE Act) should be employed only for the simplest cases in which: (a) The amounts at stake are small; (b) the respondent's defense of the case does not involve a challenge to the validity of the Department of Energy's regulations or interpretations for which judicial review likely will be sought; (c) substantial discovery of information within the control of the agency will not be requested; and (d) Department of Energy employees or former employees will not be called as witnesses.

3. Pending cases. The Secretary should, by rule, establish procedures by which a respondent to whom a remedial order (or a proposed remedial order) has been issued may petition for the removal of the pending case to an appropriate district court. The Federal Energy Regulatory Commission should, by rule, establish procedures for relinquishing jurisdiction over contested remedial order cases for which the Secretary proposes removal to a district court. The Secretary should grant a petition for removal whenever (a) the case fails to meet the criteria of part 2 of this recommendation and (b) the case has not proceeded so far that removal would result in a serious waste of government resources. The Secretary's removal rules should provide for the submission to the district court of all parts of the administrative record already developed in the agency. The rules should not claim that any prior agency action, except as may be stipulated by the parties, has resulted in

a legally binding determination that a violation has occurred.

4. Enforcement document issuance procedures. In those cases for which agency adjudication is appropriate, the Secretary should eliminate all unnecessary procedures in the issuance of the administrative enforcement document, the remedial order. The issuance of "proposed remedial orders", as well as the proceedings of the Office of Hearings and Appeals in which proposed remedial orders currently are litigated, should be discontinued. The Secretary should continue to make available pre-issuance conferences which may serve the purposes of narrowing the contested issues and providing an opportunity for early settlement of the agency's charges.

5. Contested remedial orders. When an administrative remedial order issued by the Secretary is contested by the respondent, thereby invoking the procedures of section 503(c) of the DOE Act, the Federal Energy Regulatory Commission should expand the procedural protections afforded by section 503(c) by providing a de novo determination of the merits of the case in which: (a) The burden of proving a violation is placed on the Secretary; (b) administrative law judges are used as presiding officers when the Commission does not hear the case directly; (c) all other procedures of sections 554, 555, and 556 of the Administrative Procedure Act are employed; and (d) the respondent is permitted discovery, in accordance with Recommendation 70–4, of relevant information in the possession of the government.

Dated: April 24, 1980.

Richard K. Berg,

Executive Secretary.

[FR Doc. 80–13388 Filed 4–29–80; 8:45 am]

BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

[Amdt. 3]

Loan Programs—1973 and Subsequent Crop Price Support Programs and Farm Storage and Drying Equipment Loan Program; Announcement of Interest Rate

The revised announcement by Commodity Credit Corporation published in the issue of the Federal Register of Tuesday, June 13, 1978, at 43 FR 25453, as amended in the issue of July 31, 1978, at 43 FR 33276 and further amended in the issue of June 5, 1979, at 44 FR 32259, of the rate of interest applicable to price support programs on 1973 and subsequent crops or production and to financing the purchase or construction of farm storage facilities and drying equipment is hereby amended (1) to increase the interest rate applicable to certain loans on 1979 crop or production, (2) to announce the interest rate on farm storage and drying equipment loans made on applications received on or after April 16, 1980, and (3) to announce the interest rate on 1980 crop commodity loans.

The announcement of interest rate by the Commodity Credit Corporation published at 43 FR 25453, as amended, is further amended to read as follows:

1. Paragraph A 1 (h) is revised to read as follows: (h) (1) For 1979 crops for which applications are received prior to April 16, 1980, at the per annum rate of 9 percent from the date of disbursement until date of repayment. (2) For 1979 crops for which applications are received on or after April 16, 1980, at the per annum rate of 13 percent from the date of disbursement until date of repayment.

2. Paragraph A 1 (i) is added to read as follows: (i) For 1980 crops, at the per annum rate of 13 percent from the date of disbursement until date of repayment.

3. Paragraph B(2) is revised to read as follows: 2(a) Loans disbursed by Commodity Credit Corporation on or after April 1, 1977, for which applications were received prior to March 22, 1979, shall bear interest at the per annum rate of 7.0 percent from the date of disbursement until the date of repayment; (b) loans disbursed on applications received on or after March 22, 1979, and prior to April 16, 1980, shall bear interest at the per annum rate of 10.5 percent from the date of disbursement until date of repayment; (c) loans disbursed on applications received on or after April 16, 1980, shall bear interest at the per annum rate of 13.0 percent from the date of disbursement until date of repayment; a different interest rate may be subsequently announced for new loans.

(Secs. 4 and 5, 62 Stat. 1070, as amended (15 U.S.C. 714 b and c); sec. 401 (a) and (b), 63 Stat. 1051, as amended (7 U.S.C. 1421 (a) and (b)))

Signed at Washington, D.C. April 23, 1980.

John W. Goodwin,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 80–13199 Filed 4–29–80; 8:45 am]

BILLING CODE 3410–05–M

Soil Conservation Service

Colorado River Water Quality Improvement Program

AGENCY: Soil Conservation Service, U.S. Department of Agriculture.

ACTION: Notice of Intent to Prepare a Supplement(s) to the Colorado River Water Quality Improvement Program Final Environmental Impact Statement.

FOR FURTHER INFORMATION CONTACT: Sheldon G. Boone, State Conservationist, Soil Conservation Service, 2490 West 26th Avenue, P.O. Box 17107, Denver, Colorado 80217, (telephone 303/837–4275 (CML) or 327–4275 (FTS)), or George McMillan, State Conservationist, Soil Conservation Service, 4012 Federal Building, 125 South State Street, Salt Lake City, Utah 84138, (telephone 801/524–5050 (CML) or 588–5050 (FTS)).

Notice.—Title II of the Colorado River Basin Salinity Control Act of 1974, Pub. L. 93–320, authorizes the Secretary of the Interior to expedite investigations, planning and implementation of a salinity control program. The Secretary of Agriculture is directed in the Act to cooperate with the Secretary of the Interior in the planning and implementation of onfarm system measures under programs available to the Department of Agriculture.

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Council on Environmental Quality Regulations 40 CFR 1500–1508; the Soil Conservation Service Procedures (7 CFR 650); and the Agricultural Stabilization and Conservation Service Procedures (7 CFR 799); the Soil Conservation Service, as lead agency for the U.S. Department of Agriculture, gives notice that a supplement(s) to the Colorado River Water Quality Improvement Program Final Environmental Impact Statement of May 19, 1977, is being prepared. The supplement(s) will include additional data and information on the onfarm and selected lateral work anticipated to be accomplished under ongoing USDA programs in the Colorado River Basin.

Additional information now available from environmental evaluations of USDA federally-assisted nonproject action underway or anticipated indicate that implementation of various alternative onfarm irrigation water management measures could cause significant adverse local or cumulative impacts on the environment. As a result of these findings, Norman A. Berg, Administrator, Soil Conservation Service, and Raymond V. Fitzgerald, Administrator, Agricultural Stabilization and Conservation Service, have determined that preparation and review of a supplement(s) to the existing

Program Environmental Impact Statement is needed.

As investigations and planning proceed in irrigation salinity source units, several alternatives of onfarm irrigation water management measures and associated lateral work are considered in order to achieve salt-load reduction to the Colorado River while (1) minimizing adverse effects on local fish and wildlife resources, and (2) enhancing the efficiency of irrigated agricultural operations. Applicable onfarm measures include: practices such as adjusting the number and frequency of irrigations, time of set and flow rate; ditch lining and pipelines; land leveling; lining tailwater ditches; change in irrigation methods; water measurement devices and automated timing devices; shallow water areas for wildlife; and preservation and development of wildlife habitat.

A draft of the supplement(s) will be prepared and circulated for review and comment by agencies and the public. The Soil Conservation Service and the Agricultural Stabilization and Conservation Service invite the participation and consultaton of all agencies and persons that have special expertise, legal jurisdiction, or interest, to assist in the preparation of the draft document.

(Title II of the Colorado River Basin Salinity Control Act, Pub. L. 93–320; Section 6 of the Watershed Protection and Flood Prevention Act, Pub. L. 83–566; The Soil Conservation and Domestic Allotment Act, Pub. L. 74–46; and the following Catalog of Federal Domestic Assistance Programs: No. 10.063—Agricultural Conservation Program; No. 10.902—Soil and Water Conservation; and No. 10.906—River Basin Surveys and Investigations.)

Dated: April 24, 1980.

Edward E. Thomas,

Assistant Administrator, For Land Resources, Soil Conservation Service.

[FR Doc. 80-13175 Filed 4-29-80; 8:45 am]

BILLING CODE 3410-16-M

CHRYSLER CORPORATION LOAN GUARANTEE BOARD

Closed Board Meeting

The Chrysler Corporation Loan Guarantee Board will hold a meeting closed to the public of April 29, 1980, at the Board Room, Federal Reserve System, Second Floor, 20th & C Streets, N.W., Washington, D.C. 20551. The meeting will be at 4:30 p.m.

The Chrysler Corporation has applied for commitments to guarantee loans and guarantees under the Chrysler Corporation Loan Guarantee Act ("Act"). The Board will consider whether Chrysler Corporation has satisfied the various requirements as set forth in the Act necessary for such Federal assistance.

Discussions of the above matters are closed to the public because of applicable exemptions under the Government in the Sunshine Act. The discussions at the meeting will involve significant amounts of non-public financial and commercial information received from Chrysler Corporation and its creditors, relating to proposed financing transactions, negotiations with dealers, domestic and foreign banks, suppliers, labor unions, and foreign, State and local governments; and anticipated productivity, profitability and market positions.

An open meeting is likely to disclose (1) confidential commercial and financial information, which is exempt under 5 U.S.C. § 552b(c)(4); (2) information the premature disclosure of which would (a) lead to speculation in securities which is exempt under 5 U.S.C. 552b(c)(9)(A), and (b) be likely to significantly frustrate implementation of Board action, which is exempt under 5 U.S.C. § 552(b)(c)(9)(B).

Board members voting to close the meeting are Secretary Miller, Chairman Volcker, and Comptroller Staats.

Those persons expected to attend the meeting, or portions thereof, include the Board members, the General Counsel, Executive Director and Secretary of the Board, members of the respective staffs of each Board member, outside attorneys and advisors to the Board, representatives of the Chrysler Corporation, its attorneys and advisors.

Those persons desiring further information should contact Brian M. Freeman, Secretary of the Board, at (202) 566–5888.

This notice is given as a result of Court Order. The position of the Board is that it is not subject to the Government in the Sunshine Act.

Dated: April 28, 1980.

Brian M. Freeman,

Secretary of the Board.

[FR Doc. 80-13442 Filed 4-29-80; 8:45 am]

BILLING CODE 4810-27-M

DEPARTMENT OF COMMERCE

International Trade Administration

Certain Fasteners From India; Preliminary Countervailing Duty Determination

AGENCY: United States Department of Commerce.

ACTION: Preliminary countervailing duty determination.

SUMMARY: This notice is to advise the public that it has been preliminarily determined that benefits are granted by the Government of India to manufacturers, producers, or exporters of certain industrial fasteners which constitute a subsidy within the meaning of the countervailing duty law. A final determination will be made not later than July 9, 1980.

EFFECTIVE DATE: April 30, 1980.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp, Import Administration Specialist, Office of Investigations, International Trade Administration, Department of Commerce, Washington, D.C. 20230 (202–377–5496).

SUPPLEMENTARY INFORMATION: A petition was received in satisfactory form on January 30, 1980, from counsel on behalf of the Industrial Fasteners Institute, Cleveland, Ohio, alleging that payments or bestowals, conferred by the Government of India, upon the production or exportation of certain industrial fasteners from India constitute the payment of a subsidy within the meaning of section 303, Tariff Act of 1930, as amended (93 Stat. 190, 19 U.S.C. 1303) (hereinafter referred to as "the Tariff Act"). It should be noted that India is not a "country under the Agreement" within the meaning of section 701(b) of the Tariff Act, as amended (93 Stat. 151, 19 U.S.C. 1671(b)). Therefore, section 303 of the Tariff Act as amended by section 103(b) of the Trade Agreements Act of 1979 (hereinafter called the Trade Act), continues to apply to this investigation. In accordance with section 303 of the Tariff Act, as amended (19 U.S.C. 1303), an investigation was initiated and a notice thereof was published in the **Federal Register** on February 25, 1980 (45 FR 12277).

The industrial fasteners covered by this investigation enter the United States under the following item numbers of the Tariff Schedules of the United States (TSUS): 646.49, 646.54, 646.56, 646.58, 646.60, and 646.63.

Based on the investigation to date, it has been determined preliminarily that certain programs administered by the Government of India constitute subsidies within the meaning of the Tariff Act. They include:

1. The Government of India provides export payments that are designed to compensate for indirect taxes borne in the manufacture of the subject merchandise. New requirements governing the treatment of indirect taxes in countervailing duty cases are now in

effect following passage of the Trade Act. The net subsidy stemming from such export payments would be reduced to the extent it can be established that such payments were, in effect, rebates of indirect taxes paid on items physically incorporated in the manufactured product. For countries such as India, which compensate for their indirect tax burden by means of a cash payment to the exporter, there must be satisfactory evidence, officially authorized by the Government concerned, which quantifies the degree of indirect tax incidence on the exported item, shows the clear relationship between the tax and the export payment received and demonstrates clearly that such payment is for the stated purposes of compensating for indirect taxes. No such analysis can be considered by the Department of Commerce if its preparation was principally in response to a countervailing duty investigation. Accordingly, such tax studies would be considered only if undertaken pursuant to historical government policy requiring justification of indirect tax incidence as the basis for an export rebate. The evidence presented should include a detailed inventory of all taxes used as a basis for determining the export payment, as well as the incidence each such tax bears to the exported product.

In the instant case, the Government of India has provided the results of a recent auditor's report (March 1980) which is claimed to be based on a study of the taxes borne in the production of the subject merchandise. However, in order to satisfy the terms of the law, it is necessary that Commerce examine the report and the underlying data in order to determine that the export payments made were, in effect, rebates of indirect taxes. Pending receipt and analysis of this data, the full amount of the export rebate in the instant case, 17.5 percent of the f.o.b. value of the merchandise, is determined to be a subsidy for purposes of this preliminary determination.

2. Import permits are made available to Indian exporters and manufacturers of the subject fasteners for raw materials used in their manufacture. These permits are equal to a fixed percentage of the f.o.b. value of the exports. These permits are negotiable and would constitute a subsidy to the extent to which these permits are bought and sold. The availability of these permits has been deemed to constitute a subsidy in the amount of 0.5 percent of the f.o.b. value of the merchandise for purposes of this preliminary determination. However, additional information will be obtained in order to determine the extent to which the merchandise imported under these permits is, in fact, used in the production of the exported fastener.

3. The Government of India allows commercial banks to provide short-term export financing at rates which are considered to be preferential compared to commercial interest rates presently charged in India. Information is being requested regarding the actual utilization of the lower rates available on export financing for manufacturers and exporters of the subject fasteners. In the absence of this information, the availability of these interest rates has been deemed to constitute a subsidy in the amount of 0.5 percent of the f.o.b. value of the merchandise.

4. The Government of India furnishes certain funds to export promotional organizations through the Market Development Assistance Program. With regard to the fasteners under consideration, funds are provided to the Engineering Export Promotion Counsel and the Trade Development Authority. The Engineering Export Promotion Counsel promotes the sale of all Indian engineering products throughout North and South America. The Trade Development Authority promotes most manufactured Indian products throughout the world. Members of these organizations pay dues to the organizations. Additional information is needed to determine whether or not the services provided by these organizations and funded by the Government of India would constitute a subsidy. In the absence of such information, the program has been deemed to be a subsidy and quantified as 0.08 percent of the f.o.b. value of the exported merchandise.

5. The tax laws of India allow for certain income tax savings for companies based on an Export Markets Development Allowance, a special deduction for new equipment and deductions in respect of profits and gains for newly established industrial undertakings. The information provided by the Government of India indicates that these programs are probably not used by the fastener industry. However, in absence of more definitive information, these tax programs have been deemed to be a subsidy and quantified at 1.0 percent of the f.o.b. value of the exported merchandise.

One additional program was referred to in the petition. This program concerns certain advantages to the fastener industry through location within the Kandla Free Trade Zone. The Government of India has stated that no fastener manufacturers are located in this free trade zone. Therefore, it has been determined that no subsidy is received by the industry through the trade zone.

On the basis of information provided by the Government of India, I hereby preliminarily determine that subsidies do exist within the meaning of section 303, Tariff Act of 1930, as amended (19 U.S.C. 1303). It has been further determined that these subsidies amount to 19.58 percent of the f.o.b. value of the exported merchandise. An opportunity to present oral views is being afforded to interested parties in accordance with § 355.35, Commerce Regulations (19 CFR 355.35, 45 FR 4946). This hearing is scheduled to be held, if requested, at the U.S. Department of Commerce, room 3817, 14th and Constitution Avenue, N.W., Washington, D.C. 20230, beginning at 10:00 a.m., Monday, June 2, 1980. Interested parties who are interested in having such a conference should provide a written request for a conference with the Office of the Deputy Assistant Secretary for Import Administration, room 2800, at the address shown above. These requests shall contain: (1) the name, address and telephone number of the requester; (2) the number of participants and the reason for attending; and (3) a list of the issues to be discussed. All requests are subject to the approval of the Deputy Assistant Secretary and must be received no later than 10 days after publication of this notice.

Any written views filed in accordance with § 355.34, Customs Regulations (19 CFR 355.34, 45 FR 4946) should be filed with the address indicated above, in at least 10 copies. Any written views should be filed not later than 30 days from the publication of this notice in the **Federal Register.**

In accordance with section 703, Tariff Act of 1930, as amended (93 Stat. 153, 19 U.S.C. 1671b) Customs offces will be advised to suspend liquidation of all entries, or withdrawals from warehouse, for consumption of this merchandise on or after the date of publication of this notice in the **Federal Register.** The posting of a cash deposit, bond, or other security, in the amount of 19.58 percent of the f.o.b. value of the merchandise will be required. This suspension of liquidation shall remain in effect until further notice.

This determination is published in accordance with § 355.28, Commerce Regulations (19 CFR 355.28, 45 FR 4943).

John D. Greenwald,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 80-18218 Filed 4-29-80; 8:45 am]

BILLING CODE 3510-25-M

National Bureau of Standards

Proposed Federal Information Processing Standard; Parallel Recorded Magnetic Tape Cartridge for Information Interchange, 4-Track, 6.30 mm (¼ in), 63 bpmm (1600 bpi), Phase Encoded

Under the provisions of Pub. L. 89–306 and Executive Order 11717, the Secretary of Commerce is authorized to establish uniform Federal Automatic Data Processing (ADP) standards. A Federal Information Processing Standards Publication (FIPS PUB), Parallel Recorded Magnetic Tape Cartridge for Information Interchange, 4-Track, 6.30 mm (¼ in), 63 bpmm (1600 bpi), Phase Encoded, is being proposed for Federal use. It is based on the Federal adoption of a proposed voluntary industry standard as it has been developed and passed by Technical Committee X3B5 of the American National Standards Institute.

Prior to the submission of this proposal to the Secretary of Commerce for review and approval, it is essential to assure that consideration is given to the views of manufacturers, the public, and State and local governments. The purpose of this notice is to solicit such views.

The proposed Federal Information Processing Standard contains two sections: (1) an announcement section, which provides information concerning the applicability, implementation, and maintenance of the standard; and (2) a specification section, which deals with the technical requirements of the standard. Only the announcement section of the proposal is provided in this notice.

Interested parties may obtain a copy of the technical specifications from and submit comments in writing to the Standards Administration Office, Institute for Computer Sciences and Technology, National Bureau of Standards, Washington, D.C. 20234. To be considered, comments on this proposed standard must be received on or before June 30, 1980.

Written comments received in response to this notice plus written comments obtained from Federal departments and independent agencies will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, Room 5319, Main Commerce Building, 14th Street between Constitution Avenue and E Street, N.W., Washington, D.C. 20230.

Dated: April 25, 1980.

Ernest Ambler,

Director.

Federal Information Processing Standards Publication

Date

Announcing the Standard for Parallel Recorded Magnetic Tape Cartridge for Information Interchange, 4-Track 6.30 mm (¼ in), 63 bpmm (1600 bpi), Phase Encoded.

Federal Information Processing Standards Publications are issued by the National Bureau of Standards pursuant to the Federal Property and Administrative Services Act of 1949, as amended, Public L. 89–306 (79 Stat. 1127), Executive Order 11717 (38 FR 12315, dated May 11, 1973), and Part 6 of Title 15 Code of Federal Regulations (CFR).

Name of Standard. Parallel Recorded Magnetic Tape Cartridge for Information Interchange, 4-Track, 6.30 mm (¼ in), 63 bpmm (1600 bpi), Phase Encoded (FIPS PUB——).

Category of Standard. Hardware Standard, Interchange Codes and Media.

Explanation. This standard specifies the recorded characteristics for a 6.30 mm (¼ in) wide magnetic cartridge with data recorded across four parallel tracks in order to provide for data interchange between information processing systems at a recording density of 63 bits per millimeter (1600 bits per inch) using phase encoding techniques. This standard is one of a series of Federal Standards implementing the Federal Standard Code for Information Interchange (FIPS 1) on magnetic tape media.

Approving Authority. Secretary of Commerce.

Maintenance Agency. Department of Commerce, National Bureau of Standards (Institute for Computer Sciences and Technology).

Cross Index. American National Standards Institute document X3B5/79–27, Proposed American National Standard Parallel Recorded Magnetic Tape Cartridge for Information Interchange, 4 Track, 0.250 inch (6.30 mm), 1600 bpi (63 bpmm), Phase Encoded.

Related Documents

a. American National Standard Code for Information Interchange (ASCII), X3.4–1968 (FIPS PUBS 1 and 7), X3.4–1977.

b. American National Standard Code Extension Techniques for Use with the 7-Bit Coded Character Set of American National Standard Code (ASCII) for Information Interchange, X3.41–1974, FIPS PUB 35.

c. American National Standard Unrecorded Magnetic Tape Cartridge for Information Interchange, 0.250 inch (6.30 mm), 1600 bpi (63 bpmm), Phase Encoded, X3.55–1977.

d. American National Standard Recorded Magnetic Tape Cartridge for Information Interchange, 4 Tract, 0.250 inch (6.30 mm), 1600 bpi (63 bpmm), Phase Encoded, X3.56–1977, FIPS PUB 52.

Applicability. This standard is applicable to the acquisition and use of all magnetic tape cartridge recording and reproducing equipment employing 6.30 mm (¼ in) wide magnetic tape with data recorded across four parallel tracks at a recording density of 63 bits per millimeter (1600 bits per inch) using phase encoding. Federal information processing systems employing such equipment, including associated software, shall provide the capability to accept and generate recorded magnetic tape cartridges in compliance with the requirements set forth in this standard.

Specifications. This standard incorporates by reference the technical specifications of American National Standards Institute document X3B5/79–27, Proposed American National Standard Parallel Recorded Magnetic Tape Cartridge for Information Interchange, 4 Track, 0.250 inch (6.30 mm), 1600 bpi (63 bpmm), Phase Encoded.

Qualifications. None.

Implementation Schedule. All applicable equipment ordered on or after the date of this FIPS PUB must be in conformance with this standard unless a waiver has been obtained in accordance with the procedure described below. Exceptions to this standard are made in the following cases:

a. For equipment installed or on order prior to the date of this FIPS PUB.

b. Where procurement actions are into the solicitation phase (i.e., Request for Proposals or Invitation for Bids has been issued) on the date of this FIPS PUB.

Waivers. Heads of agencies may request that the requirements of this standard be waived in instances where it can be clearly demonstrated that there are appreciable performance or cost advantages to be gained and that the overall interests of the Federal Government are best served by granting the requested waiver. Such waiver requests will be reviewed by and are subject to the approval of the Secretary of Commerce. The waiver request must address the criteria stated above as the justification for the waiver.

Forty-five days should be allowed for review and response by the Secretary of Commerce. Waiver requests shall be submitted to the Secretary of Commerce, Washington, D.C. 20230, and labeled as a Request for a Waiver to a Federal Information Processing Standard. No agency shall take any action to deviate from the standard prior to the receipt of a waiver approval from the Secretary of Commerce. No agency shall begin any process of implementation or acquisition of non-conforming equipment unless it has already obtained such approval.

Special Information. Federal standards and/or specifications for unrecorded magnetic tape cartridges will be developed and issued by the General Services Aministration. Until such time as these are available, American National Standard X3.55–1977, Unrecorded Magnetic Tape Cartridge for Information Interchange, should be cited in Federal procurements.

Also GSA will provide terminology for use of this standard in Federal ADP aquisitions. This terminology will be incorporated in the Federal Property Management Regulations (Title 41, Subtitle C, Chapter 101, Subpart 101–32.13, Code of Federal Regulations).

Where to Obtain Copies. Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22161. (Sale of the included specifications document is by arrangement with the American National Standards Institute.) When ordering, refer to Federal Information Processing Standards Publication (NBS-FIPS-PUB), and title. Payment may be made by check, money order, or deposit account.

[FR Doc. 80-13249 Filed 4-29-80; 8:45 am]
BILLING CODE 3510-13-M

NBS Solicits Comments on Plans To Enhance I/O Channel Level Interface Standards

Under the provisions of Pub. L. 89–306 (79 Stat. 1127; 40 USC 759(f)) and Executive Order 11717 (38 FR 12315, dated May 11, 1973), the Secretary of Commerce is authorized to establish uniform automatic data processing (ADP) standards. On February 16, 1979, notice was given in the **Federal Register** (44 FR 10098–10101) announcing that the Secretary of Commerce had approved three input/output (I/O) Federal Information Processing Standards (FIPS): (1) I/O Channel Interface, (2) Channel Level Power Control Interface, 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) announcing that the Secretary had approved a fourth I/O channel level interface standard, Operational Specifications for Rotating Mass Storage Subsystems, designated FIPS PUB 63.

These standards were the subject of corrections and revisions announced in the **Federal Register** on August 27, 1979 (44 FR 50079–50080), August 31, 1979 (44 FR 51294) and on December 3, 1979 (44 FR 69317).

The National Bureau of Standards is considering enhancements to the Federal Information Processing Standards for I/O Channel Level Interface (FIPS 60, 61, 62, and 63) as well as possible additional closely related standards. This consideration is a part of the Bureau's plan to continue the development of computer I/O interface standards, by taking into account technological trends, computer industry product trends, and Government requirements as indicated by comments and other information made available to NBS.

This announcement outlines certain changes that are being considered and requests comments and information that will enable NBS staff to refine and evaluate the impact that changes of this type would have. This notice is not a formal proposal of any of these changes. Should any of these changes be proposed in the form of revision to existing standards or proposals for new related standards, a **Federal Register** announcement will be made soliciting comments on specific proposed standards, and all of those comments and the analyses of them will be included in the supporting package forwarded to the Secretary of Commerce for review should NBS subsequently decide to recommend approval of such proposed standards.

The changes under consideration and outlined below are: (1) minor improvements to existing standards and (2) introduction of a new Federal Information Processing Standard for Fixed Block Rotating Mass Storage Devices.

Comments are solicited on the following items:

1. Addition to FIPS 60, I/O Channel Interface, so as to specify explicitly and permit the use of an "offset interlock" provision that enables peripheral subsystems to communicate with channels at high data rates over longer distances by permitting the subsystem to transmit either data or an acknowledgement prior to actually receiving the normally required "go ahead" signal from the channel side of the interface (thus, the acknowledgement is "offset"). For example, an I/O channel capable of supporting a transfer rate of 2 Mbytes/sec. through a zero length cable would be able to support a maximum transfer rate to a control unit, which did not use offset interlock, of about 1.3 Mbytes/sec. through a 100 ft. cable. If the control unit employed offset interlock, the full 2 Mbytes/sec. transfer rate could be sustained through the 100 ft. cable. This provision is already widely employed in implementations of control units in such a way that peripheral interconnection is achieved to I/O channels conforming to FIPS 60. Offset interlock is expected to be particularly important in the connection of higher speed peripherals through the I/O channel interface. Consideration is being given to adding Section 2.9.5 to FIPS 60 containing the specifications for the offset interlock provision. While present implementations allow an offset of one transfer cycle, the new Section 2.9.5 being considered permits the extension of the offset to multiple cycles as well; this is intended to facilitate the implementation of future control units with high data transfer rates. The new Section 2.9.5 would read as follows:

2.9.5 Offset Interlock Feature

With the exceptions noted in paragraph 2.9.5.6 below, the provisions of this section shall apply to control units during read or write data transfers only. To implement this feature, the control unit and I/O channel must also implement the High-Speed Transfer Feature (see Section 2.9.4). The purpose of this feature is to reduce or eliminate the effect of transmission delays upon data transfer rates. It will permit higher data transfer rates when long cables are used.

2.9.5.1 Initial Interlocked Transfers

A control unit may transfer as many bytes of data as necessary and shall transfer at least the first byte using the normally interlocked transfers of the high speed option before switching to the offset transfers described below.

2.9.5.2 Offset Transfers

The control unit, as in all I/O channel transfers, controls the rate of transfer. In the normal interlocked mode, the control unit must wait until the appropriate outbound tag (either 'data out' or 'service out') rises before dropping the corresponding inbound tag ('data in' or 'service in'). When operating in offset mode, however, data is transferred at a rate determined by the requirements of

the storage device, without waiting for acknowledgement from the I/O channel. In this case, the control unit shall request a data transfer by raising either 'data in' or 'service in,' then, after a period determined by its requirements, lower the first 'in' tag and raise the second 'in' tag, whether or not the first 'out' tag has risen at the control unit. If the acknowledgement is not received before beginning the next transfer request, the acknowledgement is said to be "offset." After another period, the second 'in' tag is lowered and the first 'in' tag is raised, whether or not the second 'in' tag has risen at the control unit. The control unit shall continue in this manner, alternating the 'service in' and 'data in' signals.

During a read transfer, the control unit shall place a new byte of data on 'bus in' for each rise of 'service in' or 'data in,' observing the deskew requirements of paragraph 2.2.1.2. During a write transfer, the rise of 'service out' or 'data out' will signal the availability of a new byte of information on 'bus out.'

2.9.5.3 Control Unit Checks of Delayed 'Service Out' and 'Data Out' Acknowledgements

The control unit shall ensure that the proper number of acknowledgements have been received in properly alternating sequence from the I/O channel on 'service out' and 'data out.' The control unit shall recognize a 'command out' response as both an acknowledgement of a data request and as a stop signal from the channel. Since an offset of several transfer cycles may exist when the channel signals stop, the control unit shall ensure that a *stop* signal is received for each otherwise unacknowledged transfer. The control unit shall establish a maximum delay for the acknowledgement of 'service in' and 'data in' by the channel, which is a function of the intended transfer rate, maximum cable length, internal controller buffering, and device characteristics. If this delay is exceeded, the control unit shall recognize an overrun condition. The control unit shall not recognize any acknowledgement on 'data out' or 'service out' of less than 50 nanoseconds duration.

2.9.5.4 Control Unit Transfer Rates

The maximum instantaneous transfer rate required for any control unit implementing the Offset Interlock feature shall be specified by the manufacturer.

2.9.5.5 Control Unit Timing

A control unit operating in offset mode shall observe the following timing constraints: (1) A controller operating in the offset interlock mode must assure that the input data bus remains valid for a minimum of 75 percent of the data cell time from the rise of the corresponding inbound tag measured at the channel connector. Data Cell time is the reciprocal of the data rate on a single byte width data bus; i.e., for a 4 megabyte data rate, the data cell time is 250 nanoseconds. (2) The duration of a valid inbound tag shall not be less than 75 percent of the data cell time for controllers operating in the offset interlock mode. (3) The 100 nanoseconds deskew time from the leading edge of an inbound tag until data is valid on the inbound bus measured at the channel connector will be measured from the rise of the corresponding inbound tag regardless of the condition of the other inbound tag line.

2.9.5.6 I/O Channel Requirements

With the following exceptions, the use of Offset Interlock is transparent to the I/O channel: (1) To operate with control units using offset interlock, the channel shall ensure that whenever the channel issues a *stop* signal by raising 'command out,' that it will respond to subsequent requests for data transfers on 'data in' or 'service in' with 'command out,' until 'status in' is received, since the control unit may signal additional transfers before 'command out' is seen to rise at the control unit. (2) The I/O channel shall also ensure that the duration of 'data out' and 'service out' signals shall always be greater than 100 nanoseconds measured at the channel connector. (3) Output data will remain valid for a minimum of 50 nanoseconds after the rise of the corresponding outbound tag. The 50 nanoseconds minimum time is measured from the leading edge of the corresponding outbound tag regardless of the condition of the other tag line. The 50 nanoseconds is measured at the channel connector.

2. Amendment of FIPS 60, I/O Channel Interface, to relax several tightly specified time-out limits, and to permit the use of control units which (because of desirable features such as error logging and recovery procedures which momentarily "freeze" interface signals until they can be recorded or which have advanced string switching capabilities) may occasionally violate these time-out limits.

It is believed that allowing these longer time-out periods will not affect interchangeability. In some cases, the present maximum time is retained as a performance requirement for normal operation, but a longer time-out period is proposed before an interface error is recognized, to accommodate control units which may occasionally require a longer period. The impact of these proposed changes on I/O channel performance is believed to be small. In other cases, a distinction is made between byte multiplexer mode operation and selector or block multiplexer mode operation, and the allowable maximums are increased for selector and block multiplexer operation, but not for byte multiplexer operation. This is because byte multiplexer operation is more sensitive to delays in initial selection and the propagation of the 'select out' signal. It should be noted that subsystems which conform to present operational specification standards (FIPS 62 and 63) do not normally operate in byte multiplex mode.

The changes under consideration are as follows:

(a) Change Section 2.2.2.1 to read:

2.2.2.1 Operational Out

'Operational out' is a line from the channel to all attached control units and is used for interlocking purposes. Except for 'suppress out,' all lines from the channel are significant only when 'operational out' is up. Whenever 'operational out' is down, all inbound lines from the control unit must drop and any operation currently in process over the interface must be reset. Under these conditions, all control unit-generated interface signals should normally be down within 1.5 microseconds after the fall of 'operational out' at the control unit. However, in exceptional cases, this period may be extended to a maximum of 100 microseconds before all control unit generated signals must be down. (See Sections 2.5.11 "Selective Reset" and 2.5.12 "System Reset.")

(b) Change Section 2.2.2.3, paragraph 2, to read:

2. *Disconnect Operation.* If 'hold out' down and 'address out' rises or 'address out' is up and 'hold out' falls, the presently connected control unit must drop its 'operational in,' thus disconnecting from the interface. 'Address out' remains up until 'operational in' drops. 'Operational in' should normally drop within 6 microseconds after receiving the disconnect indication. However, in exceptional cases, this period may be extended to a maximum of 100 microseconds until 'operational in' drops. Mechanical motion in process continues to a normal stopping point. Status information is generated and presented to the channel as defined in Section 2.5.10 "Interface Disconnect."

(c) In Section 2.2.2.4, eighth paragraph, change the last sentence from: If the control unit does not require selection, it

must propagate 'select out' to the next control unit within 1.8 microseconds. (See Section 2.8.1 "Interface Time-Out Considerations".) to read:

If the control unit does not require selection, it should normally propagate 'select out' to the next control unit within 1.8 microseconds; however, in exceptional cases for selector or block multiplexer operation, this period may be extended to a maximum of one millisecond until 'select out' is propagated to the next control unit. For byte multiplexer operation, in no case may the progagation time exceed 1.8 microseconds. (See Section 2.8.1 "Interface Time-Out Considerations.")

(d) Change Section 2.8.1, third paragraph, from: This applies to all byte multiplex sequences and to all selection sequences. An initial-selection sequence is defined as beginning with the rise of 'select out' at the particular control unit to the fall of 'status in' for initial status. However, a particular interface signal sequence may take longer because of other factors:

1. Delays introduced by the channel.

2. Delay because of the need for a burst mode I/O device to capture the interface before reaching the specified record area of the recording medium (not greater than 500 milliseconds) to read: this applies to all byte multiplex sequences and to all selection sequences except to block multiplex initial-selection sequences. An initial-selection sequence is defined as beginning with the rise of 'select out' at the particular control unit to the fall of 'status in' for initial status. For block multiplex initial-selection sequence, the worst case signal sequence of 1 millisecond, because of the control unit, is specified. However, a particular interface signal sequence may take longer because of other factors:

1. Delays introduced by the channel.

2. Delays because of the need for a burst mode I/O device to capture the interface before reaching the specified area of the recording medium (not greater than 500 milliseconds).

(e) Change Section 2.8.2 to read:

2.8.2 Propagation of Select Out

During an initial-selection or scan sequence, if the control unit does not require service or selection, 'select out' should be propagated by the unit within 600 nanoseconds to meet performance requirements. For operation with block multiplexer and selection channels, propagation time should normally not exceed 1.8 microseconds per control unit; however, in exceptional cases for selector or block multiplexer mode operation, this time may be extended to a maximum of 1 millisecond. For byte multiplexer operation, in no case may the propagation time exceed 1.8 microseconds per control unit. This time, measured at the external cable connectors, extends from the rise of the incoming 'select out' to the rise of the outgoing 'select out'.

3. Revision of the FIPS 60 internal cabling specifications for the resistance, signal delay and signal skew internal to control units to permit them to exceed the nominal values given by as much as 50 percent under certain conditions. Consideration is being given to relaxing these specifications, provided that subsystems which exceed the nominal values are clearly identified. Change Section 2.8.3.2 to read:

2.8.3.2 Internal Cabling

Except for 'select out' and 'select in', the maximum nominal internal resistance (including all contact resistance) contributed by a channel or control unit for every signal line, is specified as 1.0 ohm. The combined 'select out' and 'select in' maximum nominal resistance specified for the control unit is 1.5 ohms.

The maximum resistance case for 'select out'/'select in' in a control unit usually occurs when the control unit power is off and electrical bypassing is effective. For control units, the internal resistance is measured between the incoming and the outgoing pins on the external connectors. For channels, the measurement is made between the external connector pin and the corresponding channel driver or receiver. With the exception of the 'select out'/'select in' line, the maximum nominal signal delay measured between the external pins is specified as 15 nanoseconds. The nominal maximum skew between any two signal lines is specified as 1 nanosecond. The delay for the bus lines must not exceed the delay for the tag lines.

Control units may exceed the nominal values specified above for maximum internal resistance, combined 'select out' and 'select in' maximum resistance, maximum signal delay and the maximum skew by not more than 50 percent, provided the manufacturer's product specification identifies the actual value, and identifies any special cabling restrictions for that control unit. In all cases, the manufacturer's documentation for each control unit and channel must define, for each possible interface implementation, the value of its internal resistance for the signal lines and for the 'select out'/'select in' line-pair.

4. Amendment of FIPS 61, Channel Level Power Control Interface, paragraphs 2.2.2, 2.2.3, 2.2.7, and 3.2, so as to reserve those connections identified with emergency power off, but to explicitly make generation of that signal or use of that signal an option in the computer mainframe and the computer peripheral subsystem.

5. In addition to the changes to existing Federal Information Processing Standards summarized above, consideration is being given to development of an entirely new operational specifications standard to cover the command set and sense and status byte, definitions for new high performance magnetic disk subsystems referred to as Fixed Block Rotating Mass Storage Subsystems. The commands employed with these subsystems are designed to minimize the amount of overhead associated with using the FIPS 60 interface for this high performance type of magnetic disk subsystem by combining certain command functions specified in the A, B, and C classes of disk peripherals prescribed in FIPS 63. The specifications for this new standard are intended to be consistent with high performance magnetic disk subsystems which are expected to be available from multiple suppliers in 1981.

It was the original intention of FIPS 63 (Operational Specifications for Rotating Mass Storage Subsystems) that operational specifications for new classes of evolutionary rotating mass storage devices would be added to the initial three sections for classes A, B, and C. This new type of fixed block device, however, is a major departure from previous rotating mass storage devices using the I/O Channel Interface, and offers a number of significant advantages over previous devices; therefore, an entirely new operational specification is required. In contrast to the class A, B, and C devices specified in FIPS 63, this type of device uses fixed block sizes, rather than variable length blocks, does not support a record key search feature, has a greatly simplified block addressing scheme which does not require program knowledge of the track or cylinder location of records, and consequently has a greatly simplified and entirely different command set. Those wishing to receive a copy of the preliminary draft Operational Specifications for Fixed Block Rotating Mass Storage Devices when it is available should request it from the address given below.

Comments on any or all of the above changes or new closely related standards under consideration and suggestions for additional changes that should be considered are to be sent to Director, ICST, ATTN: I/O Channel Interface Comments, National Bureau of

Standards, Washington, D.C. 20234. To receive full consideration, comments must be received on or before (please insert date which is 60 days from the date of publication of this notice in the Federal Register). For further information, contact Mr. William E. Burr, Center for Computer Systems Engineering, Institute for Computer Sciences and Technology, National Bureau of Standards, Washington, D.C. 20234, (301) 921-3723.

Dated: April 25, 1980.

Ernest Ambler,

Director.

[FR Doc. 80-13250 Filed 4-29-80; 8:45 am]

BILLING CODE 3510-13-M

Office of the Secretary

Advisory Panels for Gulf of Mexico and Pacific Fishery Management Councils; Notice of Renewal

In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. (1976), and Office of Management Budget Circular A-63 (as revised), and after consultation with GSA, the Department has determined that the renewal of the Advisory Panels (APs) for the Gulf of Mexico and Pacific Fishery Management Councils are in the public interest in connection with the performance of duties imposed on the Department by law.

The President signed the Fishery Conservation and Management (FCMA) into law on April 13, 1976. The Act mandated the establishment of eight Regional Fishery Management Councils to serve as the instruments of Federal-State-private interaction in the conduct of fishery management in the U.S. Fishery Conservation Zone (FCZ). The Act also authorized the establishment of such APs as are deemed necessary in assisting the Councils in carrying out their functions.

The AP for the Gulf of Mexico Fishery Management Council was established on April 20, 1978, and the AP for the Pacific Fishery Management Council was established on May 17, 1978. These Panels are expected to continue with a balanced representation of members, who are appointed by the parent Councils. The purpose of each Panel is to advise the respective Council in the assessments and specifications contained in the fishery management plans (FMPs) for fisheries within the Council's geographical area of concern, with particular regard to: (1) The extent to which the fishing vessels of the United States will harvest the resources considered in FMPs; (2) The effect of such FMPs on local economies and social structures; (3) Potential conflicts between user groups of a given fishery resource; and (4) Enforcement problems peculiar to each fishery with emphasis on the expected need for enforcement resources. Research indicates that the functions of these Panels cannot be accomplished by any other organizational element or committee of the Department.

These Panels have produced several oral and written reports on the topics listed above. The AP for the Gulf of Mexico Fishery Management Council is currently addressing seven fishery management units selected by the Council for management plan development. The AP for the Pacific Fishery Management Council has selected three such units. The management plans for each Panel are in the developmental state.

These APs will continue to operate in compliance with the provisions of the Federal Advisory Committee Act (FACA). Copies of each AP charter will be filed with the appropriate committees of the Congress and with the Library of Congress. Inquiries regarding this notice may be addressed to the Committee Liaison Officer, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, Rockville, Maryland 20852, or Mrs. Yvonne Barnes, Committee Management Analyst, U.S. Department of Commerce, Washington, D.C. 20230.

Dated: April 24, 1980.

Guy W. Chamberlin, Jr.,

Assistant Secretary for Administration.

[FR Doc. 80-13279 Filed 4-29-80; 8:45 am]

BILLING CODE 3510-17-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcing Import Levels for Certain Cotton and Man-Made Fiber Textile Products From Haiti, Effective on May 1, 1980

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Establishing import restraint levels for certain cotton and man-made fiber textile products, produced or manufactured in Haiti and exported to the United States during the twelve-month period beginning on May 1, 1980.

SUMMARY: The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 17, 1979 between the Governments of the United States and Haiti established specific ceilings for cotton and man-made fiber textile products in Categories 337, 349/649, 632, 635, and 637 during the agreement year which begins on May 1, 1980 and extends through April 30, 1981. The agreement also provides consultation levels for certain categories of cotton and man-made fiber textile products, such as Categories 331, 340, 651 and 652, which are not subject to specific ceilings and which may be increased during the year upon agreement between the two governments. In the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs, in accordance with the bilateral agreement, to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of textile products in the foregoing categories, produced or manufactured in Haiti and exported during the twelve-month period which begins on May 1, 1980 and extends through April 30, 1981, in excess of the designated levels of restraint.

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on February 28, 1980 (45 FR 13172).)

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

April 25, 1980.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended December 15, 1977; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 17, 1979, between the Governments of the United States and Haiti; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on May 1, 1980 and for the twelve-month period extending through April 30, 1981, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 331, 337, 340, 349/649, 632, 635, 637, 651 and 652, produced or manufactured in Haiti, in excess of the following levels of restraint:

Category	12-mo. level of restraint
331	533,429 doz. pairs.
337	91,592 doz.
340	112,500 doz.
349/649	1,168,819 doz.

Category	12-mo. level of restraint
632	1,744,565 doz. pairs.
635	139,904 doz.
637	351,643 doz.
651	96,154 doz.
652	500,000 doz.

In carrying out this directive entries of textile products in the foregoing categories which have been exported to the United States prior to May 1, 1980, shall, to the extent of any unfilled balances, be charged against the levels of restraint established for such goods during the twelve-month period beginning on May 1, 1979 and extending through April 30, 1980. In the event that the levels of restraint established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter.

The levels of restraint set forth above are subject to adjustment pursuant to the provisions of the bilateral agreement of August 17, 1979, between the Governments of the United States and Haiti which provide, in part, that: (1) for the second and third agreement years, each specific limit shall be increased by seven percent annually, except Cat. 349/649; (2) any specific ceiling may be exceeded in any agreement year by not more than seven percent of its square yards equivalent total, provided that the amount of the increase is compensated for by an equivalent decrease in one or more specific limits; (3) specific limits may also be increased for carryover and carryforward up to 11 percent of the applicable category limit; and (4) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement. Any appropriate future adjustments under the foregoing provisions of the bilateral agreement will be made to you by letter.

A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on February 28, 1980 (45 F.R. 13172).

In carrying out the above directions, entry into the United States for consumption shall be construed to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of Haiti and with respect to imports of cotton and man-made fiber textile products from Haiti have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register.**

Sincerely,

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 80-13258 Filed 4-29-80; 8:45 am]

BILLING CODE 3510-25-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

April 22, 1980.

The USAF Scientific Advisory Board Summer Study on Long Range Combat Aircraft will meet on June 5 & 6, 1980 at Wright-Patterson AFB, Ohio. The purpose of the preliminary meeting is a review of technology for this aircraft. The Committee will meet from 8:30 a.m. to 4:30 p.m. each day.

The meeting concerns matters listed in Section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information contact the Scientific Advisory Board Secretariat at (202) 697-8845.

Carol M. Rose,

Air Force Federal Register, Liaison Officer.

[FR Doc. 80-13170 Filed 4-29-80; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

April 22, 1980.

The USAF Scientific Advisory Board Summer Study on Long Range Combat Aircraft will meet on June 3 & 4, 1980 at HQ SAC, Offutt AFB, NE. The purpose of the preliminary meeting is to review the operational viewpoint on requirements for this aircraft. The Committee will meet from 8:30 a.m. to 4:30 p.m. each day.

The meeting concerns matters listed in Section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information contact the Scientific Advisory Board Secretariat at (202) 697-8845.

Carol M. Rose,

Air Force Federal Register, Liaison Officer.

[FR Doc. 80-13171 Filed 4-29-80; 8:45 am]

BILLING CODE 3910-01-M

Department of the Navy

Naval Discharge Review Board; Hearing Locations

In November 1975, the Naval Discharge Review Board commenced to convene and conduct prescheduled discharge review hearings for a number of days each quarter in locations outside of the Washington, D.C., area. The cities in which these hearings are scheduled are determined in part by the concentration of applicants in a geographical area.

The following Naval Discharge Review Board itinerary for April through October 1980 has been approved, but remains subject to modification if required:

April 21 through May 2, 1980, Chicago, IL; Minneapolis, MN

May 4 through 16, 1980, San Diego, CA; San Francisco, CA; Albuquerque, NM

May 12 through 23, 1980, Denver, CO; Salt Lake City, UT; Portland, OR

June 16 through 27, 1980, Atlanta, GA; New Orleans, LA; Tampa, FL, Boston, MA; Albany, NY

July 7 through 18, 1980, Dallas, TX; Kansas City, MO; Memphis, TN; Chicago, IL; Minneapolis, MN

July 27 through August 8, 1980, San Diego, CA; San Francisco, CA

August 18 through 29, 1980, Atlanta, GA; New Orleans, LA; Tampa, FL

September 8 through 19, 1980, Boston, MA; Albany, NY

September 29 through October 10, 1980 Chicago, IL; Minneapolis, MN; OMINBUS

Any former member of the Navy or Marine Corps who desires a discharge review, either in Washington, D.C., or in a city nearer to his or her residence, should filed an application with the Naval Discharge Review Board, using DD Form 293. If a personal appearance is requested, the petitioner should enter on the application which location is preferred. Application forms (DD 293) may be obtained from, and the completed application should be mailed to, the following address: Naval Discharge Review Board, Suite 910, 801 North Randolph Street, Arlington, Virginia 22203.

Notice is hereby given that, since the foregoing itinerary is subject to modification and since, following receipt of a new application, the Naval Discharge Review Board must obtain the applicant's military records before a hearing may be scheduled, the submission of an application to the Naval Discharge Review Board is not tantamount to scheduling a hearing. Applicants and/or their representatives will be notified by mail of the date and place of their hearing when personal appearance has been requested.

For futher information concerning the Naval Discharge Review Board, contact: Captain James C. Price, U.S. Naval Reserve, Executive Secretary, Naval

Discharge Review Board, Suite 910, 801 North Randolph Street, Arlington, Virginia 22203, telephone no. (202) 696–4881.

Dated: April 24, 1980.

P. B. Walker,

Captain, JAGC, U.S. Navy Deputy Assistant Judge Advocate General (Administrative Law).

[FR Doc. 80–13243 Filed 4–29–80; 8:45 am]

BILLING CODE 3810–71–M

Navy Resale System Advisory Committee; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), notice is hereby given that the Navy Resale System Advisory Committee will meet on May 26, 1980, at the Thurston Room of the Washington Plaza Hotel, Fifth Avenue at Westlake, Seattle, Washington. The first session from 8:30 to 10:00 a.m. will be open to the public. The second session from 10:15 a.m. to 11:30 a.m. will be closed to the public.

The agenda will consist of discussions of resale operations, merchandising, field support, distribution, and financial management.

The Secretary of the Navy has determined in writing that the public interest requires that the second session of the meeting, which will involve discussion of matters relating solely either to internal agency personnel rules and practices or to trade secrets and confidential commercial or financial information, be closed to the public. These matters fall within the exemptions listed in subsections 552b(c)(2) and (c)(4) of title 5, *United States Code*. The first session of the meeting, which will involve other nonprivileged matters relating to the Navy Exchange Resale System, will be open to the public.

For further information concerning this meeting contact: Commander J. R. Akers, SC, U.S. Navy, Naval Supply Systems Command, NAVSUP 09B, Room 801, Crystal Mall, Building No. 3, Arlington, VA 20376, Telephone number (202) 695–5457.

Dated: April 24, 1980.

P. B. Walker,

Captain, JAGC, U.S. Navy Deputy Assistant Judge Advocate General (Administrative Law).

[FR Doc. 80–13242 Filed 4–29–80; 8:45 am]

BILLING CODE 3810–71–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Intervention by South Dakota State Planning Bureau in Application of Nebraska Public Power District for International Interconnection

AGENCY: Department of Energy, Economic Regulatory Administration.

ACTION: Notice of Intervention by South Dakota State Planning Bureau in application of Nebraska Public Power District for International Interconnection.

SUMMARY: ERA has received a notice of intervention in the application of Nebraska Public Power District for international interconnection from the South Dakota State Planning Bureau.

FOR FURTHER INFORMATION CONTACT:

James M. Brown, Jr., System Reliability and Emergency Response Branch, Department of Energy, Room 4110, 2000 M Street NW., Washington, D.C. 20461, (202) 653–3825.

Lise Courtney Howe, Office of General Counsel, Department of Energy, Room 5E–064, Forrestal Building, Independence Avenue SW., Washington, D.C. 20585, (202) 252–2900.

SUPPLEMENTARY INFORMATION: On January 23, 1980, the Economic Regulatory Administration (ERA) issued a notice in the **Federal Register** (45 FR 5364) stating that it had received an application from the Nebraska Public Power District (NPPD) for a Presidential Permit pursuant to Executive Order No. 10485, as amended. NPPD requests authority to construct, connect, operate and maintain a 500 kV international transmission line at a point on the U.S.-Canadian border in the vicinity of Pembina County, North Dakota.

ERA further stated that any person desiring to be heard or to protest said application should file a petition to intervene or protest with the System Reliability and Emergency Response Branch, Economic Regulatory Administration, Room 4110, 2000 M Street, N.W. Washington, D.C. 20461, in accordance with section 1.8 and 1.10 of the Rules of Practice and Procedure (18 CFR 1.8, 1.10), on or before March 5, 1980.

On March 10, 1980, ERA received a petition to intervene in this proceeding from the South Dakota State Planning Bureau (SDSPB); the SDSPB did not request a hearing in this proceeding. Pursuant to section 1.8(a)(1) of the Rules of Practice and Procedure (18 CFR Chapter 1.8(a)(1)), ERA recognizes SDSPB's right as a state agency to intervene in this proceeding.

Copies of the SDSPB petition are on file with the Economic Regulatory Administration and will, upon request, be made available for public inspection and copying at the ERA Docket Room, B110, 2000 M Street, N.W., Washington, D.C., and at the System Reliability and Emergency Response Branch, Room 4110, 2000 M Street, N.W., Washington, D.C.

Issued in Washington, D.C., April 23, 1980.

Jerry L. Pfeffer,

Assistant Administrator for Utility Systems, Economic Regulatory Administration.

[FR Doc. 80–13283 Filed 4–29–80; 8:45]

BILLING CODE 6450–01–M

[Docket No. ERA–FC–80–014; OFC Case No. 56074–9088–01–12]

Acceptance of Petition for Exemption Pursuant to Interim Rules Implementing the Powerplant and Industrial Fuel Use Act of 1978

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of acceptance of petition for exemption pursuant to the interim rules implementing the Powerplant and Industrial Fuel Use Act of 1978.

SUMMARY: On April 1, 1980, Champlin Petroleum Company (Champlin) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) for an order permanently exempting a new major fuel burning installation (MFBI) from the prohibitions of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act) (42 U.S.C. 8301 *et seq.*), which prohibits the use of petroleum or natural gas as a primary energy source in certain new MFBI's. Criteria for petitioning for exemptions from the prohibitions of FUA are published at 44 FR 28530 (May 15, 1979) and at 44 FR 28950 (May 17, 1979) (Interim Rules).

The MFBI for which the petition was filed is a packaged boiler installed at Champlin's Corpus Christi, Texas, Refinery. The boiler, designated as 61–B–1A, or A-prime boiler by Champlin, has a designed heat input rate of 208 million Btu's per hour and is capable of burning either gaseous or liquid fuels.

Under Section 505.28 of the Interim Rules, Champlin has requested a permanent fuel mixtures exemption for the unit to burn petroleum and natural gas in a mixture with refinery waste gases produced at the Refinery.

FUA imposes statutory prohibitions against the use of natural gas or petroleum as a primary energy source by new MFBI's which consist of a boiler. ERA's decision in this matter will determine whether Champlin will be

granted a permanent exemption for the A-prime boiler to use petroleum and natural gas in a mixture with certain other fuels.

ERA has determined that Champlin's petition for a permanent fuel mixtures exemption is complete in accordance with the Interim Rules and is accepted as filed. A review of the petition is provided in the Supplementary Information section below.

As provided for in Sections 701 (c) and (d) of FUA and Sections 501.31 and 501.33 of the Interim Rules, interested persons are invited to submit written comments in regard to this matter, and any interested person may submit a written request that ERA convene a public hearing.

DATES: Written comments are due on or before June 16, 1980. A request for public hearing must also be made on or before June 16, 1980.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Economic Regulatory Administration, Case Control Unit (Fuel Use Act), Box 4629, Room 2313, 2000 M Street NW., Washington, D.C. 20461.

Docket Number ERA–FC–80–014 should be printed clearly on the outside of the envelope and on the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Constance L. Buckley, Chief, New MFBI Branch, Office of Fuels Conversion, Economic Regulatory Administration, 2000 M Street NW., Room 3119, Washington, D.C. 20461, Phone (202) 653–3679.

Robert Goodie, Case Manager, New MFBI Branch, Office of Fuels Conversion, Economic Regulatory Administration, 2000 M Street NW., Room 3128, Washington, D.C. 20461, Phone (202) 653–3675.

Marya Rowan, Office of the General Counsel, Department of Energy, Forrestal Building, Room 6G–087, 1000 Independence Avenue SW., Washington, D.C. 20585, Phone (202) 252–2967.

SUPPLEMENTARY INFORMATION: FUA prohibits the use of natural gas or petroleum as a primary energy source in certain new MFBI's and powerplants unless an exemption for such use has been granted by ERA.

The MFBI for which the permanent exemption is requested is a packaged boiler having a designed heat input rate of 208 million Btu's per hour, a steam generating capacity of 170,000 pounds of steam per hour and is designed to burn either gaseous or liquid fuels. Champlin states that the A-prime boiler will replace a less efficient existing boiler and, in combination with another boiler at the site, will be used for primary generation of steam for the refinery processes at the Corpus Christi Refinery during normal operating conditions. The less efficient boiler replaced by the A-prime boiler will be used during maintenance activities on the two primary boilers when maintenance operations are scheduled or operational difficulties require.

Section 505.28 of the Interim Rules provides for a permanent exemption from the prohibitions of FUA for certain fuel mixtures containing natural gas or petroleum. To qualify, a petitioner must demonstrate to the satisfaction of ERA that:

(1) It proposes to use a mixture of natural gas or petroleum and an alternate fuel as a primary energy source; and

(2) The amount of petroleum or natural gas proposed for use in the mixture will not exceed the minimum percentage of the total annual Btu heat input needed to maintain operational reliability of the installation consistent with maintaining a reasonable level of fuel efficiency.

If the exemption is granted, ERA will not require that the percentage of petroleum and natural gas used in the mixture be less than 25 percent of the total annual Btu heat input of the installation.

In addressing these eligibility requirements, and the evidentiary requirements in Sections 505.28(c)(1), (2) and (4), of the Interim Rules, Champion states that it will be using refinery waste gases that are a by-product of its refinery operation in a mixture with natural gas as a primary energy source in the A-prime boiler. Champlin also states that the A-prime boiler is capable of burning fuel oil and it desires to retain the flexibility to utilize petroleum in the unit in a mixture with the refinery waste gases should that become economically desirable. Champlin has certified in its petition that the total amount of natural gas and petroleum that is proposed to be used in the A-prime boiler will not exceed 25 percent of that unit's total annual Btu heat input.

Champlin states in its petition that the Btu content of the refinery waste gases generated at the Corpus Christi Refinery varies under different operational conditions and, that depending upon the operational status of various units, it also varies in volume. To promote consistent flame stabilization, Champlin asserts it is necessary to combine the refinery waste gases with natural gas in a mixing drum before using the gases as a fuel in its boilers. Further, Champlin contends that the ability to use petroleum in lieu of natural gas in the fuels mixture adds a flexibility to its process that is desirable under normal operating conditions.

Champlin believes that the refinery gases, which are a waste by-product of its refinery process, are commercially unmarketable by reason of quality, and, therefore, are alternate fuels.

At a prepetition conference held with ERA at Champlin's request on August 24, 1979, Champlin asked ERA to make a determination that the refinery gases are commercially unmarketable pursuant to Section 507.4(e)(1) of the Interim Rules. ERA is presently analyzing the evidence and information furnished by Champlin. Should ERA determine that the refinery waste gases are not an alternate fuel, Champlin will be so notified and given the opportunity to request any other appropriate exemptions for the unit.

In accordance with Part 502 of the Interim Rules, Champlin, in support of its petition, has addressed the appropriate Fuels Decision Report (FDR) requirements, including the environmental impacts analysis necessary for ERA to fulfill its responsibilities under the National Environmental Policy Act (NEPA).

ERA hereby gives notice that Champlin's petition for a permanent fuel mixtures exemption has been determined to be complete as filed and is accepted. ERA retains the right to request additional relevant information from Champlin at any time during the pendency of these proceedings where circumstances or procedural requirements may so require. In this connection, Champlin will be requested to correct certain minor deficiencies noted in the petition during the ERA staff review for acceptability. As set forth in Section 501.3(g) of the Interim Rules, the acceptance of the petition by ERA does not constitute a determination that Champlin is entitled to the exemption requested.

The public file containing documents on these proceedings and supporting materials is available for inspection upon request at: Economic Regulatory Administration, Room B–110, 2000 M Street, NW., Washington, D.C., Monday–Friday, 8:00 a.m.–4:30 p.m.

Issued in Washington, D.C. on April 25, 1980.

Robert L. Davies,

Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration.

[FR Doc. 80–13296 Filed 4–29–80; 8:45 am]

BILLING CODE 6450–01–M

[Docket No. ERA-TA-80-02]

Carmel Energy, Inc.; Issuance of Final Decision and Order

On March 4, 1980, the Economic Regulatory Administration issued a Proposed Decision and Order to Carmel Energy, Inc. (Carmel) that would, pursuant to 10 CFR 212.78, designate Carmel as a qualified producer and also set forth certain expenses that Carmel would be allowed to recover for its enhanced oil recovery project located in Vernon County, Missouri. The Proposed Decision and Order was published in the **Federal Register** On March 11, 1980, (45 FR 15608). No comments were received during the prescribed period. Accordingly, a final Decision and Order, substantially as proposed, has been issued.

A copy of the final Decision and Order is available in the Public Affairs Office, Room B–110, 2000 M Street, N.W., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except Federal holidays), and in the DOE Reading Room, Room GA–152, James Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except Federal holidays).

Issued in Washington, D.C., on April 23, 1980.

Doris J. Dewton,

Assistant Administrator, Office of Petroleum Operations, Economic Regulatory Administration.

[FR Doc. 80-13224 Filed 4-29-80; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-FC-79-010; OFC Case No. 53330-6170-02-77]

Wisconsin Electric Power Co., Auxiliary Boiler No. 2; Classification as Existing Facility

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of classification as an existing facility, Wisconsin Electric Power Co.'s Auxiliary Boiler No. 2.

SUMMARY: On November, 16, 1979, the Wisconsin Electric Power Company (WEPC), Milwaukee, Wisconsin, requested the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) to classify Auxiliary Boiler No. 2, installed at its Pleasant Prairie Power Plant, Kenosha County, Wisconsin, as an existing installation pursuant to Section 515.13 of the Revised Interim Rule to Permit Classification of Certain Powerplants and Installations as Existing Facilities issued by ERA on March 15, 1979 (44 FR 17464, March 21, 1979), and pursuant to the provisions of the Powerplant and Industrial Fuel Use Act of 1979 (42 U.S.C. 8301 *et. seq.*)(FUA).

ERA published a summary of WEPC's request for classification in the **Federal Register** on January 14, 1980 (44 FR 2736), and requested comments by interested persons on or before February 4, 1980. No comments were received.

The Final Rule to Permit Classification of Certain Powerplants and Installations as Existing Facilities (Final Rule) was published in the **Federal Register** on October 19, 1979 (44 FR 60690), and became effective November 30, 1979. An amendment to the Final Rule was issued on November 29, 1979, and published in the **Federal Register** on December 5, 1979 (44 FR 69919). ERA determinations on requests that were received by ERA on or before November 30, 1979, will be made on the basis of the provisions set forth in the Revised Interim Rule or the Final Rule, whichever would result in a more favorable disposition.

ERA has completed its analysis of WEPC's request for classification and has concluded, based upon the information contained in WEPC's request and subsequently submitted evidence, that Auxiliary Boiler No. 2 qualifies for automatic classification as existing pursuant to Section 515.12(c) of the Final Rule and is thereby subject to the provisions of Title III of FUA applicable to existing facilities.

FOR FURTHER INFORMATION CONTACT:

William L. Webb (Office of Public Information), Economic Regulatory Administration, 2000 M Street, NW., Room B–110, Washington, D.C. 20461, Phone (202) 634–2170.

Constance L. Buckley, Chief, New MFBI Branch, Office of Fuels Conversion, Economic Regulatory Administration, 2000 M Street, NW., Room 3128, Washington, D.C. 20461, Phone (202) 653–3679.

Marx M. Elmer, Office of the General Counsel, Department of Energy, 1000 Independence Avenue SW., Room 6G–087, Washington, D.C. 20585, Phone (202) 252–2967.

Robert Goodie, Case Manager, New MFBI Branch, Office of Fuels Conversion, Economic Regulatory Administration, 2000 M Street NW., Room 3319, Washington, D.C. 20461, Phone (202) 653–3675.

SUPPLEMENTARY INFORMATION: On November 16, 1979, WEPC filed, pursuant to ERA's Revised Interim Rule, a request for ERA to classify as existing its Auxiliary Boiler No. 2 installed at WEPC's Pleasant Prairie Power Plant, Kenosha County, Wisconsin. The Auxiliary Boiler is a packaged boiler having a design capability to consume fuel oil at a fuel heat input rate of 100.2 million Btu's per hour and will be used to supply low pressure steam for use in the Pleasant Prairie Power Plant's auxiliary equipment during unit startup, shutdown and hot standby.

WEPC's request for classification, submitted under the provisions of § 515.13 of the Final Rule, was based on the contention that it would incur substantial financial penalty if the construction or acquisition of Auxiliary Boiler No. 2 were to be cancelled, rescheduled or modified as of November 9, 1978. In its analysis of WEPC's request, ERA also examined the eligibility of Auxiliary Boiler No. 2 for automatic classification as existing under the provisions of § 515.12(c) of the Final Rule. That Section provides that any installation for which a contract for construction or acquisition was signed prior to November 9, 1978, and which was operational on or before May 8, 1979, is automatically classified as existing and subject to the provisions of Title III of FUA upon filing of a certification.

In its request, WEPC certified that a contract for acquisition of Auxiliary Boiler No. 2 was signed on November 7, 1977, and that the packaged boiler was shipped by the manufacturer to the Pleasant Prairie Power Plant on November 10, 1978. Upon request of ERA, WEPC subsequently furnished a copy of the bill of lading substantiating the November 10, 1978 shipping date.

In reaching its determination that Auxiliary Boiler No. 2 qualified for automatic classification as existing under § 515.12(c), ERA considered that within the context of the definition of "operational" contained in § 515.20(c)(23) of the Final Rule, Auxiliary Boiler No. 2, a prefabricated packaged boiler, was tested by the manufacturer at the completion of the manufacturing process and was found to be capable of producing a product or providing a service on a continuing basis. Accordingly, it was concluded that Auxiliary Boiler No. 2 was "operational" at the time of its shipment by the manufacturer on November 10, 1978.

The public file containing documents on these proceedings is available upon request at: ERA, Room B–110, 2000 M Street, NW., Washington, D.C, Monday–Friday, 8:00 a.m.–4:30 p.m.

Issued in Washington, D.C. on April 22, 1980.

Robert L. Davies,

Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration.

[FR Doc. 80-13223 Filed 4-29-80; 8:45 am]

BILLING CODE 6450-01-M

Maurice L. Brown Co.; Final Action on Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of final action taken.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces final action to accept a Consent Order after consideration of comments from the public.

EFFECTIVE DATE: May 30, 1980.

FOR FURTHER INFORMATION CONTACT: Alan L. Wehmeyer, Office of Enforcement, Economic Regulatory Administration, Department of Energy, 324 East 11th Street, Kansas City, Missouri 64106.

SUPPLEMENTARY INFORMATION: On March 17, 1980 the Office of Enforcement of the ERA published Notice of a Consent Order which had been executed between Maurice L. Brown Company and DOE. With that Notice, and in accordance with 10 CFR 205.199J(c), the Office of Enforcement invited interested persons to comment on the Consent Order. A press release was issued simultaneously, in conformity with 10 CFR 205.199J(c). Under the terms of 10 CFR 205.199J(c) no Consent Order involving sums in excess of $500,000 shall become effective until the DOE publishes Notice of its execution and solicits and considers public comment with respect to its terms. Pursuant to 10 CFR 205.199J, the Office of Enforcement of the ERA hereby gives Notice of final action taken on the Consent Order.

I. Comments Received

No comments were received with respect to the terms of the Consent Order.

II. Determination

The Office of Enforcement of the ERA has determined that the refund procedures as provided in the Consent Order are appropriate under the circumstances of this case.

The Office of Enforcement has concluded that the Consent Order as executed between DOE and Maurice L. Brown Company is an appropriate resolution of the compliance proceedings described in the Notice published on March 17, 1980, and hereby gives Notice that the Consent Order is made effective to Maurice L. Brown Company.

Issued in Kansas City, Missouri on this 21st day of April, 1980.

William D. Miller,

District Manager, Central Enforcement District.

Concurrence:

David H. Jackson,

Chief Enforcement Counsel, Central Enforcement District.

[FR Doc. 80-13261 Filed 4-29-80; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearing and Appeals

Issuance of Decisions and Orders; Week of February 18 Through February 22, 1980

Notice is hereby given that during the week of February 18 through February 22, 1980, the Decisions and Orders summarized below were issued with respect to Appeals and Applications for Exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions which were dismissed by the Office of Hearings and Appeals and the basis for the dismissal.

Appeals

Dobrovir, Oakes & Gebhardt, Washington, D.C. DFA-0505, freedom of information

The law firm of Dobrovir, Oakes & Gebhardt filed an Appeal from a partial denial by the DOE Inspector General of a Request for Information which the firm had submitted under the Freedom of Information Act. In considering the Appeal, the DOE found that most of the material which had been withheld from the firm originated with the Central Intelligence Agency and that the CIA should therefore have an opportunity to review those documents. The DOE also indentified certain congressional correspondence which it determined should be released.

Duncan, Allen & Mitchell, Washington, D.C.; BFA-0147, freedom of information

The law firm of Duncan, Allen & Mitchell filed an Appeal from a partial denial by the Director of the DOE Office of Power Marketing Coordination, Resource Applications, of a Request for Information which the firm had submitted under the Freedom of Information Act. In considering the Appeal, the DOE found that certain of the documents which were initially withheld under Exemption 5 should be released to the public. The DOE also remanded the matter for the preparation of a complete index of all documents withheld, justification of the application of Exemption 5 to each such document, and consideration of the public interest.

Remedial Orders

Mark Crockette, d.b.a. Prestige Marketing, Inc., Kansas City, Mo.; DRO-0279, Motor gasoline

Mark Crockett d.b.a. Prestige Marketing Inc. objected to an Interim Remedial Order for Immediate Compliance which the Central District Office of Enforcement issued to the firm on July 6, 1979. In the Interim Remedial Order, the Office of Enforcement found that Prestige had engaged in discriminatory business practices and had modified its normal business practices in violation of 10 CFR 210.62. In considering Crockett's submission, the DOE found that the firm had failed to amend a deficient Notice of Objection and had failed to file a Statement of Objections to the Interim Remedial Order. The DOE therefore concluded that the Interim Remedial Order should be issued as a final Order.

McCaleb & Davis, San Antonio, Tex.; DRO-0072, crude oil

McCaleb & Davis objected to a Proposed Remedial Order which ERA Region VI issued to the firm on June 14, 1978. In the PRO, Region VI found that McCaleb & Davis had overcharged a purchaser of crude oil $30,391. In considering the Objection, the DOE concluded that the arguments raised by the firm were without merit. The DOE therefore concluded that the PRO should be issued as a final Remedial Order. The important issues discussed in the Decision and Order include (i) the validity of Ruling 1974-29 and (ii) the authority of the DOE to assess interest on overcharges.

Twin Montana, Inc., Graham, Tex.; DRO-0349, crude oil

Twin Montana, Inc. objected to a Proposed Remedial Order which the Southwest District of the ERA Office of Enforcement issued to the firm on August 6, 1979. In the Proposed Remedial Order, the ERA found that Twin Montana had improperly included injection wells in the well counts for seven properties and had overcharged its customers for the crude oil produced from those properties. In considering the firm's objections, the DOE determined that Twin Montana had erroneously classified the seven properties as stripper well properties during the audit period. The DOE therefore concluded that the Proposed Remedial Order should be issued as a final Order.

Remedial Orders

In the following cases involving Proposed Remedial Orders and/or Interim Remedial Orders for Immediate Compliance, no Statements of Objections were filed. The DOE therefore issued the orders in final form.

Company name and case No.

Flajole Brothers—BRW-0019
Jack Lloyd d/b/a Long Point Marina—BRW-0013
Wallace Mays, Jr. d/b/a Wallies Penzoil—BRW-0014
Charles M. Bryant d/b/a Chuck Bryant Chevron—BRW-0015
Harry Marrs d/b/a Expressway 76—BRW-0018

Stiers Chevron—BRW–0003
Al Sellers d/b/a Al Sellers Union 76—BRW–0004
Jose Luis Fonte d/b/a Airport Texaco—BRW–0005
Joe Webster d/b/a J. W. Oil Co.—BRW–0006
Richard Myers d/b/a Rich's Shell—BRW–0007
Sam Price d/b/a Price Wagon Auto—BRW–0008
Charles Gugino, Sr. d/b/a Gugino's Exxon—BRW–0009
William Pinkoske—BRW–0010
Edward Pace—BRW–0011
Franklin Monts d/b/a Monts Texaco—BRW–0012

Petition for Special Redress

Armour Oil Com.; Office of Enforcement, Washington, D.C.; DSG–0066; BRF–0001, special refund procedures

Armour Oil Company filed a Petition for Special Redress and the ERA Office of Enforcement filed a Petition for the Implementation of Special Refund Procedures with respect to approximately $4,500,000 that General Crude Oil Company had placed in escrow pursuant to a remedial Order. In considering the requests, the DOE concluded that the Office of Enforcement should issue an Ancillary Order prior to disbursement of the escrow account, setting forth the portion of the fund to be retained by Armour and the portion to be passed through to Armour's customers. Since Armour's customers were readily ascertainable and not too numerous, the Petition for Implementation of Special Refund Procedures was denied.

Requests for Exceptions

Consumers Power Com., Washington, D.C.; FEE–4392, crude oil

Consumers Power Company filed an Application for Exception from the provisions of 10 CFR 211.67, in which the firm requested that it be permitted to retain the revenues which it had received as a result of its allegedly erroneous participation in the Entitlements Program during the period November 1974 through January 1975. In considering the application, the DOE found that Consumers Power had not established that a cost disparity existed between it and other utilities during the November 1974 through January 1975 period or that the alleged disparity would have increased substantially had the firm not participated in the Entitlements Program. The DOE therefore concluded that Consumers Power had failed to demonstrate that it would have qualified for exception relief at that time. The DOE further concluded that Consumers Power had failed to demonstrate that there were compelling reasons for the approval of retroactive exception relief. Accordingly, the Application for Exception was denied.

Michael Doyle, Westminster, Calif.; DEO–0231, motor gasoline

Michael Doyle filed an Application for Exception from the provisions of 10 CFR, Part 211, in which the firm sought an increase in its base period allocation of motor gasoline. In considering the request, the DOE determined that Doyle should receive some relief on the basis of the criteria established in *Duncan Oil Company*, 4 DOE Par. ——— (June 20, 1979). However, additional relief was denied on the basis that increased demand at the station was not attributable to an alteration of Doyle's ongoing business practices. Accordingly, the Application for Exception was granted in part.

Guam Energy Office, Aguana, Guam; BEE–0745, conservation grants

The Guam Energy Office filed an Application for Exception from the provisions of 10 CFR, Parts 450 and 455, in which it requested that "through-the-wall" air conditioners be considered a "cooling system" for determining eligibility to participate in the Institutional Buildings Grant Program. In considering the application, the DOE found that two-thirds of the institutional buildings on Guam use "through-the-wall" air conditioners which apparently disqualify the buildings from receiving energy conservation grants. The DOE concluded that the exclusion of such a large proportion of the institutional buildings on Guam contravened the intent of the National Energy Conservation Policy Act and therefore constituted a gross inequity. Accordingly, the Application for Exception was granted.

Husky Oil Co., Denver, Colo.; DXE–6321, crude oil

Husky Oil Company filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. Exception relief was granted to permit Husky to sell at upper tier prices 29.43 percent of the crude oil produced from the Bonetti Lease.

Husky Oil Co., Denver, Colo.; DXE–6323, crude oil

Husky Oil Company filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. Exception relief was granted to permit Husky to sell at upper tier prices 100 percent of the crude oil produced from the Goodwin Lease.

International Business Machines Corp., White Plains, N.Y.; BEE–0518; BES–0518; BEL–0518, temperature restrictions

The International Business Machines Corporation filed an Application for Exception from the provisions of 10 CFR, Part 490. In its Application, IBM sought approval of a proposed program under which the firm would distribute space heaters to employees experiencing a serious medical hardship as a result of the Temperature Restrictions. In considering the request, the DOE found that IBM's program would operate in a manner consistent with (i) the energy conservation objectives of the Temperature Restrictions and (ii) the procedures and standards utilized in exceptions previously granted by the DOE. The DOE also noted that the implementation of IBM's program would generally result in an efficient and expeditious processing of health-related exception requests and would therefore be in the public interest. Accordingly, exception relief was granted.

N.J.; Highway Authority, Woodbridge, New Jersey; DXE–6279, motor gasoline

The New Jersey Highway Authority filed an Application for Exception from the Allocation Regulations which would increase the allocation of motor gasoline to the retail outlets owned by the Highway Authority on the Garden State Parkway. In considering the request, the DOE found that exception relief was necessary to alleviate severe dislocations caused by gasoline shortages on the Garden State Parkway. Three types of exception relief were granted for a one year period. First, the Parkway retail outlets were allocated 600,000 gallons of gasoline per month from the State set-aside system. Second, the base period volumes of the Parkway outlets were increased by 500,000 gallons per month. Third, Exxon Company, U.S.A. was granted an exception from the "equal application rule" to permit it to pass through additional increased costs in the prices it charges at the retail outlets on the Parkway. The price exception was intended to alleviate the disparity between prices at Parkway stations and prices at stations off the Parkway which created an artificial incentive for motorists from surrounding communities to purchase gasoline on the Parkway.

Propane Gas & Appliance Co., New Brockton Ala.; DEE–1080, propane

Propane Gas and Appliance Company filed an Application for Exception from the provisions of 10 CFR 212.93, in which the firm sought relief from its obligation under a May 23, 1979 remedial Order to make refunds of overcharges to its customers. In considering the request, the DOE found that Propane had failed to submit sufficient evidence to determine whether the firm was able to make the refunds required by the Remedial Order. The DOE concluded that there was no basis in the record upon which exception relief could be granted. Accordingly, Propane's exception request was denied.

Washington University, St. Louis, Mo.; BEO–0198, temperature restrictions

Washington University filed an Application for Exception from the provisions of 10 CFR Part 490, in which it sought permission to raise the temperature above 65° F in art classrooms in which nude models are used. In considering the request, the DOE found that the applicant failed to demonstrate that there were health risks to the models or that there were no alternative means to minimize any discomfort which the models might experience. Accordingly, exception relief was denied.

Young Men's and Young Women's Hebrew Association, Wayne, N.J.; BEO–0319, temperature restrictions

The Young Men's and Young Women's Hebrew Association filed an Application for Exception from the provisions of 10 CFR Part 490, in which the applicant sought permission to raise the temperature in its locker room and shower room areas above 65° F. In considering the request, the DOE found that the applicant had failed to demonstrate that it would suffer a gross inequity or unfair distribution of burdens in the absence of exception relief. Accordingly, exception relief was denied.

Request for Stay

Mobil Oil Corp.; Texaco, Inc., Washington, D.C.; BES–0050; BES–0051, motor gasoline

Mobil Oil Corporation; Texaco, Inc. filed joint Applications for Stay from the

requirement that they supply unleaded motor gasoline to American Agri-Fuels Corporation (AAF) pursuant to orders issued by ERA Region VII. The assignment orders were issued to effectuate the exception relief granted in *American Agri-Fuels Corp.*, 4 DOE Par. —— (August 28, 1979), which was designed to facilitate AAF's gasohol program. In considering the Applications, the DOE determined that its previous decision to reconsider the AAF exception request did not warrant the approval of a stay. The DOE also concluded that it had the authority to fashion equitable relief to effect restitution of any product furnished to AAF should the exception ultimately be rescinded. Consequently, the Applications for Stay were denied.

Motion for Evidentiary Hearing

Shell Oil Co., Houston, Tex.; BEH–0008, crude oil

Shell Oil Company filed a Motion for Evidentiary Hearing in connection with a Statement of Objection which it had filed. In considering the request, the DOE found that Shell had not identified the particular factual matters which it wished to have considered at an evidentiary hearing. The DOE also found that Shell had not demonstrated that other evidentiary mechanisms were not suitable, as required by 10 CFR 205.64(c). Accordingly, the Shell request for an evidentiary hearing was denied.

Interlocutory Order

Cotten Service Stations, & Rentals, Dallas, Tex.; BEZ–0023, motor gasoline

Cotten Service Stations, & Rentals filed an Application for Exception in which it requested that its base period allocation for motor gasoline be increased. In its Application, Cotten contends that the base period represents an anomalous period for the firm because of the alleged predatory activities in its market area by its supplier, Diamond Shamrock Corporation. In considering the exception request, the DOE noted that Diamond Shamrock had not had an opportunity to respond to Cotten's allegations. The DOE therefore ordered that a hearing be convened to consider evidence concerning whether the marketing practices of Diamond Shamrock during the base period adversely affected Cotten's operations.

Supplemental Order

Crown Central Petroleum Corp.; Office of Special Counsel, Baltimore, Md.; Washington, D.C.; BRX–0024 Distillates; Motor Gasoline

Crown Central Petroleum Corporation and the Office of Special Counsel jointly filed an Application for Stay of a Proposed Remedial Order which was issued to Crown on October 23, 1978. In considering the Application, the DOE determined that any further administrative action with respect to the PRO should be stayed since the parties had indicated that they were close to reaching a resolution of the enforcement proceedings. The DOE further determined that it was in the public interest to encourage settlement of disputes between the DOE and firms in the petroleum industry. The Stay request was therefore granted.

Protective Orders

The following firms filed Applications for Protective Orders. The applications, if granted, would result in the issuance by the DOE of the proposed Protective Orders submitted by the firm. The DOE granted the following applications and issued the requested Protective Orders as Orders of the Department of Energy:

Name and Case No.

Commonwealth Oil/Texaco, Inc., BEJ–0040
Mobil Oil Corp./Union Oil Co. of CA., BEJ–0039
Amoco Oil Co./Union Oil Co. of CA., BEJ–0041

Interim Orders

The following firms were granted Interim Exception relief which implements the relief which the DOE proposed to grant in an order issued on the same date as the Interim Order:

Company Name, Case No. and Location

Big D & W Refining & Solvents Co., Inc., BEN–0017; Van Buren, AR

Petitions Involving the Motor Gasoline Allocation Regulations

The following firms filed Applications for Exception, Temporary Exception, Stay, and/or Temporary Stay from the provisions of the Motor Gasoline Allocation Regulations. The requests, if granted, would result in an increase in the firms' base period allocation of motor gasoline. The DOE issued Decisions and Orders which determined that the requests be denied.

Company Name, Case No. and Location

Bud's "66" Service, BEO–0826; South Bend, IN
Burgman Supply Co., DEE–6446; Jacksonville, FL
H.M.H. Supply, Inc., BEO–0607; Bear Creek, AL
Haynes Mobil, BEO–0141; Hartford, MI
Mid-City Exxon, DEO–0270; Monroe, LA
Quik Stop Convenience, BEO–0553; Blanchard, OK
Saffari Mobil, DEE–5789; Sepulveda, CA
Red Onion Drive In, BEO–0461; Sioux City, IA
Tom's Standard, BEO–0439; Belvidere, IL
Tony's Servicenter, DEE–3943; Miami, FL
Viger's Shell, DEE–6332; Lincoln Park, MI
Wheaton Manor Amoco, DEE–3665; Wheaton, MD
Ace Pest Control, DEE–6629
Air Conditioning Systems, DEE–5781
All-Dade Driveway Maintenance, DEE–7615
Bay Export Services, DEE–6419
Bell of Pennsylvania, BEE–0073
Brown & Root, Inc., DEE–4532
Budget Rent a Car of St. Louis, DEE–7631
Central Delivery Service of Massachusetts, Inc., DEE–7423
Central New York State Park and Recreation Comm., DEE–6163
General Rental Co., DEE–6846
Hawthorne Mazda, DEE–5773
Montebello Land & Water Co., DEE–5572
Pacific Soils Engineering, Inc., DEE–6195
Plasticrete Block & Supply Corp., DEE–7420
Polaris Plating, Inc., DEE–6622
Sav-Way Auto Leasing & Rental, Inc., DEE–4627
Sears Roebuck & Co., DEE–5805
Southern Tours, DEE–6337
Van Nuys Publishing Co., DEE–6254
Pacific Galvanizing, DEE–7055
Bay Alarm Co., DEE–5617
Benton Brothers Film Express, Inc., DEE–7732
Kim Electric Service, DEE–5830
Grazzolo Drug & Chemical Co., DEE–7311
Temp Rite Engineering Co., DEE–3536
Hyster Co., DEE–6514
Hartge Yachtyard, DEE–7566
Somerset District, DEE–6715
Federal Express Corp., DEE–6526
Brooks, Inc., DEE–6784
A. J. Leblanc Heating Co., Inc., DEE–7687
Tri-City Rentals, Inc., DEE–7494
Johnson Roofing Inc., DEE–6176
Tab Transportation, Inc., DEE–4153
Bieber Lighting Corp., DEE–6222
Charles George Trucking Co., Inc., DEE–7685
Ogden Food Service Corp., DEE–7056
Spruce Creek Golf & Country Club, DEE–3606
Coca Cola Bottling of Southeastern New England, Inc., DEE–5406
Arnie's Service Center, BEO–0110
S. Huntington Chevron, BEO–0043
The Oasis, Inc., BEO–0081

Dismissals

The following submissions were dismissed without prejudice to refiling at a later date:

Name and Case No.

Castle Aero Club, Inc., BEE–0620
City of San Diego, DEE–5442; DES–5442
Fletcher Oil & Refining Co., DEE–4185; DES–4185
Hamilton Oil Co., DEE–4846
McDuff's Exxon, BXE–0330
Munford, Inc., DST–4516
Palos Verdes Standard, DES–6653; DST–6653
Reynolds Oil Co., DEE–2619
Steven Toth, BRO–0140
West Patterson Amoco, BEH–0819

Copies of the full text of these Decisions and Orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room B–120, 2000 M Street, N.W., Washington, D.C. 20461, Monday trhrough Friday, between the hours of 1:00 p.m. and 5:00 p.m., e.s.t., except Federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Melvin Goldstein,

Director, Office of Hearings and Appeals.

April 22, 1980.

[FR Doc. 80–13225 Filed 4–29–80; 8:45 am]

BILLING CODE 6450–01–M

Office of Assistant Secretary for International Affairs

Proposed Subsequent Arrangements

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of proposed "subsequent arrangements" under the Additional Agreement Between the Government of the United States of America and the European

Atomic Energy Community (EURATOM) Concerning the Peaceful Uses of Atomic Energy.

The subsequent arrangements to be carried out under the above mentioned agreement involve approval of the following contracts:

WC–EU–161, United States to the Netherlands, 39.45 grams of normal uranium-palladium alloy, 8.24 grams of normal uranium trifluoride, 0.59 grams of normal uranium tetrafluoride, 1.92 grams of normal uranium nitride, and 1.10 grams of palladium fluoride, to be used for the determination of enthalpy of formation of compounds at the Netherlands Energy Research Foundation at Petten.

S–EU–647, United States to Belgium, 1,000 milligrams of uranium enriched to greater than 99.99% in U–238, to be used as tracer for isotopic dilution analysis for safeguards, burn-up, and other measurements.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of these nuclear materials will not be inimical to the common defense and security.

These subsequent arrangements will take effect no sooner than fifteen days after the date of publication of this notice (June 16, 1980).

For the Department of Energy.

Dated: April 24, 1980.

Harold D. Bengelsdorf,

Director for Nuclear Affairs International Nuclear and Technical Programs.

[FR Doc. 80–13262 Filed 4–29–80; 8:45 am]

BILLING CODE 6450–01–M

Southeastern Power Administration

Order Extending Confirmation and Approval of Power Rates on and Interim Basis

AGENCY: Department of Energy, Southeastern Power Administration (SEPA).

ACTION: Extension on interim basis of Kerr-Philpott projects' rates.

SUMMARY: On April 22, 1980, the Assistant Secretary for Resource Applications confirmed and approved, on an interim basis, the extension of existing rates for Kerr-Philpott Projects' power. The extension is for a 15-month period through September 30, 1981.

DATES: Extension of approval of rates on interim basis effective July 1, 1980.

FOR FURTHER INFORMATION CONTACT:

Sidney M. Cleveland (404) 283–3261, Acting Chief, Division of Fiscal Operations, Southeastern Power Administration, Department of Energy, Samuel Elbert Building, Elberton, Georgia 30635.

John J. DiNucci (202) 633–8336, Office of Power Marketing Coordination, Department of Energy, 12th Street and Pennsylvania Avenue NW., Washington, D.C. 20461.

SUPPLEMENTARY INFORMATION: The Federal Power Commission by Order issued February 18, 1976, in Docket No. E–7002 confirmed and approved Wholesale Power Rate Schedules KP–1–B, KP–2–B and JHK–1–B applicable to Kerr-Philpott Project's power for a period ending June 30, 1980.

The extension of rates hereby approved is subject to approval on a final basis by the Federal Energy Regulatory Commission.

Issued in Washington, D.C., April 22, 1980.

Ruth M. Davis,

Assistant Secretary, Resource Applications.

United States of America, Department of Energy, Assistant Secretary for Resource Applications

In the Matter of: Southeastern Power Administration, Kerr-Philpott Projects' Power Rates; Rate Order No. SEPA–7.

Order Confirming and Approving Extension of Power Rates on an Interim Basis.

April 22, 1980.

Pursuant to Sections 302(a) and 301(b) of the Department of Energy Organization Act, Public Law 95–91, the functions of the Secretary of the Interior and the Federal Power Commission under Section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, relating to the Southeastern Power Administration (SEPA) were transferred to and vested in the Secretary of Energy. By Delegation Order NO. 0204–33, effective January 1, 1979, 43 FR 60636 (December 28, 1978), the Secretary of Energy delegated to the Assistant Secretary for Resource Applications the authority to develop power and transmission rates, acting by and through the Administrator, and to confirm, approve, and place in effect such rates on an interim basis and delegated to the Federal Energy Regulatory Commission (FERC) the authority to confirm and approve on a final basis or to disapprove rates developed by the Assistant Secretary under the delegation. This rate order is issued pursuant to the delegation to the Assistant Secretary.

Background

Power from the Kerr-Philpott Projects is presently sold under Wholesale Power Rate Schedules KP–1–B, KP–2–B and JHK–1–B. These rates were confirmed and approved by the Federal Power Commission on February 18, 1976, for a period ending June 30, 1980. SEPA is in the process of developing a new written power marketing policy for the Kerr-Philpott Projects and has requested that I approve a 15-months' extension of such rates to allow time to finalize the policy, renegotiate expiring contracts and permit applicable rates appropriate to such revised policy to be developed, confirmed and approved, and placed in effect.

Discussion

Existing rate schedules are predicated upon a March 1975 repayment study and other supporting data all of which are contained in FPC Docket NO. E–7002. However, expenses during Fiscal Years 1975 through 1979 were considerably less than estimated, such that at the end of Fiscal Year 1979, the remaining unpaid investment allocated to the power function was approximately $1,400,000 less than previously estimated. Furthermore, electric operating expenses for the Fiscal Years 1980 and 1981 are projected to essentially equal O&M estimates used for the 1975–79 period. Because of SEPA's favorable repayment position and because existing rates will continue to produce revenues during the interim extension period essentially adequate to repay costs associated with the production and transmission of power produced at the projects, it is appropriate to confirm and approve on an interim basis, an extension of existing rates as requested by SEPA.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approve on an interim basis, effective July 1, 1980, an extension of existing Rate Schedules KP–1–B, KP–2–B and JHK–1–B for the sale of power from the Kerr-Philpott Projects. The rate schedules, copies attached, as confirmed and approved hereby, shall remain in effect through September 30, 1981.

Issued at Washington, D.C., this 22nd day of April 1980.

Ruth M. Davis,

Assistant Secretary, Resource Applications.

Wholesale Firm Power Rate Schedule KP–1–B

Availability: This rate schedule shall be available to public bodies and cooperatives (any one of which is hereinafter called the Customer) within a 150 mile radius of the John H. Kerr Project, purchasing power generated at the John H. Kerr and Philpott Projects in wholesale quantities under appropriate contracts and served through the facilities of the Virginia Electric and

Power Company (hereinafter called the Company).

Applicability: This rate schedule shall be applicable to firm power and accompanying energy generated at the John H. Kerr and Philpott Projects and to deficiency energy purchased by the Government from the Company, purchased in wholesale quantities under appropriate contracts for a specified number of kilowatts of capacity and shall be applied to each customer's system consisting of one or more delivery points.

Character of Service: The electric capacity and energy supplied hereunder will be 3-phase alternating current at a nominal frequency of 60 Hertz. The voltage of delivery will be maintained within the limits established by the state regulatory commission.

Monthly Rate: The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand Charge: $1.25 per kilowatt of contract demand.

Energy Charge: 5.00 mils per kilowatt-hour.

Contract Demand: The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government: The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a total amount annually of 5,000 kilowatt-hours per kilowatt of contract demand prorated on an equal daily amount throughout the year. The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system.

Billing Month: The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Conditions of Service: The Purchaser shall at its own expense provide, install and maintain on its side of each delivery point the equipment to protect and control its own system. In so doing, the installation, adjustment, and setting of all such control and protective equipment at or near the point of delivery shall be coordinated with that which is installed by and at the expense of the Company on its side of the delivery point.

Service Interruption: When energy delivery to the Customer's system is reduced or interrupted for 1 hour or longer, and such reduction or interruption is not due to conditions on the Customer's system, the demand charge for the month shall be appropriately reduced.

Wholesale Power Rate Schedule KP–2–B

Availability: This rate schedule shall be available to the Carolina Power and Light Company and the Virginia Electric and Power Company (either one of which is hereinafter called the Company).

Applicability: This rate schedule shall be applicable to electric capacity and energy generated at the John H. Kerr and Philpott Projects (hereinafter called the Projects) and sold under appropriate contracts between the Government and the Company.

Character of Service: Electric capacity and energy delivered to the Company will be 3-phase alternating current at a nominal frequency of 60 Hertz delivered at points of delivery specified by appropriate contract.

Monthly Rate: The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand Charge: $1.25 per kilowatt per month for dependable capacity made available to the Company for their own use.

Energy Charge: An amount for dump energy equal to eighty percent (80%) of the calculated saving in the cost of fuel for the Company's operating generating units due to the generation avoided therein by the delivery of such dump energy; provided that the procedures to determine saving in the cost of fuel will be agreed upon from time to time by the Government and the Company.

Billing Month: End-of-month meter readings shall be made at 12:00 midnight at the end of the calendar month where meters are located in continuously attended power plants and substations.

Service Interruptions: When the dependable capacity available to the Company is reduced or interrupted for one hour or longer during on-peak hours and such reduction or interruption is not due to conditions on the Company's system, or in the case of Philpott, the Appalachian Power Company's or the Company's system, or agreed to outages, the dependable capacity to be paid for by the Company for that month shall be reduced for billing purposes for each on-peak hour (the nearest number of whole hours) that dependable capacity available to the Company is reduced or interrupted by an amount equal to one/(number of on-peak hours in the month) times such reduction in kilowatts of dependable capacity. In the event such reduction in dependable capacity to be paid for by the Company should be greater than the dependable capacity sold to the Company in any month, any such excess shall be applied to the dependable capacity sold to the Company in subsequent months. If such reduction or interruption results in a total delivery of energy in that month to or for the account of the Company's system by the Government amounting to less than the total declared available, the declaration of energy for that month shall be reduced for accounting purposes to the amount actually delivered. On-peak hours shall be the hours between 8:00 a.m. and 10:00 p.m. on all days except Sunday.

Power Factor: The Company shall take power and energy from the Government at such power factor as will best serve the Company's system from time to time; provided, that the Company shall not impose a power factor of less than .85 lagging on the Government's facilities which requires operation contrary to good operating practice or results in overload or impairment of such facilities or unreasonably interferes with the delivery of power and energy by the Government to its other customers.

Termination of Contract: The Company shall pay the Government 5.00 mills per kilowatt-hour for energy remaining in the energy bank and for energy remaining as a net debit balance in the storage account at the termination of the contract between the Government and the Company.

Wholesale Firm Power Rate Schedule JHK–1–B

Availability: This rate schedule shall be available to public bodies and cooperatives (any one of which is hereinafter called the Customer) within a 165-mile radius of the existing interconnection point between the Virginia Electric and Power Company and the Carolina Power and Light Company (hereinafter called the Company) at the Virginia-North Carolina State line in the vicinity of John H. Kerr Project (hereinafter called the Project), purchasing power from the Project in wholesale quantities under appropriate contracts and served through the facilities of the Company.

Applicability: This rate schedule shall be applicable to Project firm power and accompanying energy, purchased in wholesale quantities under appropriate contracts for a specified number of kilowatts of capacity and shall be applied to each Customer's system consisting of one or more delivery points.

Character of Service: Electric capacity and energy supplied hereunder will be 3-phase alternating current at a nominal frequency of 60 Hertz delivered at existing or future delivery points on

the Company's transmission and distribution system.

Monthly Rate: The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand Charge: $1.25 per kilowatt of contract demand.

Energy Charge: 5.00 mills per kilowatt-hour.

Contract Demand: The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government: (a) If the Customer does not own or operate generating facilities (other than mobile generating equipment used for emergency purposes), the Government will supply Project energy to such Customer each month, to the extent that such energy is available, based on the ratio of the Customer's energy requirements (determined by multiplying the Customer's total energy requirements at all points of delivery located within 165 miles of the existing interconnection point between the Company and VEPCO at the Virginia-North Carolina State line in the vicinity of the Project by the ratio of the Customer's contract demand to its maximum 30-minute integrated measured demand for that month at said points of delivery) to the sum of the individual energy requirements of all such Customers purchasing under this rate schedule determined on this same basis. (The maximum 30-minute integrated measured demand of the Customer for the month shall be determined by adding together the highest 30-minute integrated measured demand at each point of delivery located within 165 miles of the aforementioned interconnection point, exclusive of abnormal nonrecurring demands resulting from transfer of loads from one point of delivery to another where such transfers are previously approved by the Company.)

(b) If the Customer owns or operates generating facilities (other than mobile generating equipment used for emergency purposes), the Government will supply Project energy each month in an amount determined by multiplying the ratio of the Customer's contract demand to the dependable capacity made available to the Company's system from the Project by 100/106 of the total energy (exclusive of dump energy) declared and made available to the Company's system from the Project.

Energy Accounting: For the purposes of energy accounting an energy bank shall be maintained, and the Government shall keep the official record of such account. In any month in which the total Project energy (exclusive of dump energy) declared and made available by the Government to the Company exceeds the energy accounted for in such month as accompanying the capacity required to meet the contract demands of the Government to preference customers, increased by six percent (6%) to provide for losses in transmission, such remaining energy shall be credited to the energy bank. Energy stored in this energy bank shall be used in subsequent months to supply to the extent possible preference customer energy requirements not supplied by energy declared and made available from the Project during such months. Withdrawals of energy from the energy bank shall reduce the bank account and shall be accounted for as Project energy available to be transmitted by the Company to the preference customers for the account of the Government.

In those months when Project energy (including energy available from the energy bank) multiplied by 100/106 is equal to or more than the total energy requirements of preference customers of the Government, all such energy requirements shall be deemed to have been supplied from the Project and transmitted by the Company for the account of the Government. In those months when Project energy (including energy available from the energy bank) multiplied by 100/106 is less than the total energy requirements of preference customers of the Government, the quantity of energy which shall be deemed to have been transmitted by the Company for the account of the Government shall be 100/106 of the total Project and bank energy available for transmission. In such months each preference customer of the Government that owns or operates generating facilities (other than mobile generating equipment used for emergency purposes) shall receive a portion of the available energy that results from multiplying the ratio of each such Customer's contract demand to the dependable capacity made available to the Company's system by 100/106 of the total energy declared and made available to the Company's system (excluding energy available from the energy bank), and each of the other preference customers of the Government shall receive a proportionate part of the remaining available energy based on the ratio of such Customer's individual energy requirements (determined by multiplying each such Customer's total energy requirements at all points of delivery by the ratio of its contract demand to its maximum 30-minute integrated measured demand for the month at said points of delivery) to the sum of the individual energy requirements of all such preference customers determined on this same basis.

Billing Month: End-of-month meter readings for billing under this schedule shall be made on the last regular working day of each month or as near thereto as may be practicable.

Conditions of Service: (a) *Parallel Operation:* The Government may condition service to the Customer upon payment by the Customer to the Company of the cost of such facilities, including special meters, as are made necessary by the Customer's operation of any generating facilities in parallel with the Company's system and in such event will require the operation and maintenance of such facilities by the Customer in accordance with good operating practices.

(b) *Energy Scheduling:* If the Customer owns or operates generating facilities (other than mobile generating equipment used for emergency purposes), it shall schedule and receive its proportionate share of the minimum monthly declarations of energy as provided in the contract between the Government and the Company dated March 30, 1973, in quantities reasonably distributed over the period of declaration. In the event energy in addition to minimum is available at the Project, the Customer shall receive its proportionate share of any excess energy so declared during the period for which it is declared.

(c) *Service Interruption:* When energy delivery to the Customer's system is reduced or interrupted for 1 hour or longer, and such reduction or interruption is not due to conditions on the Customer's system, the demand charge for the month shall be appropriately reduced.

(d) *Power Factor:* If the Customer owns or operates generating facilities (other than mobile generating equipment used for emergency purposes), the Customer will so utilize its generating units and power factor corrective equipment as to minimize its reactive requirements; provided, however, that unless otherwise specifically agreed, the Government will not be obligated to make available for delivery power and energy to the Customer at any time at a power factor below .85 lagging.

[FR Doc. 80-13260 Filed 4-29-80; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-180429; FRL 1481-7]

Arizona Commission of Agriculture and Horticulture; Issuance of Specific Exemption To Use Imazalil To Control Penicillium Species on Citrus Fruit

AGENCY: Environmental Protection Agency (EPA).
ACTION: Notice.

SUMMARY: EPA has granted a specific exemption to the Arizona Commission of Agriculture and Horticulture (hereafter referred to as the "Applicant") to use imazalil on 6,248,000 pounds of citrus fruit in Arizona to control post-harvest decay caused by *Penicillium* species. The specific exemption is issued under the Federal Insecticide, Fungicide, and Rodenticide Act.

DATE: The specific exemption expires on January 11, 1981.

FOR FURTHER INFORMATION CONTACT: Donald Rodier, Registration Division (TS-767), Rm. E-124, Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, 202/426-0223.

It is suggested that interested persons telephone before visiting EPA Headquarters, so that the appropriate files may be made conveniently available for review purposes.

SUPPLEMENTARY INFORMATION: According to the Applicant *P. italicum* and *P. digitatum*, commonly known as blue and green mold respectively, have developed resistance to currently registered fungicides such as 2-aminobutane, benomyl, O-phenylphenate, and thiabendazole. Data indicate that imazalil adequately controls these molds. The total value of the citrus crop in Arizona is $100 million. Without an effective fungicide to control post-harvest decay, the Applicant estimates a loss of from 6-18 percent.

The Applicant proposed to apply Deccozil, which contains the active ingredient imazalil, to citrus intended for the fresh fruit market only. Fruit which is to be exported or processed for juice will not be treated. The Applicant plans to make a single treatment in approximately 18 packing houses.

EPA has determined that residues of imazalil in or on citrus fruit should not exceed 10 parts per million (ppm) from this use. This level has been judged adequate to protect the public health. Because imazalil is to be used indoors, EPA has determined that this specific exemption poses little exposure to fish and wildlife. However, imazalil is toxic to fish so EPA has incorporated appropriate discharge restrictions into the exemption.

After reviewing the application and other available information, EPA has determined that (a) post-harvest decay of citrus fruits is likely to occur; (b) the pesticides registered for this use do not provide adequate control of *Penicillium* spp. in Arizona; (c) there are no alternative means of control, taking into account the efficacy and hazard; (d) significant economic problems may result if *Penicillium* spp. are not controlled; and (e) the time available for action to mitigate the problems posed is insufficient for a pesticide to be registered for this use. Accordingly, the Applicant has been granted a specfic exemption to use the pesticide noted above until January 11, 1981, to the extent and in the manner set forth in the application. The specific exemption is also subject to the following conditions:

1. Use of the Pennwalt product Deccozil is authorized at the following concentrations, specified as the active ingredient imazalil:

A. Wash tank—500 ppm
B. Drenches—750 ppm
C. Non-recovery spray—1,000 ppm
D. Wax and foam—2,000 ppm

Citrus is to be treated only once.

2. Up to 6,248,000 pounds of citrus fruit may be treated, provided such fruit is intended for the fresh fruit market only. Use of 1,250 pounds of the active ingredient imazalil is authorized under this exemption;

3. All applicable label use directions, precautions, and restrictions must be adhered to. The product label used under this specific exemption must specify only the target pest sought after in this exemption: Resistant *Pencillium* spp. Claims for the control of *Diaporthe* and *Diplodia* must be deleted;

4. Because imazalil is toxic to fish, it may not be discharged into lakes, streams, ponds or public waters, unless in accordance with an NPDES permit. EPA Region IX will give guidance;

5. Citrus fruit containing residues of imazalil (1-[2-(2,4-dichlorophenyl)-2-(2-propenyloxy)-[ethyl]-1H-imidazole) not exceeding 10 ppm may enter interstate commerce. The Food and Drug Administration (FDA), U.S. Department of Health, Education, and Welfare, has been advised of this action. This administrative agreement covers fresh fruit only. Citrus juice or citrus byproducts are not part of that agreement. Such commodities, if found to contain residues of imazalil, would be subject to seizure, quarantine, and possible destruction by the FDA;

6. The EPA shall be notified immediately of any adverse effects resulting from the use of imazalil under this specific exemption; and

7. The Applicant is responsible for ensuring that all of the provisions and restrictions of this specific exemption are met and must submit a report summarizing the result of this program by the end of July 1981.

(Sec. 18, as amended, (92 Stat. 819; 7 U.S.C.))

Dated: April 25, 1980.

Edwin L. Johnson,
Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 80-13299 Filed 4-29-80; 8:45]
BILLING CODE 6560-01-M

[PF-123A; FRL 1481-3]

Filing of Pesticide Petition Amendment; Elanco Products Co.

AGENCY: Environmental Protection Agency (EPA).
ACTION: Notice.

SUMMARY: This notice announces an amendment to a petition submitted by Elanco Products Co., establishing tolerances for residues of the herbicide trifluralin (alpha, alpha, alpha-trifluoro-2,6-dinitro-*N,N*-dipropyl-*p*-toluidine) in or on the raw agricultural commodity group grain crops.

ADDRESS: Written comments and inquiries should be directed to: Mr. James M. Stone, Acting Product Manager (PM-23), Rm. E-351, Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460, 202-755-1397.

Written comments may be submitted while the petition is pending before the Agency. The comments are to be identified by the document control number "[PF-123A]". All written comments filed pursuant to this notice will be available for public inspection in the product manager's office from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays

SUPPLEMENTARY INFORMATION: On March 27, 1979, EPA announced in the **Federal Register** (44 FR 18278) that Elanco Products Co., PO Box 1750, Indianapolis, IN 46206, submitted a pesticide petition (PP 9F2172) proposing that 40 CFR 180.207 be amended by establishing tolerances for residues of the herbicide trifluralin (alpha, alpha, alpha-trifluoro-2,6-dinitro-*N,N*-dipropyl-*p*-toluidine) in or on the raw agricultural commodity group grain crops at 0.05 part per million (ppm) in accordance with the Federal Food, Drug, and Cosmetic Act. Elanco Products Co. has amended this

petition by changing the raw agricultural crops affected *from* the commodity group grain crops at 0.05 ppm *to* grain (except fresh corn and rice) at 0.05 ppm; barley, forage; barley, fodder; barley, straw; barley, hay; sorghum, forage; and shorghum, fodder at 0.05 ppm. The proposed analytical method for determining residues is gas liquid chromatography.

(Sec. 408(d)(1), 68 Stat. 512 (7 U.S.C. 135))

Dated: April 24, 1980.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 80-13303 Filed 4-29-80; 8:45 am]

BILLING CODE 6560-01-M

[OPP-180389A; FRL 1481-6]

Idaho Department of Agriculture; Amendment to Specific Exemption for Benomyl

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has issued an amendment to a specific exemption granted to the Idaho Department of Agriculture (hereafter referred to as the "Applicant") to use benomyl on 200,000 acres of wheat to control *Cercosporella* foot rot. The amendment permits the Applicant to tank-mix benomyl with fertilizer or other pesticides.

FOR FURTHER INFORMATION CONTRACT: Patricia Critchlow, Registration Division (TS-767), Rm. E-107, Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460, (202-426-0223).

SUPPLEMENTARY INFORMATION: In the Federal Register of November 8, 1979 (44 FR 64872), EPA announced the granting of a specific exemption to the Applicant to use a maximum of 100,000 pounds of benomyl to control *Cercosporella* foot rot of wheat on 200,000 acres of wheat. Since then, the Applicant has requested that the specific exemption be amended to permit tank-mixing of benomyl with herbicides or nitrogen fertilizer solutions, provided that such mixtures are not prohibited by the herbicide labels and provided that all other conditions of the specific exemption are followed. The Applicant requested to be allowed to tank-mix herbicides such as bromoxynil, MCPA, Bronate, Banvel Igran, Sencor, Lexone, and 2,4-D.

After reviewing the application and other available information, EPA has determined that the requested amendment should not result in any additional environmental problems. Accordingly, EPA has granted the amendment so that benomyl may be applied in a tank-mix with nitrogen solutions and with other pesticides registered for use on wheat, providing that such mixtures are not prohibited by the various product labels. All other provisions and restrictions of the specific exemption granted on October 31, 1979, still apply.

(Sec. 18, as amended, 92 Stat. 819; (7 U.S.C. 136))

Dated: April 25, 1980.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 80-13300 Filed 4-29-80; 8:45 am]

BILLING CODE 6560-01-M

[OPP-180430; FRL 1481-8]

Oregon Department of Agriculture; Issuance of Specific Exemption To Use Oxamyl on Onions To Control Stubby Root Nematode

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted a specific exemption to the Oregon Department of Agriculture (hereafter referred to as the "Applicant") to use Vydate L (oxamyl) for control of the stubby root nematode on 1,200 acres of onions in four western counties of Oregon. The exemption is issued under the Federal Insecticide, Fungicide, and Rodenticide Act.

DATE: This exemption expires on July 1, 1980.

FOR FURTHER INFORMATION CONTACT: Jack E. Housenger, Registration Division (TS-767), Rm. E-107, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, 202-426-0223. It is suggested that interested persons telephone before visting the EPA Headquarters so that the appropriate files may be made conveniently available for review purposes.

SUPPLEMENTARY INFORMATION: Western Oregon is comprised of peat soils 25 to 60 feet deep. These peat soils provide an ideal habitat for the stubby root nematode which feeds on onion seedling roots. This feeding inhibits the plant's development of a root system capable of supporting new growth, and results in high yield losses. In 1978, serious losses occurred due to a large population of the pest, and the Applicant stated that present nematode counts indicate a serious problem for the 1980 season. The Applicant reported that a loss of $400,000 occurred in 1978, due to the stubby root nematode, even though registered products were used. The Applicant stated that such losses were avoided in 1979 when Vydate L was used under a specific exemption. The Applicant expects losses this year would be the same as in 1978, without the use of Vydate L.

Controls available for the stubby root nematode include fumigants such as D-D, Telone, and Vorlex. However, the Applicant claims that these are not acceptable because: (1) annual fall rains create soil moisture problems for fall fumigation; (2) flooding, which occurs in the fall, contaminates fumigated fields with water-borne nematodes and eggs from nonfumigated fields; and (3) high water tables do not permit a spring fumigation early enough to allow onions to be harvested before the fall rains occur. Other controls, such as cultural practices, do not significantly reduce nematode populations, the Applicant states.

The Applicant proposed to apply three pound of the active ingredient, oxamyl, per acre on 1,200 acres of onions in Clackamas, Marion, Washington, and Yamhill Counties.

EPA has determined that residues of oxamyl in or on onions from the proposed use should not exceed 0.1 part per million (ppm). This level had been judged to be adequate to protect the public health. A pre-harvest interval of 45 days has been imposed and residues of oxamyl are not expected to show up in crops rotated to treated onion fields.

Oxamyl is toxic to birds and other wildlife. However, the currently registered label carries adequate precautions concerning the proposed use. The use of a liquid formulation followed by "watering" should alleviate potential problems concerning the chemical's high toxicity to wildlife. This use is not expected to result in an unreasonable adverse risk to the environment.

After reviewing the application and other available information, EPA has determined that (a) an outbreak of the stubby root nematode in onions has occurred or is about to occur; (b) there is no effective pesticide presently registered and available for use to control this pest in onions in Oregon; (c) there are not alternative means of control, taking into account the efficacy and hazard; (d) significant economic problems may result if this pest is not controlled; and (e) the time available for action to mitigate the problems posed is insufficient for a pesticide to be registered for this use. Accordingly, the Applicant has been granted a specific exemption to use the pesticide noted above until July 1, 1980, to the extent and in the manner set forth in the

application. The specific exemption is also subject to the following conditions:

1. The product Vydate L (EPA Reg. No. 352–372) may be used. If an unregistered label is used, it must contain the identical applicable precautions and restrictions which appear on the registered label;

2. Application will be restricted to 1,200 acres located in the counties named above;

3. Vydate L will be applied at a rate of one and one-half gallons (three pounds oxamyl) in twenty to thirty gallons of water per acre;

4. No more than two applications of Vydate L may be made per acre per growing season;

5. Application shall be by ground equipment only and shall be followed by sprinkler irrigation of approximately two inches of water;

6. No application will be made within 45 days of harvest;

7. Applications are to be made by State-certified applicators. Application procedures will be those recommended by qualified Oregon State University extension agents;

8. All applicable label use directions, precautions, and restrictions, must be adhered to;

9. Residues of oxamyl in the raw agricultural commodity onions, treated according to the above provisions, are not likely to exceed a level of 0.1 ppm of oxamyl. Onions with residues of oxamyl not exceeding this level may enter interstate commerce. The Food and Drug Administration, U.S. Department of Health, Education, and Welfare, has been advised of this action;

10. The Applicant is responsible for assuring that all of the provisions of this specific exemption are met and must submit a report summarizing the results of this program by October 31, 1980; and

11. Any adverse effects resulting from the use of oxamyl under this specific exemption shall be reported to the EPA immediately.

(Sec. 18, as amended, (92 Stat. 819; 7 U.S.C. 136))

Dated: April 25, 1980.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 80-13298 Filed 4-29-80; 8:45 am]

BILLING CODE 6560-01-M

[OPTS-51013B; FRL 1481-5]

Premanufacture Notice; Extension of Review Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On December 13, 1979, EPA received six premanufacture notices (PMN's) submitted under the Toxic Substances Control Act (TSCA). The Agency assigned them the identification numbers 5AHQ–1279–0079, 0080, 0081, 0082, 0083, and 0084. On March 25, 1980, EPA extended the review period for the six PMN's for 45 days, until April 26, 1980. The Agency now is extending the period for an additional 45 days, until June 10, 1980. EPA also is issuing a proposed order under section 5(e) of TSCA, to require the development of additional information and data on the substances and to impose a temporary ban on their production.

FOR FURTHER INFORMATION CONTACT: Paul Wilson, Premanufacturing Review Division (TS–794), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C., 20460. Telephone 202/426–3980.

SUPPLEMENTARY INFORMATION: Section 5(a)(1) of TSCA requires any person who intends to manufacture in or import into the United States a new chemical substance to submit a PMN to EPA at least 90 days before manufacture or import begins. A "new" chemical substance is one 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** 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.

Ordinarily EPA has 90 days to review PMN's. For good cause, the Agency may extend the review period for up to an additional 90 days.

On December 13, 1979, EPA received six premanufacture notices (PMN's), submitted under section 5 of TSCA. EPA assigned them the identification numbers 5AHQ–1279–0079, 0080, 0081, 0082, 0083, and 0084. These PMN's described six related chemical substances that will be manufactured for use as plasticizers in polyvinyl chloride (PVC) plastics. The manufacturer submitting the PMN's requested that its company name be kept confidential. On March 25, 1980, EPA gave notice in the **Federal Register** (45 FR 19306) that the Agency had found good cause under section 5(c) of TSCA to extend the notice review period, and EPA therefore extended the notice review period for 45 days, until April 26, 1980. The Agency cited two reasons behind its decision to extent the notice review period:

(1) EPA was concerned about potential risks associated with the new substances, and

(2) EPA needed more time to determine whether regulatory controls respecting the new substances were necessary.

As a result of information gained from its continuing consideration of the potential risks to health and the environment presented by these new substances, EPA has decided to take action under section 5(e) of TSCA with respect to the new chemicals. Section 5(e)(1)(B)(i) provides that the Agency may not issue a proposed order under section 5(e) later than 45 days before the end of the notice review period. Therefore with this notice EPA is extending the notice review period for PMN's 5AHQ–1279–0079, 0080, 0081, 0082, 0083, and 0084 for an additional 45 days in order to allow the Agency to issue a proposed order under section 5(e). The notice review period now will expire on June 10, 1980.

Dated: April 24, 1980.

Edwin H. Clark II,

Acting Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 80-13301 Filed 4-29-80; 8:45 am]

BILLING CODE 6560-01-M

[OPP-C31035; FRL 1481-2]

Receipt of Applications To Conditionally Register Pesticide Products Entailing Changed Use Patterns

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice publishes applications submitted by various companies to conditionally register pesticide products entailing changed use patterns.

DATE: Written comments by May 30, 1980.

ADDRESS: Written comments to: Designated Product Manager (PM), Registration Division (TS–767), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The following companies have submitted to EPA applications to conditionally register pesticide products entailing changed use patterns.

Notice of approval or denial of these applications to register pesticide products will be announced in the **Federal Register.** Except for such material protected by Section 10 of the Federal Insecticide, Fungicide, and

Rodenticide Act (FIFRA) as amended (92 Stat. 819; 7 U.S.C. 136), the test data and other scientific information deemed relevant to the registration decision may be made available after approval under provisions of the Freedom of Information Act. The procedure for requesting such data will be given in the Federal Register if an application is approved. Notice of receipt of these applications do not indicate a decision by the Agency on the applications.

Interested persons are invited to submit written comments on these applications. Comments may be submitted, and inquiries directed, to the designated product manager. The comments must be received on or before May 30, 1980, and should bear a notation indicating the document control number "[C31035]" and the applicable file symbol or registration number. Comments received within the specified time period will be considered before a final decision is made; comments received after the specified time period will be considered only to the extent possible without delaying processing of the application. The label furnished by the applicant, as well as all written comments filed in pursuant to this notice, will be available for public inspection in the product manager's office from 8:30 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

(40 CFR 162.5 and 162)

Dated: April 24, 1980.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

Applications Received

EPA Reg. No. 464–403. Dow Chemical Co, PO Box 1706, Midland, MI 48640. Dowicil 75. Active ingredient: 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride 67.7%. Application proposes that registration of the product be amended to include in its presently registered use the outdoor use to control bacterial growth in drilling muds, gypsum muds, packer fluids, and underground strata. Application proposes a general use classification. Mr. Arturo Castillo, PM–32, Rm. E–325, 202–426–9486.

EPA Reg. No. 3125–234. Mobay Chemical Corp., PO Box 4913, Kansas City, MO 64120. Mesurol 2% Bait. Active ingredient: 3,5-dimethyl-4-(methylthio)-phenol methylcarbamate 2.0%. Application proposes that registration of the product be amended to include in its presently registered use the use for aerial broadcast application of golf courses, cemeteries, industrial grounds, parkways, and roads. Application proposes general use classification. Mr. William Miller, PM–16, Rm. E–239, 202–426–9458.

EPA File Symbol 10445–EU. Calgon Corp., PO Box 1346, Pittsburgh, PA 15230. H–790 Liquid Microbiocide. Active ingredient: 1,2-dibromo-2,4-dicyanobutane 10%. Application proposes that the use pattern of this product be changed to include in its presently proposed use the outdoor use to control growth of bacteris, fungi, yeast, and algae in industrial cooling water systems. PM 32.

EPA File Symbol 10445 EL. Calgon Corp. Metasol K-Power Slimicide. Active ingredient: 1,2-Dibromo-2,4-dicyanobutane 98%. Application proposes that the use pattern of this product be changed to include in its presently proposed use the outdoor use to control growth of bacteria, fungi, and yeasts in pulp and paper mills. PM–32.

EPA File Symbol 10445–EA. Calgon Corp. Metasol K–79 Liquid Slimicide. Active ingredient: 1,2-Dibromo-2,4-dicyanobutane 10%. Application proposes that the use pattern of this product be changed to include in its presently proposed use the outdoor use to control growth of bacteria, fungi, yeasts, and algae in industrial cooling water systems. PM–32.

EPA File Symbol 10445–EG. Calgon Corp. H–790 Powder Microbiocide. Active ingredient: 1,2-Dibromo-2,4-dicyanobutane 98%. Application proposes that the use pattern of this product be changed to include in its presently proposed use the outdoor use to control growth of bacteria, fungi, yeasts, and algae in industrial cooling water systems. PM–32.

[FR Doc. 80-13304 Filed 4-29-80; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1481-4]

Science Advisory Board, Subcommittee on Energy-Related Health Effects Research; Open Meeting

Under Pub. L. 92–463, notice is hereby given that a two-day meeting of the Subcommittee on Energy-Related Health Effects Research will be held on May 21 and 22, 1980 in Conference Room 1137, North Building, Department of Health, Education, and Welfare, 330 Independence Avenue SW., Washington, D.C. The meeting will start at 9:00 a.m. on May 21, 1980. Conference Room 1137 is located on the main floor.

The purpose of the meeting will be to review and comment on Agency plans for redirecting certain portions of the Energy-Related Health Effects Research Program. The goal is to make the research program more responsive to needs and objectives of several of EPA's regulatory programs (Toxic Substances, Drinking Water, Solid Waste, Air). The portion of the Energy-Related Health Effects Research Program to be reviewed is referred to as Theme 2, Development and Validation of Bioassay Screens and Predictor Test Protocols for Energy-Related Waste Streams and Agents. Further meetings of the Subcommittee will be scheduled as appropriate.

The meeting will be open to the public. Any member of the public wishing to attend or submit a paper, or wishing further information should contact the Secretariat, Science Advisory Board (A–101), U.S. Environmental Protection Agency, Washington, D.C. 20460 by c.o.b. May 16, 1980. Please ask for Mr. Kenneth Goggin. The telephone number is (202) 472–9444.

Richard M. Dowd,

Staff Director, Science Advisory Board.

April 23, 1980.

[FR Doc. 80-13302 Filed 4-29-80; 8:45 am]

BILLING CODE 6560-01-M

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 80–88]

American Communication Systems, Inc.; Erratum

Released: March 12, 1980 (See 45 FR 16334).

In the matter of American Communication Systems, Inc., 3019 East Point Street, Atlanta, Georgia 30334, Domestic Public Land Mobile Radio Service Station KIG300.

On March 4, 1980, the Commission released an "Order to Show Cause," FCC Mimeo 15728, in the above-docketed proceeding. Paragraph 6 should be amended to read as follows:

6. It is further ordered, That the designated Administrative Law Judge is directed to certify the record in this show cause proceeding to the Commission for final decision without the issuance of an initial decision. For purposes of assisting the Commission in preparing the final decision, a staff member (Michael A. Ferrante) will be separated from the Staff of the Common Carrier Bureau and is hereby designated a decision-making person in this proceeding.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 80-13156 Filed 4-29-80; 8:45 am]

BILLING CODE 6712-01-M

[BC Docket Nos. 80–154, File Nos. BPH-10551; BC Docket No. 80–155, File No. BPH-10670; BC Docket No. 80–156, File No. BPH-10750]

Hosea Wilson, et al.; Hearing Designation Order for Construction Permit of a New FM Station

Adopted: April 1, 1980.
Released: April 22, 1980.

In re Applications of HOSEA

WILSON Delano, California Req: 105.3 MHz, Channel 287 50 kW (H&V), 500 feet; McGAVREN COMMUNICATIONS, INC. Delano, California Req. 105.3 MHz, Channel 287 50 kW (H&V), 243 feet; and KWSO, INC. Delano, California Req: 105.3 MHz, Channel 287 31 kW (H&V), 620 feet, For construiction permit for a new FM station.

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has under consideration the above-captioned mutually exclusive applications of Hosea Wilson (Wilson), McGarvren Communications, Inc. (McGarvren) and KWSO, Inc. (KWSO).

2. *Wilson.* Analysis of the financial data submitted by Wilson reveals that $66,470 will be required to construct the proposed station and operate for three months, itemized as follows:

Equipment down payment	$9,680
Equipment payments with interest	29,040
Building	7,000
Legal costs	10.000
Installation	1,000
Miscellaneous	1,000
3 months operating costs	8,750
Total	66,470

Wilson plans to finance construction of operation with existing capital of $42,271. However, Wilson has not established the availability of other sources to meet costs of construction and operation of $66,740. In addition, Wilson has relied upon deferred equipment credit by Rockwell International. Notwithstanding Wilson's claim that Rockwell has extended credit to him, the deferred credit letter was issued to Zay Production, Inc., not Wilson. Therefore, Wilson must show Rockwell's consent to assignment of the credit terms to Wilson. A limited financial issue will therefore be specified.

3. Wilson has failed to comply with the requirements of the *Primer on Ascertainment of Community Problems by Broadcast Applicants,* 27 FCC 2d 650, 21 RR 2d 1507 (1971). From the information before us, it appears tha the applicant has failed to survey leaders of significant population groups set forth in its demographic study as required by Questions and Answers 10, 13(a) and 16 of the *Primer.* For example, Wilson has omitted blacks and other minorities, youth, labor, military, and students. In addition, Question and Answer 6 of the *Primer* requires an applicant to ascertain the problems of major communities which are outside the city of license and which the applicant undertakes to serve. Question and Answer 7 provides that ascertainment in such communities may consist of consultations with leaders who can be expected to have a broad overview of community problems. In the alternative, if an applicant chooses not to serve such a community, it must explain why. Wilson's application indicates that Bakersfield (population 75,500); Wasco (8,600); Shafter (5,700); and Porterville (12,602) are within the proposed 1.0 mV/m contour. Considering the size of the proposed city of license (15,500 in 1975), Bakersfield, Wasco, Shafter and Portersville are major communities as contemplated by Questions and Anwers 6 and 7. the applicant neither interviewed appropriate leaders in these communities nor explained why it does not intend to serve them. A limited ascertainment issue will be specified.

4. Wilson's application indicates that he will require six employees. There is not indication how many will be fulltime and how many parttime. The Commission requires that if there will be five or more fulltime station employees, the applicant must complete and file Section VI of FCC Form 301 and supply a statement detailing the applicant's hiring and promotion policies even though there may be only a few members of minority races residing within the proposed service area. Wilson has submitted no such EEO program. Accordingly an issue will be specified.

5. *McGavren.* Applicants for new broadcast stations are required by Section 73.3580(f) of the Commission's Rules to give local notice of the filing of their applications. They must then file with the Commission the statement described in Section 73.3580(h) of the Rules. We have no evidence that McGavren published the required notice. To remedy this deficiency, McGavren will be required to publish local notice of its application, if it has not already doen so, and to file a statement of publication with the presiding Administrative Law Judge.

6. McGavren's application indicates that he will employ less than ten employees, but there is no indication how many will be fulltime and how many parttime. McGavren has also failed to file an EEO program. Accordingly, an issue will be specified.

7. Data submitted by the applicants indicate that there would be significant difference in the size of the areas and population which would receive service from the proposals. Consequently, for the purpose of comparison, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to any of the applicants.

8. Except as indicated by the issues specified below, the applicants are qualfied to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

9. Accordingly, it is ordered, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine with respect to Hosea Wilson:

(a) Whether deferred credit by the equipment supplies will be available to Wilson;

(b) The source and availability of funds over and above the $42,271 indicated; and

(c) Whether, in light of the evidence adduced pursuant to (a) and (b) above, the applicant is financially qualified.

2. To determine with respect to Wilson's ascertainment effort:

(a) Whether the applicant interviewed leaders of blacks and other minorities, youth, labor, military, and students.

(b) Whether the applicant adequately ascertained community problems outside of its proposed community of license.

3. To determine whether Wilson has complied with the requirements of Section VI of FCC Form 301.

4. To determine whether McGavren Communications, Inc. has complied with the requirements of Section VI of FCC Form 301.

5. To determine which of the proposals would, on a comparative basis, best serve the public interest.

6. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which of the applicants should be granted.

10. It is further ordered, That McGavren Communications, Inc. shall file a statement with the presiding Administrative Law Judge showing compliance with the public notice requirements of Section 73.3580(f) of the Commission's Rules.

1. It is further ordered, That, to avail themselves of the opporutnity to be heard, the applicants herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by

attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

12. It is further ordered, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing (either individually or, if feasible and consistent with the Rules, jointly) within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

Federal Communications Commission.

Jerold L. Jacobs,

Chief, Broadcast Facilities Division.

[FR Doc. 80-13158 Filed 4-29-80; 8:45 am]

BILLING CODE 6712-01-M

Performance Review Board; Appointment of New Members

As required by the Civil Service Reform Act of 1978 (Public Law 95-454), Chairman Charles D. Ferris has appointed, effective April 23, 1980, the following members to the Performance Review Board, Federal Communications Commission, for the terms indicated:

R. D. Lichtwardt, Executive Director—Chairman.
Philip L. Verveer, Chief, Common Carrier Bureau—Member, 2 year term.
Richard J. Shiben, Chief, Broadcast Bureau—Member, 2 year term.
Elliot E. Maxwell, Deputy Chief Scientist (Policy) Office of Science & Technology—Member, 1 year term.
Vacant—Member, 1 year term.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 80-13154 Filed 4-29-80; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1225]

Petitions for Reconsideration of Actions in Rulemaking Proceedings Filed

April 21, 1980.

Docket or RM No.	Rule No.	Subject	Date received
RM-3258	73.202(b)	Request amendment FM Table of Assignments to substitute Ch. 271 for 270 at Ponce, Puerto Rico; assign Ch. 269A to Las Piedras, Puerto Rico. Filed by: Jose David Soler	Apr. 7, 1980.
RM-3402	Part 73	Request to adopt a rule requiring all commercial television outlets to maintain and/or control access to their own satellite ground stations. Filed by: Scott H. Robb, Attorney for National Producers' Corporation.	Apr. 14, 1980.

NOTE.—Oppositions to petitions for reconsideration must be filed within 15 days after publication of this Public Notice in the FEDERAL REGISTER. Replies to an opposition must be filed within 10 days after time for filing oppositions has expired.

Federal Communications Commission,

William J. Tricarico,

Secretary.

[FR Doc. 80-13155 Filed 4-29-80; 8:45 am]

BILLING CODE 6712-01-M

Radio Technical Commission for Marine Services; Meetings

In accordance with Pub. L. 92-463, "Federal Advisory Committee Act," the schedule of future Radio Technical Commission for Marine Services (RTCM) meetings is as follows:

Executive Committee Meeting
Notice of May Meeting
Thursday, May 15, 1980—9:30 a.m.
Conference Room 8334
Nassif (DOT) Building
400 Seventh Street, S.W. at D Street
Washington, D.C.

Agenda

1. Administrative Matters.
2. Approval of Terms of Reference for proposed special committees.

The RTCM has acted as a coordinator for maritime telecommunications since its establishment in 1947. All RTCM meetings are open to the public. Written statements are preferred, but by previous arrangement, oral presentations will be permitted within time and space limitations.

Those desiring additional information concerning the above meeting(s) may contact either the designated chairman or the RTCM Secretariat (phone: (202) 632-6490).

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 80-13157 Filed 4-29-80; 8:45 am]

BILLING CODE 6712-01-M

[BC Dockets Nos. 80-148, 80-149; Files Nos. BPH-11184, BPH-790117AG]

Canyon Broadcasting Co. & Tillis Broadcasting Inc.; Hearing Designation Order

Adopted: April 1, 1980.

Released: April 22, 1980.

In re applications of Canyon Broadcasting Company, Canyon, Texas, Req: 107.1 MHz, Channel No. 296 3 kW (H&V), 295 feet (H&V), BC Docket No. 80-148, File No. BPH-11184; Tillis Broadcasting Inc., Canyon, Texas, Req: 107.1 MHz, Channel No. 296 3 kW (H&V) 300 feet (H&V), BC Docket No. 80-149, File No. BPH-790117AG; for construction permit for a new FM station.

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has under consideration the above-captioned mutually exclusive applications.

2. Canyon Broadcasting Company (Canyon). Analysis of the financial data submitted by Canyon reveals that $96,304 will be required to construct the proposed station and operate for three months, itemized as follows:

Total cost of equipment	$44,354
Land	36,750
Building	4,500
Miscellaneous	4,700
Operating Costs	6,000
Total	96,304

Since Canyon has only budgeted $1,200 for legal costs, additional costs will be incurred. Canyon plans to finance construction and operate with the following funds: (i) Projected profits of Canyon's station KHBJ, based on 1977 profits of $48,556 and (ii) a $299,000 bank loan from First National Bank of Canyon, 90% guaranteed by the Small Business Administration, of which $115,392 would be available to Canyon for construction and operating costs. Records on file with the Commission reflect that KHBJ had losses in 1978 which more than equalled the station's 1977 profits. Thus, Canyon cannot rely on any estimated profits of KHBJ. The $299,000 loan from First National Bank of Canyon is not documented by a letter from the bank as required by Section III, paragraph 4(e) of FCC Form 301. The SBA Authorization and Loan Agreement has expired and, furthermore, there is no evidence of Canyon's commitment to satisfy any of the many conditions required by SBA in the loan agreement. Furthermore, the balance sheet provided is not dated within 90 days of the filing of Canyon's application as required by paragraph 2(a) of Section III, FCC Form 301. Accordingly, we cannot determine the net current and liquid assets available to the applicant. Canyon has shown no available funds to meet the requirement of $96,304. Therefore, a general financial issue will be specified.

3. Canyon has failed to comply with the requirements of the *Primer on Ascertainment of Community Problems by Broadcast Applicants*, 27 FCC 2d 650, 21 RR 2d 1507 (1971). From the information before us, it appears that the applicant has failed to provide a racial/minority breakdown and

governmental activities of the community as required by Question and Answer 9 of the Primer. West Texas State University at Canyon has an enrollment of almost 7000 students, and the application shows that the Canyon Independent School District has a total enrollment of 3385. Yet, Canyon has failed to survey leaders of students, a significant population group as set forth in its demographic study, as required by Question and Answer 13(a) of the *Primer*. The applicant conducted its ascertainment in connection with another application filed June 24, 1977. Thus, it appears Canyon has not complied with the requirements of Question and Answer 15 of the *Primer*. Moreover, Canyon has failed to present any evidence to document that a general public survey was conducted, as required by Question and Answer 4 of the *Primer*. Canyon has also omitted the anticipated time segment of its programs to meet needs and interests and specific community problems which are to be treated by its proposals, as required by the *Primer's* Question and Answer 29. Finally, the applicant's ascertainment relies entirely on a prior ascertainment filing for a station in the same community, without any showing that the contour of the existing station encompasses the contour of this proposal, as required by Question and Answer 2 of the *Primer*. Accordingly, a general ascertainment issue will be specified.

4. *Tillis Broadcasting Inc. (Tillis).* Tillis has failed to comply with the requirements of the *Primer on Ascertainment of Community Problems by Broadcast Applicants*, 27 FCC 2d 650, 21 RR 2d 1507 (1971). Question and Answer 6 of the *Primer* requires an applicant to ascertain the problems of major communities which are outside the city of license and which the applicant undertakes to serve. Question and Answer 7 provides that ascertainment in such communities may consist of consultations with leaders who can be expected to have a broad overview of community problems. In the alternative, if an applicant chooses not to serve such a community, it must explain why. Tillis' application indicates that Amarillo, Texas (population, 127,000) is within the proposed 1 mV/m contour. Considering the size of the proposed city of license (8,333 in 1970), Amarillo is a major community as contemplated by Questions and Answers 6 and 7. The applicant has neither interviewed appropriate leaders in Amarillo nor explained why it does not intend to serve the community. Morever, Canyon has failed to state the anticipated time segment of proposed programming designed to meet community problems. Accordingly, limited ascertainment issues will be specified.

5. Data submitted by the applicants indicate that there would be a significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, for the purpose of comparison, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to either of the applicants.

6. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

7. Accordingly, it is ordered, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsquent order, upon the following issues:

1. To determine whether Canyon is financially qualified to construct and operate the proposed station.

2. To determine the effort made by Canyon to ascertain the community needs and problems of the area to be served and the means by which the applicant proposes to meet those needs and problems.

3. To determine with respect to the efforts of Tillis to ascertain the needs of its proposed area:

(a) Whether the applicant has complied with Questions and Answers 6 and 7 of the *Primer* with respect to the community of Amarillo, Texas.

(b) The anticipated time segment of the programming proposed to meet community problems.

4. To determine which of the proposals would, on a comparative basis, better serve the public interest.

5. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which, if either, of the applications should be granted.

8. It is further ordered, That, to avail themselves of the opportunity to be heard, the applicant herein shall, pursuant to§ 1.221(c) of the Commission's rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

9. It is further ordered, that the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's rules, give notice of the hearing (either individually or if feasible and consistent with the rules, jointly) within the time and in the manner prescribed in such rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the rules.

Federal Communications Commission.

Jerold L. Jacobs,

Chief, Broadcast Facilities Division.

[FR Doc. 80-13219 Filed 4-29-80; 8:45 am]

BILLING CODE 6712-01-M

[Dockets Nos. PR 80-161—PR 80-164]

Elmer C. Robinson; Order To Show Cause, Suspension Order and Designation Order

Adopted: April 17, 1980.

Released: April 25, 1980.

In the matters of revocation of license of Elmer C. Robinson, 800 W. Highlander Avenue, La Habra, California 90631, Licensee of Radio Station KAGL-2933 in the Citizens Band Radio Service, Docket No. PR 80-161; Revocation of License of Elmer C. Robinson, 800 W. Highlander Avenue, La Habra, California 90631, Licensee of Radio Station KA6DJJ in the Amateur Radio Service, Docket No. PR 80-162; Suspension of License of Elmer C. Robinson, 800 W. Highlander Avenue, La Habra, California 90631, Amateur Novice Class Operator Licensee, Docket No. PR 80-163; and Application of Elmer C. Robinson, 800 W. Highlander Avenue, La Habra, California 90631, Docket No. PR 80-164, for Technician Class Amateur Radio Operator License.

The Chief, Private Radio Bureau, has under consideration the license of Elmer C. Robinson for Citizens Band (CB) radio station KAGL-2933. Robinson's CB license was granted December 14, 1976, for a five year term. Also under consideration are Robinson's Amateur Radio Service station license and Amateur Novice Class operator's license which are scheduled to expire on October 10, 1983. Also under consideration is Robinson's application for a Technician Class Operator license, filed on August 28, 1979.

1. Information before the Commission indicates that on March 24, 1979, Robinson operated radio transmitting equipment on the frequency 26.945 MHz. That frequency was assigned for use by United States Government stations. Robinson did not possess a license authorizing the use of that frequency.

Thus, the operation was apparently in violation of Section 301 of the Communications Act of 1934, as amended.

2. If the apparent operation of March 24, 1979, was under color of authority of Robinson's CB station license KAGL–2933, the operation was in violation of the following CB Rules: 17(a) (unauthorized frequency); 19(a) (non-type accepted transmitter); 23(a)(9) (communications with a station located more than 250 kilometers (155.3 miles) away); and 30(a) (identifying by the designation "LF4" in lieu of authorized station call sign).[1] [2]

3. If the apparent operation of March 24, 1979, was under the color of authority of Robinson's Amateur station license KA6DJJ, the operation was in violation of the following Amateur Rules: 97.61(a) (unauthorized frequency); 97.7(e) (radio telephony by Novice Class operator); 97.84(a) and 97.123 (improper identification of station).

4. The conduct described above, therefore, calls into question Robinson's qualifications to retain his Amateur and CB radio station licenses. This conduct also warrants suspension of his Amateur operator license.

5. Section 312(a)(4) of the Communications Act of 1934, as amended, provides that radio station licenses may be revoked for wilful or repeated violation of Commission Rules or the Communications Act. Section 309(e) of the Communications Act requires the Commission to designate an application for hearing where it cannot find that grant of the application would serve the public interest, convenience and necessity.

Accordingly, it is ordered, that Robinson show cause why the licenses for the captioned radio station should not be revoked.

7. It is further ordered, that if Robinson wants a hearing on the revocation and/or application matter, he must file a written request for a hearing within thirty (30) days.[3] [4] If a hearing is requested, the time, place and Presiding Judge will be specified by subsequent order.

8. It is further ordered, that if Robinson waives his right to a hearing, this proceeding will be certified to the Commission for administrative disposition pursuant to § 1.92(c) of the rules.

9. It is further ordered, that if Robinson waives his right to a hearing on the application matter, his application for a Technician Class Operator license will be dismissed with prejudice, pursuant to §§ 1.221(c) and 1.961(b) of the rules.

10. It is further ordered, that the matters in this proceeding will be resolved upon the following issues:

(a) To determine with respect to Robinson's transmissions of March 24, 1979,

(1) Whether such transmissions were in wilful violation of Section 301 of the Communications Act of 1934, as amended; or

(2) Whether such transmissions were in wilful violation of Sections 17(a); 19(a); 23(a)(9); and/or 30(a) of the CB Rules; or

(3) Whether such transmissions were in wilful violation of §§ 97.61(a); 97.7(e); 97.84(a) and/or 97.123 of the Amateur rules.

(b) To determine whether Elmer C. Robinson has the requisite qualifications to remain a Commission licensee.

(c) To determine in light of the evidence adduced above, whether a grant of the pending Amateur application would serve the public interest, convenience and necessity.

(d) To determine whether the license for CB radio station KAGL–2933 and Amateur radio station KADJJ should be revoked.

11. Section 303(M)(1)(A) of the Communications Act of 1934, as amended, gives the Commission authority to suspend the operator license of any licensee who has violated any provision of the Communications Act or the Commission's Rules. Therefore, it is further ordered, under authority contained in Section 303(M)(1)(A) of the Communications Act and § 0.331 of the Commission's rules, that the Novice Class Amateur operator license of Elmer C. Robinson is suspended for the remainder of the license term.

12. It is further ordered, That if Robinson seeks a hearing on the suspension matter, he must request it within thirty (30) days. If a hearing is requested, his suspension will be held in abeyance until a decision is reached by an Administrative Law Judge as to whether this suspension order should be affirmed, modified or dismissed. The time, place and Presiding Judge will be specified by subsequent order.[5]

13. It is further ordered, That if Robinson waives hearing and submits a statement, the matter will be certified to the Commission for administrative disposition and the suspension will be held in abeyance until a decision is reached based upon the statement by Robinson and the facts of the case.[6]

14. It is further ordered, pursuant to § 1.227 of the Commission's rules, that the proceedings on the above stated issues regarding the order to show cause and the Designation and Supension are consolidated for hearing.

15. It is further ordered, that a copy of this order shall be sent by Certified Mail—Return Receipt Requested and by Regular Mail to the licensee at his address of record (shown in the caption).

Chief, Private Radio Bureau.

Raymond A. Kowalski,

Acting Chief, Compliance Division.

[FR Doc. 80–13220 Filed 4–28–80; 8:45 am]

BILLING CODE 6712–01–M

[1] The CB Rules are in § 95.401 of the Commission's Rules.

[2] The March 24, 1979, operation was the subject of Official Notices of Violation mailed to Robinson on April 25, 1979.

[3] The enclosed form should be used to either request or waive hearing. It should be returned to the Federal Communications Commission, Washington, D.C. 20554.

[4] Any contrary provisions of § 1.221(c) of the rules are waived.

[5] Any contrary provisions of § 1.85 of the rules are waived.

[6] If Robinson waives hearing and does not submit a statement on the suspension matter, he must submit his license to the Commission within 30 days to be retained during the suspension period.

[BC Dockets Nos. 80–133, 80–134; Files Nos. BPH–10,739, BPH–11,013]

Live Broadcasting Co., Inc. and Broadcast Management of Albany, Ltd.; Hearing Designation Order

Adopted: March 27, 1980.

Released: April 9, 1980.

In re applications of Live Broadcasting Company, Inc., Ballston Spa, New York, Req: 96.7 MHz, Channel 244, 3 kW (H & V), 24 feet (HAAT), BC Docket No. 80–133, File No BPH–10,739; Broadcast Management of Albany, Ltd., Clifton Park, New York, Req: 96.7 MHz, Channel 244, 3 kW (H & V), 300 feet (HAAT), BC Docket No. 80–134, File No BPH–11,013; for construction permit.

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authorty, has under consideration the above-captioned mutually exclusive applications filed by Live Broadcasting Company, Inc. (Live) and Broadcast Management of Albany, Ltd. (BMA).

2. Analysis of the financial data submitted by Live reveals that $41,726 will be required to construct the proposed station and operate it for three months, itemized as follows:

Equipment down payment	$15,931
Equipment payments with interest (3 mos.)	3,943
Building	6,500
Legal costs	1,000
Other miscellaneous	5,500
Interest on bank loan (5 mos.)	1,042

Operating costs (3 mos.)	8,810
Total	41,726

To meet these requirements, Live indicates its intention to rely upon a $25,000 bank loan and $5,000 existing capital. However, the balance sheet evidencing the latter amount was more than 90 days old on the application tender date, and thus fails to meet the requirement set forth in Paragraph 2(a), Section III of the application form. The $5,000 therefore has not been shown available. In addition to the two sources already mentioned, the applicant indicates that $25,000, is on deposit in three financial institutions; but its balance sheet reflects no such deposits. Finally, the $1,000 Live has budgeted to cover its legal costs in this comparative proceeding appears clearly insufficient. In view of the foregoing, a limited financial issue will be specified.

3. Live and BMA have both failed to comply with the requirements of the *Primer on Ascertainment of Community Problems by Broadcast Applicant*, 27 FCC 2d 650 (1971). Live's compositional study fails to list public service organizations present in the community and draws only on county-wide Census information for a population breakdown by race, age and sex. Further, from the information before us, it appears that both applicants have failed to survey leaders of significant population groups set forth in their compositional studies. For example, Live apparently did not interview leaders from the following groups: Minorities, labor, agriculture, business, charities, consumer services, cultural, military, elderly, women, professionals, and religion. BMA apparently failed to interview community leaders from these groups: Public safety; health and welfare; labor; charities; civic; consumer services; cultural; and women. BMA's omissions are of special concern since that applicant conducted only 23 community leader interviews, while proposing to serve a community with a population of over 20,000 people. Also, neither applicant has set forth those communities besides its community of license which it intends to serve, and neither has provided enough information for us to determine whether it interviewed appropriate leaders from significant comunities in such outlying areas. In view of these deficiencies, general ascertainment issues will be specified with respect to both Live and BMA.

4. Live failed to answer Question 29 in Section IV–A of its application. Also, Sections V–B and V–G of its application do not bear the certifying signatures of the persons who prepared them. Live's equal employment opportunity plan is deficient in that it contains no workforce availability statistis, without which it is unlikely that realistic hiring goals can be set. Also, Live has not designated a particular station official responsible for administering and implementing its plan. Finally, while Live published local notice of its application, that notice did not include the names of all the principals required to be listed by § 73.3580 of the Commission's rules. BMA, on the other hand, has furnished no evidence that it published local notice at all. These deficiencies should be corrected by appropriate amendments from both Live and BMA.

5. Finally, the two proposals, although for different communities, would serve substaintial areas in common. Consequently, in addition to determining pursuant to Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would better provide a fair, efficient and equitable distribution of radio service, a contingent comparative issue will be specified.

6. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding.

7. Accordingly, it is ordered, that pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine with respect to Live Broadcasting Company, Inc.:

a. Whether the applicant has accurately estimated its legal costs incident to a comparative hearing.

b. The source and availability of additional funds over and aove the $25,000 indicated.

c. Whether, in light of the evidence adduced pursuant to (a) and (b) above, the applicant is financially qualified.

2. To determine the efforts made by Live Broadcasting Company, Inc. to ascertain the community needs and problems of the area to be served and the means by which the applicant proposes to meet those needs and problems.

3. To determine the efforts made by Broadcast Management of Albany, Ltd. to ascertain the community needs and problems of the area to be served and the means by which the applicant proposes to met those needs and problems.

4. To determine, in light of Section 307(b) of the Communicaitons Act of 1934, as amended, which of the proposals would better provide a fair, efficient and equitable distribution of radio service.

5. To determine, in the event it is concluded that a choice between the applications should not be based solely on considerations relating to Section 305(b), which of the proposals would, on a comparative basis, better serve the public interest.

To determine, in the light of the evidence adduced pursuant to the foregoing issues, which if either of the applications should be granted.

8. It is further ordered, That Live Broadcasting Company, Inc. and Broadcast Management of Albany, Ltd. shall file amendments to their respective applications as set forth in Paragraph 4 of this Order within 60 days of its release.

9. It is further ordered, that, to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to § 1.221(c) of the Commission's rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

10. It is further ordered, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's rules, give notice of the hearing within the time and in the manner prescribed in such rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the rules.

Federal Communications Commission.

Jerold L. Jacobs,

Chief, Broadcast Facilities Division.

[FR Doc. 80–13192 Filed 4–29–80; 8:45 am].

BILLING CODE 6712–01–M

Domestic Public Land Mobile Radio Service Procedures for Processing Construction Permit Applications for Base Stations in Areas of Irregular Terrain

Rules § 22.504 of the FCC Rules and Regulations governs the method of computation of propagation from base stations in the Domestic Public Land Mobile Radio Service (DPLMRS). Section 22.504(b) of the rules includes charts for determining signal propagation identical to those found in an FCC document generally referred to as the Carey Report. Unfortunately, both

the Carey Report, and § 22.504, only are useful for making theoretical propagation computations under "average terrain conditions." As a result, problems have arisen as to what method should be used to compute propagation where irregular terrain exists. When irregular terrain is shown to affect an applicant's service contour, an adjustment to the station's power and/or antenna height is usually warranted in order to make the reliable service contour cover approximately the same area that would be served under normal terrain conditions.

In a Memorandum Opinion and Order (MO&O), Docket No. 15694, adopted August 9, 1967, 32 FR 12040 (August 22, 1967), the Commission recognized that there are situations which may call for "propagation determinations at variance with the Carey Report." The MO&O stated:

> * * * we expect such requests to be supported by extensive quantitative engineering field strength measurement data gathered over a significant geographic area and covering a substantial time period within each of the four seasons of the year. We wish to stress that requests for waivers of our rules should be submitted only in the most exceptional circumstances.

In a Public Notice, May 30, 1979, Mimeo 17973, a meeting was announced by the Commission staff to discuss with members of the public alternative methods of propagation computation where irregular terrain exists. The meeting took place on June 26, 1979. We still continue, however, to struggle with the question of what alternative computational procedures afford substantial improvement over the Carey method presently set forth in our rules. The answer seems to be that any alternative procedure has some significant shortcoming.

Because more complications than solutions have developed since the June 26, 1979 meeting, the Mobile Services Division has decided to strictly follow the procedures contemplated by the Commission's rules. Applications for construction permits for new stations, additional sites for existing call signs, or modifications of existing stations, must include data and computations in accordance with our rules, regardless of terrain. We briefly describe below how we intend to respond to claims that irregular terrain affects prediction of service contours.

Because of irregular terrain, an applicant may not be able to provide service in areas that it otherwise would be entitled to serve. Even where such a claim is made, however, we still intend only to grant the application consistent with our rules and not initially make any adjustment to station power or antenna height. At the processing stage, we simply have no reliable method for determining whether irregular terrain will actually shrink the station's reliable service contour. However, after the station goes on the air, the staff will expedite a request to modify the license where the license provides:

(1) An engineering showing in accordance with the 1967 Commission MO&O that demonstrates that the applicant's reliable service contour does not extend as far as it should because of irregular terrain, and

(2) All other financial, legal and technical requirements are satisfied.

Irregular terrain may also cause a signal to extend beyond the area that an applicant is entitled to serve. We have situations, therefore, where a party objects to the grant of an application for construction permit based on the claim that actual propagation over irregular claim will extend further than permitted under the rules and cause harmful co-channel interference to its station. As in the previous situation, we are again almost always speculating as to what will actually occur once a station is on the air. Therefore, in a case where a party raises a substantial question of propagation characteristics that appear to be inconsistent with Carey predictions and show a likelihood of causing co-channel interference, the staff will still grant the application, but subject to several conditions. These conditions will require the permittee and objecting party to cooperate during a testing period (see § 22.212) for the purpose of assessing whether any harmful interference will actually occur.

If interference is shown to exist, testing will be ordered terminated and the construction permit application will be designated for hearing (unless, of course, the applicant informs the Commission of its desire to amend the application to eliminate the interference). If no interference is shown to exist during this test period, the Commission will grant the application. Should interference subsequently develop, and be substantiated consistent with the above procedures, we would expect the Licensee to voluntarily take action, subject to our approval, to eliminate the interference. This would be more preferable than for the Commission to initiate a formal proceeding.

For further information please contact John V. Buscemi, telephone (202) 632-6450.

Sheldon M. Guttmann,

Chief, Mobile Services Division, Common Carrier Bureau.

[FR Doc. 80-13278 Filed 4-29-80; 8:45 am]

BILLING CODE 6712-01-M

Mobile Services Division Will Return Public Mobile Radio Service Applications Found to be Defective

Section 22.20 of the FCC rules and regulations authorizes the return of applications which are found to be unacceptable for filing because they are defective.

When examination of an application reveals that it is blatantly defective, we will not hold the application in pending status nor will we send a deficiency letter requesting further information, as we have ofter done in the past. We will return the application as unacceptable for filing. For example, when an application for the assignment of an additional channel does not contain a traffic load study, as required by § 22.516 of the rules, the application will be returned as unacceptable for filing. *See RAM Broadcasting of Indiana, Inc.*, 76 FCC 2d, Mimeo 30573, released March 26, 1980. Whenever an application fails to provide the radials in the direction of each co-channel station within seventy-five miles (and does not explicitly state that there are no such radials), as required by FCC Form 401, Item 26, we will return the application as defective. *See RAM, supra.* Applications that are filed without the required engineering data demonstrating interference-free operations with existing stations will also be returned as defective. These are examples of only some of the defects which may result in the return of an application and not a comprehensive list of such defects. While evaluating an application does required some subjective judgment, there are some applications that either omit very significant information or provide it in practically useless form. In our view, the staff does not have the obligation to nurse these applications back to good health. We recommend that all applications on file be reviewed to make sure they are complete and free of any defects. We intend to begin enforcing this policy strictly, as contemplated by our rules and emphasized on the front of our "accepted for filing" public notices. Effective June 30, 1980, applications that are found upon examination to be blatantly defective will be returned immediately.

On another matter, but one that also has an effect on our backlog, we will in the future take a more restrictive approach towards granting special temporary authority (STA). STA's for new stations will be granted only under the most extraordinary and compelling circumstances. No request for an STA for a new facility should be submitted unless it is accompanied by such a showing. Licensees that seek STA's for their existing facilities must affirmatively demonstrate extraordinary and compelling circumstances requiring the grant of the STA. Priority will be given to STA requests where it is demonstrated that the facility for which the STA is requested is presently off the air or is about to be forced to go off the air.

For further information please contact James H. Bennett, telephone (202) 254-6810.

Sheldon M. Guttmann,

Chief, Mobile Services Division, Common Carrier Bureau.

[FR Doc. 80-13217 Filed 4-29-80; 8:45 am]

BILLING CODE 6712-01-M

[BC Docket No. 80-58; File No. BPH-10,754; BC Docket No. 80-59; File No. BPH-11,006]

Mary Bayer, et al.; Designating Applications for Consolidated Hearing on Stated Issues; Hearing Designation Order

Adopted: February 27, 1980.

Released: March 12, 1980.

In re Applications of Mary Bayer, Chet Bayer, G. Robert Besset, William G. Cody, Gina Guy, Cynthis Hytrek, Curt E. Kaiser, Jr., William Kallal, Jean Anne Kingrey, Philip Margulies, Donald R. Morris, Jerry Palen, Thomas Ruckman, Keith Spencer, Jesse M. Taggert, Robert Zimmer, and Timothy C. Day d.b.a. WYOMEDIA Cody, Wyoming (Req: 97.9 MHz, Channel 250 100 kW (H&V), 1900 feet). Shoshone Communications Commission, Cody, Wyoming, Req: 97.9 MHz, Channel 250 100 kW (H&V), 1830 feet, for Construction Permit for a New FM Station.

1. The Commission, by its Chief, Broadcast Bureau, acting pursuant to delegated authority, has under consideration: (a) the above-captioned mutually exclusive applications of Wyomedia, and Shoshone Communications Corporation (Shoshone); (b) a petition to specify issues filed by Shoshone; [1] (c) petitions for leave to amend submitted by Wyomedia; and (d) responsive pleadings thereto.

[1] Issues noted by Shoshone that have been cured by subsequent amendments are not discussed herein.

2. *Wyomedia.* Shoshone alleges that Wyomedia was inept in failing to respond to the staff's deficiency letter in a timely manner. The deficiency letter of October 28, 1978 stated that a response "should" be filed within 30 days, but that amendments could be filed as a matter of right until December 27, 1978. Wyomedia filed after the 30-day period had expired. Wyomedia is correct that the language in the staff letter merely encouraged responses within 30 days, and that it was within its rights in filing its amendment on December 27, 1978. Therefore, no ineptness issue lies.

3. Analysis of the financial data submitted by Wyomedia reveals that $78,516 will be required to construct the proposed station and operate for three months, itemized as follows:

Equipment down payment	$25,415
Equipment payments with interest	6,351
Miscellaneous	24,000
3 months operating costs	22,750
Total	78,516

Wyomedia plans to construct and operate with the following funds: $7,500 existing capital, $42,500 new capital, and $150,000 of a $370,000 bank loan, 90 percent guaranteed by the Small Business Administration. However, Wyomedia has not shown that its principals will be able to inject the free cash into its enterprise required by SBA to receive an SBA guarantee. Further, the SBA guarantee expired on August 24, 1979. Consequently, the bank loan has not been shown to be available. Additionally, it is not clear whether Wyomedia can rely on deferred credit from its equipment supplier, because the SBA loan would require a first security interest in the equipment and machinery acquired with the loan proceeds, whereas equipment suppliers normally retain a first lien on the equipment covered by a deferred payment contract. For the above reasons, a limited financial issue is required.

4. It appears that Wyomedia's ascertainment of the community needs of Cody is in substantial compliance with the *Primer on Ascertainment of Community Problems by Broadcast Applicants*, 27 FCC 2d 650, 21 RR 2d 1507 (1971). Although Wyomedia did not interview leaders of industry, Wyomedia has in every other respect complied with the *Primer:* a detailed compositional study, interviews with almost all of the significant groups in Cody, a random general public survey, and programming which addresses the perceived community needs of Cody. We agree with Wyomedia that the city's Indian population, 20 persons, does not constitute a significant minority group. Also, the departure of a principal from an applicant (in this case, Robert Williams) does not invalidate the community leader interviews he made prior to his departure. See *Western Television Co.*, 50 FCC 2d 453, 32 RR 2d 350 (Rev. Bd. 1974). Therefore, no ascertainment issues will be included against Wyomedia.

5. *Shoshone.* The financial plan submitted by Shoshone is complete in all aspects except that the commitment extended to Shoshone by the American National Bank, of Powell, Wyoming, to lend Shoshone up to $50,000 has expired. A new bank letter is required to assure the Commission that Shoshone still has funds available to it to construct and operate its proposed station. A limited financial issue will be specified.

6. Except as indicated by the issues specified below, both applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding.

7. Accordingly, it is ordered, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine with respect to Wyomedia:

(a) the source and availability of additional funds over and above the $7,500 indicated, and

(b) whether, in light of the evidence adduced pursuant to (a) above, the applicant is financially qualified.

2. To determine with respect to Shoshone:

(a) The availability of a $50,000 bank loan, and

(b) whether, in light of the evidence adduced pursuant to (a) above, the applicant is financially qualified.

3. To determine which of the proposals would, on a comparative basis, better serve the public interest.

4. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which, if either, of the applications should be granted.

8. It is further ordered, That the petition to specify issues filed by Shoshone Communications Co. is granted to the extent indicated above, and is denied in all other respects.

9. It is further ordered, That the petitions for leave to amend filed by Wyomedia are granted, and the corresponding amendments are accepted.

10. It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants herein shall,

pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

11. It is further ordered, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing (either individually or, if feasible, jointly) within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

Federal Communications Commission.

Richard J. Shiben,

Chief, Broadcast Bureau.

[FR Doc. 80-13246 Filed 4-29-80; 8:45 am]

BILLING CODE 6712-01-M

FM and TV Translator Applications Ready and Available for Processing Pursuant to Section 73.3572(c) and 73.3573(d) of the Commission's Rules

Adopted: April 14, 1980.

Released: April 23, 1980.

By the Chief, Broadcast Facilities Division:

Notice is hereby given pursuant to Section 73.3572(c) and 73.3573(d) of the Commission's Rules, that on May 30, 1980, the TV and FM translator applications listed in the attached Appendix will be considered ready and available for processing. Pursuant to Sections 1.227(b)(1) and 73.3591(b) of the Rules, an application, in order to be considered with any application appearing on the attached list or with any other application on file by the close of business on May 29, 1980 which involves a conflict necessitating a hearing with any application on this list, must be substantially complete and submitted for filing at the offices of the Commission in Washington, D.C., by the close of business on May 29, 1980.

Any party in interest desiring to file pleadings concerning any pending TV or FM translator application, pursuant to Section 309(d)(1) of the Communications Act of 1934, as amended, is directed to Section 73.3584(a) of the Rules, which specifies the time for filing and other requirements relating to such pleadings.

Federal Communications Commission.

William J. Tricarico,

Secretary.

UHF TV Translator Applications

BPTT-790202KD (new), Lewiston, Idaho, State Board of Education and Board of Regents of the University of Idaho. Req: Channel 68, 770-776 MHz, 10 watts. Primary: KUID-TV, Moscow, Idaho.

BPTT-790420IE (new), Parowan, Utah, Iron County. Req: Channel 44, 650-656 MHz, 20 watts. Primary: KUED-TV, Salt Lake City, Utah.

BPTT-790510IF (new), Logan, Utah, Cache County Municipal Corporation. Req: Channel 53, 704-710 MHz, 100 watts. Primary: KSTU-TV, Salt Lake City, Utah.

BPTT-790521IM (new), Ingram, Kentucky, Kentucky Authority For Educational Television. Req: Channel 63, 764-770 MHz, 10 watts. Primary: WKHA-TV, Hazard, Kentucky.

BPTT-790521IN (new), Imlay, Nevada, Humboldt County. Req: Channel 62, 758-764 MHz, 20 watts. Primary: KCRL-TV, Reno, Nevada.

BPTT-790522IF (new), Meeker, Colorado, Rio Blanco County TV Association. Req: Channel 64, 770-776 MHz, 100 watts. Primary: KRMA-TV, Denver, Colorado.

BPTT-790606II (new), El Paso Natural Gas Company Compressor Station 12 miles NW of Klageton, Arizona, Regents of the University of New Mexico and Board of Education of the City of Albuquerque, New Mexico. Req: Channel 53, 704-710 MHz, 10 watts. Primary: KNME-TV, Albuquerque, New Mexico.

BPTT-790611IK (new), Ripley, New York, Board of Cooperative Educational Services of Chautauqua. Req: Channel 58, 734-740 MHz, 10 watts. Primary: WNED-TV, Buffalo, New York.

UHF TV Translator Applications

BPTT-790625IF (new), Anton and SW Rural Area Washington County, Colorado, Board of Washington County Commissioners. Req: Channel 52, 698-704 MHz, 100 watts. Primary: KWGN-TV, Denver, Colorado.

BPTT-790625IG (new), Anton and SW Rural Area Washington County, Colorado, Board of Washington County Commissioners. Req: Channel 54, 710-716 MHz, 100 watts. Primary: KOA-TV, Denver, Colorado.

BPTT-790625IH (new), Anton and SW Rural Area Washington County, Colorado, Board of Washington County Commissioners. Req: Channel 56, 772-728 MHz, 100 watts. Primary: KRMA-TV, Denver, Colorado.

BPTT-790625II (new), Anton and SW Rural Area Washington County, Colorado, Board of Washington County Commissioners. Req: Channel 58, 734-740 MHz, 100 watts. Primary: KBTV-TV, Denver, Colorado.

BPTT-790625IJ (new), Akron and Otis, and Rural Area Washington County, Colorado, Board of Washington County Commissioners. Req: Channel 62, 758-764 MHz, 100 watts. Primary: KWGN-TV, Denver, Colorado.

BPTT-790625IK (new), Akron and Otis, and Rural Area Washington County, Colorado, Board of Washington County Commissioners. Req: Channel 64, 770-776 MHz, 100 watts. Primary: KOA-TV, Denver, Colorado.

BPTT-790625IL (new), Akron and Otis, and Rural Area Washington County, Colorado, Board of Washington County Commissioners. Req: Channel 66, 782-788 MHz, 100 watts. Primary: KRMA-TV, Denver, Colorado.

BPTT-790625IM (new), Akron and Otis, and Rural Area Washington County, Colorado, Board of Washington County Commissioners. Req: Channel 68, 794-800 MHz, 100 watts. Primary: KBTV-TV, Denver, Colorado.

UHF TV Translator Applications

BPTT-790709ID (K70EU), Olivia, Minnesota, Renville County TV Corporation. Req: Change frequency to Channel 55, 716-722 MHz.

BPTT-790709IE (K72DJ), Olivia, Minnesota, Renville County TV Corporation. Req: Change frequency to Channel 53, 704-710 MHz.

BPTT-790709IF (K74DN), Olivia, Minnesota, Renville County TV Corporation. Req: Change frequency to Channel 51, 692-698 MHz.

BPTT-790709IG (K76CU), Olivia, Minnesota, Renville County TV Corporation. Req: Change frequency to Channel 49, 680-686 MHz.

BPTT-790718IB (new), Panama City and Adjacent Communities, Florida, The Board of Regents of Florida, Acting for and on Behalf of Florida State University. Req: Channel 22, 518-524 MHz, 1000 watts. Primary: WFSU-TV, Tallahassee, Florida.

BPTT-790918IH (new), Greenville, South Carolina, New South Television Corporation. Req: Channel 66, 782-788 MHz, 100 watts. Primary: WAIM-TV, Anderson, South Carolina.

BPTT-791123IA (new), Westbury, Carle, Place Mineola, Hempstead, East Meado and Hicksville, New York, Bogner Broadcast Equipment Corporation. Req: Channel 15, 476-482 MHz, 100 watts. Primary: WVIA-TV, Scranton, Pennsylvania.

BPTT-800103IA (K65AG), Preston, Idaho, Franklin County TV District No. 1. Req: Change frequency to Channel 26, 542-548 MHz, and Change primary Station to KBGL, Channel 10, Pocatello, Idaho.

BMPTT-791213IC (W46AC), Tangier, Virginia, County of Accomack, Virginia. Req: Change frequency to Channel 48, 674-680 MHz.

BPTT-800103IB (K68AB), Preston, Idaho, Franklin County TV District No. 1. Req: Change frequency to Channel 28, 554-560 MHz, increase output power to 100 watts.

BPTT-800103IC (K78BF), Preston, Idaho, Franklin County TV District No. 1. Req: Change frequency to Channel 34, 590-596 MHz, increase outpower to 100 watts.

BPTT-800103ID (K80BO), Preston, Idaho, Franklin County TV District No. 1. Req: Change frequency to Channel 32, 578-584 MHz.

BPTT-800103IE (K82BI), Preston, Idaho, Franklin County TV District No. 1. Req: Change frequency to Channel 36, 602-608 MHz.

BPTT-800103IF (new), Preston, Idaho, Franklin County TV District No. 1. Req:

Channel 30, 566–572 MHz, 100 watts. Primary: KSTU–TV, Salt Lake City, Utah.

BPTT–800122IA (new), Lake Charles, Iowa, and W. Lake Sulphur and Moss Bluff, Louisiana, Full Gospel Fellowship International Lake Charles Louisiana Chapter. Req: Channel 65, 776–782 MHz, 100 watts. Primary: WJAN–TV, Canton, Ohio.

BPTT–800123IA (new), Lead and Deadwood, South Dakota, Midcontinent Broadcasting Company. Req: Channel 55, 716–722 MHz, 100 watts. Primary: KPLO–TV, Reliance, South Dakota.

BPTT–800207IA (new), Flagstaff, Arizona, Arizona Board of Regents. Req: Channel 66, 782–788 MHz, 100 watts. Primary: KAET–TV, Phoenix, Arizona.

BPTT–800211IA (W51AC), Reading, Pennsylvania, South Central Education Broadcasting Council. Req: Change frequency to Channel 60, 746–752 MHz.

VHF TV Translator applications

BPTTV–790202KC (K13LR), Twin Falls (Magic Valley Area), Idaho, State Board of Education and Board of Regents of The University of Idaho. Req: Change principal community to Filer, Hansen, Jerome, Kimberly, Twin Falls, Dietrich and Shoshone, Idaho.

BPTTV–790501ID (new), Pipe Creek, Bobtail Creek, Quartz Creek and Libby Dam Site Trailer Park, Montana, Libby Video Club. Req: Channel 10, 192–198 MHz, 1 watt. Primary: KHQ–TV, Spokane, Washington.

BPTTV–790525IY (new), Rosebud and East Rural Area, Montana, Forsyth TV Tax District. Req: Channel 7, 174–180 MHz, 10 watts. Primary: KTVQ–TV, Billings, Montana.

BPTTV–790606IH (new), Ganado, Arizona, Regents of the University of New Mexico and Board of Education of the City of Albuquerque, New Mexico. Req: Channel 5, 76–82 MHz, 10 watts. Primary: KNME–TV Albuquerque, New Mexico.

BPTTV–790625ID (new), Outlying area of Joshua Tree, called "Monument Manor," California, Morongo Basin TV Club, Incorporated. Req: Channel 10, 192–198 MHz, 10 watts. Primary: KNBC–TV, Los Angeles, California.

BPTTV–790625IE (new), Outlying area of Joshua Tree, called "Monument Manor," California, Morongo Basin TV Club, Inc. Req: Channel 12, 204–210 MHz, 10 watts. Primary: KABC–TV, Los Angeles, California.

BPTTV–791217IP (new), Mitchell, South Dakota, South Dakota Broadcasting Company. Req: Channel 7, 174–180 MHz, 10 watts. Primary: KSFY–TV, Sioux Falls, South Dakota.

BPTTV–800201IA (new), Talkeetna, Alaska, Talkeetna Chamber of Commerce. Req: Channel 6, 82–88 MHz, 10 watts. Primary: KIMO–TV, Anchorage, Alaska.

FM Translator Applications

BPFT–790723IH (new), Watertown, New York, North Country Gospel Radio Association. Req: Channel 285, 104.9 MHz, 10 watts. Primary: WMHR–FM, Syracuse, New York.

BPFT–790914IC (new), Nucla and Naturita, Colorado, Woodland Broadcasting Company. Req: Channel 257, 99.3 MHz, 10 watts. Primary: KUBC–FM, Montrose, Colorado.

BPFT–790914ID (new), Paonia and Hotchkiss, Colorado, Woodland Broadcasting Company. Req: Channel 257, 99.3 MHz, 10 watts. Primary: KUBC–FM, Montrose, Colorado.

BPFT–791213IB (new), Pioneer, Buckhorn and West Point, California, Vernon C. Hatfield tr/as Gold Country Radio. Req: Channel 276, 103.1 MHz, 10 watts. Primary: KNGT–FM, Jackson, California.

BPFT–800109IA (new), Laguna Beach, California, Saddlerback Community College District. Req: Channel 208, 89.5 MHz, 1 watt. Primary: KSBR–FM, Mission Viejo, California.

BPFT–800116IA (new), McCleary, Oakville and Montesano, Washington, The Evergreen State College. Req: Channel 201, 88.1 MHz, 10 watts. Primary: KAOS–FM, Olympia, Washington.

BPFT–800116IB (new), Aberdeen and Central Park, Washington, The Evergreen State College. Req: Channel 205, 88.9 MHz, 10 watts. Primary: KAOS–FM, Olympia, Washington.

BPFT–800116IC (new), Raymond and South Bend, Washington, The Evergreen State College, Req: Channel 209, 89.1 MHz, 10 watts. Primary: KAOS–FM, Olympia, Washington.

BPFT–800116ID (new), Queets and Taholah, Washington, The Evergreen State College, Req: Channel 209, 89.7 MHz, 10 watts. Primary: KAOS–FM, Olympia, Washington.

BPFT–800121IA (new), Fort Dodge, Iowa, The Sonshine Foundation. Req: Channel 244, 96.7 MHz, 10 watts. Primary: KRGS–FM, Spencer, Iowa.

BMPFT–790423IM (K292BB), Yreka, California, Yreka Christian Radio. Req: Change frequency to Channel 252, 98.3 MHz.

BMPFT–791130ID (W252AA), St. Petersburg, Florida, The Moody Bible Institute of Chicago. Req: Change frequency to Channel 213, 90.5 MHz.

BPFT–800403IA (new), Palm Springs, California, Classic Broadcasting, Inc. Req: Channel 249, 97,7 MHz, 1 watt. Primary: KCMS–FM, Indio, California.

BPFTB–791005IA (new), La Jolla, California, Eleven-Fifty Corporation. Req: Channel 275, 102.9 MHz, 10 watts. Primary: KEZL–FM, San Diego, California.

BMPFT–791207IC (W219AA), Key West, Florida, Miami Christian College, Inc. Req: Change frequency to Channel 272, 102.9 MHz.

[FR Doc. 80–13247 Filed 4–29–80; 8:45 am]

BILLING CODE 6712–01–M

National Industry Advisory Committee Amateur Radio Services Subcommittee; Notice of Meeting

Pursuant to the provisions of Pub. L. 92–463, announcement is made of a public meeting of the Amateur Radio Services Subcommittee of the National Industry Advisory Committee (NIAC) to be held Friday, May 16, 1980. The Subcommittee will meet at the Federal Communications Commission Annex Building, Room A–110, 1229 20th Street, N.W., Washington, D.C. at 10:00 A.M.

Purpose: To consider emergency communications matters.

Agenda: As follows:

Items: 1. Chairman's opening remarks.

a. Introduction of new members:
Mr. Wayne Green, W2NSD/1
Mr. Harold C. Todd, W7ZXM
Mr. Christopher D. Imlay, N3AKD

b. Approval of the minutes, October 22, 1979 Subcommittee meeting.

2. Reports.

a. Status of Commission action related to ARS Emergency Plan. By Mr. Michael Rentfrow, FCC staff.

b. Status of Research into Rules now. By Mr. Christopher D. Imlay. By Mr. Robert A. Hayne.

c. Status of RACES frequencies. By Mr. Michael Rentfrow, FCC staff.

3. Report on recommendations received to modify ARS Emergency Plan. By Mr. Charles Dunn, K7RMG.

4. ARS Communications by satellite. By Mr. Wayne Green, W2NSD/1.

5. ARS support for inter-government emergency communications. By Mr. Harold Todd, W7ZXM.

6. Use of ARS publications, organizations, clubs, and Subcommittee members, and commercial broadcast industry to encourage development of local ARS Emergency Plans as recommended at the October 22, 1979 Subcommittee meeting. By Mr. Charles Dunn, K7RMG.

7. National Traffic System report. By Mr. John Lindholm, W1XX.

8. EMP report—Part 2. By Mr. G. "Don" Meserve, W0HG.

9. Organizing Community Emergency Communications Resources. By Mr. Charles Bino, K4CJZ.

a. Workshop to identify resources available for use in developing the recommended ARS Plan for the Support of Local Governments During Emergencies.

b. Specific assignments for Subcommittee members to write brief explanatory paragraphs for submission at the next Subcommittee meeting.

10. Federal agency and public comments.

11. Adjournment.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 80–13248 Filed 4–29–80; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

First Guthrie Corp.; Formation of Bank Holding Company

First Guthrie Corp., Guthrie, Oklahoma, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of The First State Bank and Trust Company, Guthrie, Oklahoma. The factors that are

considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than May 22, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, April 22, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-13203 Filed 4-29-80; 8:45 am]

BILLING CODE 6210-01-M

Frazee Bancorporation, Inc.; Formation of Bank Holding Company

Frazee Bancorporation, Inc., Frazee, Minnesota, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of Peoples State Bank of Frazee, Frazee, Minnesota. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Minneapolis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than May 22, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, April 22, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-13204 Filed 4-29-80; 8:45 am]

BILLING CODE 6210-01-M

Streator Bancorp., Inc.; formation of Bank Holding Company

Streator Bancorp., Inc., Streator, Illinois, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 100 percent of the voting shares of The Streator National Bank, Streator, Illinois. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than May 22, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, April 22, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-13205 Filed 4-29-80; 8:45 am]

BILLING CODE 6210-01-M

Coastal Bankshares, Inc.; Formation of Bank Holding Company

Coastal Bankshares, Inc., St. Simon's Island, Georgia, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 100 percent of the voting shares of The Coastal Bank of Georgia, St. Simon's Island, Georgia. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than May 22, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, April 23, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-13206 Filed 4-29-80; 8:45 am]

BILLING CODE 6210-01-M

Fabank, Inc.; Proposed Retention of Insurance Agency Activities

Fabank, Inc., Fayette, Iowa, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to continue to engage in insurance agency activities.

Applicant states that it engages in the activities of selling as agent credit life and credit accident and health insurance directly related to extensions of credit by Applicant and its subsidiary bank and acting as agent for the sale of general lines of insurance. These activities would be performed from offices of Applicant's subsidiary in Fayette, Iowa, and the geographic area to be served is a twelve-mile area surrounding Applicant's subsidiary bank, State Bank of Fayette, Fayette, Iowa. Such activites have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than May 23, 1980.

Board of Governors of the Federal Reserve System, April 23, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-13207 Filed 4-29-80; 8:45 am]

BILLING CODE 6210-01-M

Stapleton Bancorporation, Ltd.; Formation of Bank Holding Company

Stapleton Bancorporation, Ltd., Denver, Colorado, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C 1842(a)(1)) to become a bank holding company by acquiring 99.9 percent of the voting shares of Dominion Bank of Denver, Denver, Colorado. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than May 23, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifying any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, April 23, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-13208 Filed 4-29-80; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Companies; Proposed de Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than May 14, 1980.

A. *Federal Reserve Bank of Atlanta* (Robert E. Heck, Vice President), 104 Marieta Street, N.W., Atlanta, Georgia 30303:

1. Southern Bancorporation of Alabama, Birmingham, Alabama (financing and leasing activities; Alabama): to engage in making or acquiring loans or other extensions of credit, including loans to consumers and commercial loans secured by real or personal property, accounts receivable, pledges of mortgage notes, and income-producing mineral interests; and in making leases of equipment in accordance with the Board's Regulation Y. These activities would be conducted from an office in Birmingham, Alabama, serving the State of Alabama.

2. First Atlanta Corporation, Atlanta, Georgia (finance activities; Georgia): to continue to engage through its subsidiary, First Atlanta Factors, Inc., in the activities of making or acquiring, for its own account or for the account of others, loans and other extensions of credit, including unsecured loans and loans secured by inventory, accounts receivable, contract rights, equipment, and real property. These activities would be conducted from an office in Atlanta, Georgia, serving the State of Georgia.

B. *Other Federal Reserve Banks:* None.

Board of Governors of the Federal Reserve System, April 23, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-13209 Filed 4-29-80; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

[Intervention Notice 116]

Illinois Bell Telephone Co., the Illinois Commerce Commission; Proposed Intervention in Rate Increase Proceeding

The General Services Administration seeks to intervene in a proceeding before the Illinois Commerce Commission concerning the application of the Illinois Bell Telephone Company for an increase in its annual telephone rates. GSA represents the interest of the executive agencies of the U.S. Government as users of telecommunications services.

Persons desiring to make inquiries to GSA concerning this case should submit them in writing to Spence W. Perry, Assistant General Counsel, Regulatory Law Division, General Services Administration, 18th and F Streets, N.W., Washington, DC (mailing address: General Services Administration (LT), Washington, DC 20405), telephone 202-566-0750, on or before May 30, 1980, and refer to this notice number.

Persons making inquiries are put on notice that the making of an inquiry shall not serve to make any persons parties of record in the proceeding.

(Sec. 201(a)(4), Federal Property and Administrative Services Act, 40 U.S.C. 481(a)(4))

Dated: April 21, 1980.

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 80-13244 Filed 4-29-80; 8:45 am]

BILLING CODE 6820-25-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

Follow Through Program—Resource Centers

AGENCY: Office of Education, HEW.

ACTION: Notice of closing date for transmittal of noncompeting continuation applications (by invitation only) for additional fiscal year 1980 Funds.

Applicants will be invited to apply for funds to conduct expanded demonstration activities (referred to as resource centers) by letter of invitation from the Commissioner of Education or his authorized representative. Letters of invitation are expected to be mailed by April 30, 1980.

Authority for this activity is contained

in sections 551–554 of the Economic Opportunity Act of 1964, as amended by Pub. L. 95–568. (42 U.S.C. 2929 *et seq.)*

The resource center grants are awarded among those local Follow Through projects which have had educational practices validated by the Office of Education/National Institute of Education's Joint Dissemination Review Panel.

CLOSING DATE FOR TRANSMITTAL OF APPLICATIONS: To be assured of consideration for funding, an application for a resource center grant should be mailed or hand delivered on or before May 30, 1980.

If the application is late, the Office of Education may lack sufficient time to review it with other resource center applications and may decline to accept it.

APPLICATIONS DELIVERED BY MAIL: An application sent by mail should be addressed to the U.S. Office of Education, Application Control Center, Attention: 13.433D, Washington, D.C. 20202.

An applicant should show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other evidence acceptable to the U.S. Commissioner of Education.

If an application is sent through the U.S. Postal Service, the Commissioner does not accept either of the following as proof of mailing: (1) a private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail.

APPLICATIONS DELIVERED BY HAND: An application that is hand delivered should be taken to the U.S. Office of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets, S.W., Washington, D.C.

The Application Control Center will accept a hand-delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C., time) daily, except Saturdays, Sundays, and Federal holidays.

PROGRAM INFORMATION: In formulating proposals for resource center grants, applicants should give special attention to § 158.15(a) of the *Follow Through Regulations* which provides an explanation of the procedures to be used in evaluating these proposals.

AVAILABLE FUNDS: It is estimated that up to $2.9 million will be available for the resource center grants in FY 1980. The President has proposed budget rescissions to the Congress that may reduce the funds available for this program. When the Congress acts on the proposed rescissions, a notice to the public will be published in the **Federal Register** stating whether funds are still available for grants and if so, how much. However, the deadline established in this notice will not be extended, and applicants should prepare and submit applications pending further notification. Applications must be submitted to the Application Control Center at the address included in this notice.

APPLICATION FORMS: Application forms and program information packages with the letters of invitation are expected to be ready for mailing by April 30, 1980. Application forms and program information packages may be obtained by writing to the Division of Follow Through, U.S. Office of Education, 400 Maryland Avenue, S.W., (Room 3624, Regional Office Building 3), Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. The Commissioner strongly urges that applicants not submit information that is not requested.

SPECIAL PROCEDURES: Every applicant is subject to the State and areawide clearinghouse review procedures under OMB Circular A–95.

An applicant should check with its appropriate Federal regional office to obtain the name(s) and address(es) of the clearinghouse(s) in its State. OMB Circular A–95 requires the applicant to give the clearinghouse(s) up to 60 days for review, consultation, and comments on the application.

In its application each applicant must provide—

(a) The comments of each clearinghouse that commented on the application; or

(b) A statement that the applicant used the procedures of Part I of OMB Circular A–95 but did not receive any clearinghouse comments.

APPLICABLE REGULATIONS: Regulations applicable to this program include the following:

(a) Regulations governing the Follow Through Program (45 CFR Part 158) published in the **Federal Register** on June 29, 1977; and

(b) Education Division General Administrative Regulations (EDGAR) published in the **Federal Register** on April 3, 1980.

FURTHER INFORMATION: For further information contact, Mrs. Rosemary C. Wilson, Director, Division of Follow Through, U.S. Office of Education, 400 Maryland Avenue, S.W., (Room 3624, Regional Office Building 3), Washington, D.C. 20202, Telephone (202) 245–9846.

(42 U.S.C. 2929 *et seq.)*

(Catalog of Federal Domestic Assistance No. 13.433, Follow Through Program)

Dated: April 24, 1980.

William L. Smith,

U.S. Commissioner of Education.

[FR Doc. 80–13259 Filed 4–29–80; 8:45 am]

BILLING CODE 4110–02–M

Office of Facilities Engineering

HEW/Navy Bethesda Cogeneration Project: Public Meeting

SUMMARY: HEW and Navy are jointly sponsoring a feasibility study and conceptual design for a single cogeneration plant to serve their respective campuses in Bethesda, Maryland—the National Institutes of Health, the National Naval Medical Center and the Uniformed Services University of Health Sciences. The work is being performed by the engineering firm of Black and Veatch of Kansas City, Missouri. The statement of work calls for three major divisions of contract output: (1) Selection of the optimal system from among the candidate cogeneration systems; (2) Recommendations for owning and operating; (3) Conceptual design. The contractor is required to examine for each candidate system the technical, economic, environmental and institutional issues involved. In order to get the widest range of comment at crucial decision points in the study, we are providing for public presentation of key reports in the contract. This is an announcement of the public presentation by the contractor of the first report "Assessment of Barriers to Implementation." This report will look at the full range of issues as they affect the users and the community. Public comment is invited.

DATE: June 11, 1980.

TIME: 8:00 p.m.

PLACE: National Institutes of Health, Building 31C, Conference Room 6, Rockville Pike and Cedar Lane, Bethesda, Maryland.

FOR FURTHER INFORMATION CONTACT:
Dr. Max H. Novinsky, P.E., Project Officer, Office of Facilities Engineering, Department of Health, Education, and Welfare, Washington, D.C. 20201, Telephone: (202) 245–6376.

Dated: April 24, 1980.

Robert Blake,

Deputy Director for Engineering Management, Office of Facilities Engineering.

[FR Doc. 80–13277 Filed 4–29–80; 8:45 am]
BILLING CODE 4110–12–M

Office of the Secretary

Advisory Council on Education Statistics; Meeting

Notice is hereby given, pursuant to section 10, Pub. L. 92–463, that a meeting of the Advisory Council on Education Statistics will be held on May 14, 1980 from 8:45 a.m. to 12:30 p.m. and May 15, 1980 from 8:45 a.m. to noon in Room 3000, 400 Maryland Avenue SW, Washington, DC 20201.

The Advisory Council on Education Statistics is mandated by section 406(c) of the General Education Provisions Act as added by section 501(a) of the Education Amendments of 1974, Pub. L. 93–380 (20 U.S.C. 1221e-(c)), to advise the Secretary of the Department of Health, Education, and Welfare, and the Assistant Secretary for Education, and the National Center for Education Statistics (NCES); and "shall review general policies for the operation of the Center and shall be responsible for establishing standards to ensure that statistics and analyses disseminated by the Center are of high quality and are not subject to political influence."

The agenda includes an Administrator's report summarizing recent developments of the National Center for Education Statistics, a report on NCES Publications, a tour of new NCES facilities on the afternoon of May 14 and the election of the vice-chairperson of the Council for 1980–81.

Questions regarding the meeting should be directed to: Executive Director, Advisory Council on Education Statistics, Room 3153–E, FOB #6, 400 Maryland Avenue, S.W., Washington, D.C. 20202.

Records shall be kept of all Council proceedings and shall be available for public inspection in the Office of the Administrator, National Center for Education Statistics, located at 400 Maryland Avenue, S.W., Washinigton, D.C. 20202.

Signed at Washington, D.C. on April 24, 1980.

Marie D. Eldridge,

Administrator, National Center for Education Statistics.

[FR Doc. 80–13159 Filed 4–29–80; 8:45 am]
BILLING CODE 4110–12–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Environmental Quality

[Docket No. NI–15]

Intended Environmental Impact Statements

The Department of Housing and Urban Development gives notice that an Environmental Impact Statement (EIS) is intended to be prepared for each of the following projects under HUD programs as described in the appendices of the Notice: South University Industrial Park, Albuquerque, Bernalillo County, New Mexico; Sunrise Ridge Master Plan, El Paso County, Colorado; and Menoken Golf Course, Montrose County, Colorado. This Notice is required by the Council on Environmental Quality under its rules (40 CFR 1500).

Interested individuals, governmental agencies, and private organizations are invited to submit information and comments concerning a particular project to the specific person or address indicated in the appropriate part of the appendices.

Particularly solicited is information on reports or other environmental studies planned or completed in the project area, issues and data which the EIS should consider, recommended mitigating measures and alternatives, and major issues associated with the proposed project. Federal agencies having jurisdiction by law, special expertise or other special interests should report their interests and indicate their readiness to aid the EIS effort as a "cooperating agency."

Issued at Washington, D.C., April 23, 1980.

Richard H. Broun,

Director, Office of Environmental Quality.

Appendix—EIS for the South University Industrial Park, Albuquerque, Bernalillo County, N. Mex.

The City of Albuquerque presently has an application pending with the Department of Housing and Urban Development for an Urban Development Action Grant. In compliance with HUD regulations 24 CFR Part 58, the City of Albuquerque intends to prepare an Environmental Impact Statement on a proposed project of a portion of the South University Industrial Park located in Albuquerque, New Mexico. The City of Albuquerque will assume the lead role for environmental review and decision making responsibilities in accordance with Section 104(h) of title I of the Housing and Community Development Act of 1974.

Description—The City of Albuquerque proposes to construct municipal water and sanitary sewer lines to serve a 375-acre portion of an area known as the South University Industrial Park. The area lies generally south of the Kirtland Addition, west of the Albuquerque International Airport, north of the Tijeras Arroyo, both south and east of the University Golf Course and east of south University Boulevard. The city proposes to install some 19,200 feet of water lines and approximately 9,800 feet of 14" sanitary sewer line to serve industrial development planned for the site. Initial development will occur on 65 acres lying immediately south of the golf course and north of the Rio Bravo/University Boulevard road connection. A two-lane paved road 4,250 feet long connecting Rio Bravo Road and South University Boulevard will be constructed in order to provide improved access to the site. Roadway construction will be jointly funded by the city, the Economic Development Administration and the State Highway Department.

Need—Using the flexible EIS threshold criteria set forth in 24 CFR 50.31(b) the residential unit threshold for Bernalillo County of the Albuquerque SMSA is 900 units. Using the 5.0 dwelling units (net) permitted by local zoning regulations for R–1 zoning, and assuming this to be the lowest density that would result in a residential area, the calculated number of units would be 1875, making an EIS mandatory.

The area will be available for development after access is improved and water and sewer service are provided.

Alternatives Perceived—The alternatives to be considered by the City of Albuquerque are (1) no action, reject the project (2) delay the proposed project, (3) utilize alternative sites and facility locations, and (4) accept the project but with a change in scale.

Scoping—Meetings have taken place among interested local and State agencies. Additional scoping meetings are anticipated between participating Federal agencies at both regional and area levels, and with any parties expressing an interest following publication of this notice in local newspapers and the **Federal Register.** Any responses to this notice will be used to help (1) determine significant environmental issues, and (2) identify

data and information which should be included in the EIS.

Contact—Comments should be sent within 21 days following publication of this notice in the **Federal Register** to the Honorable David P. Rusk, Mayor of the City of Albuquerque, 400 Marquette, NW., P.O. Box 1293, Albuquerque, New Mexico 87103. Mayor Rusk may be reached by telephone at (505) 766–7550.

Appendix— EIS on Sunrise Ride Master Plan, El Paso

The HUD Area Office in Denver, Colorado, intends to prepare an EIS on Sunrise Ridge, described below, and requests information and comments for consideration in the EIS.

Description—Approximately 1,030 dwelling units will be constructed in El Paso County, Colorado.

Need—An EIS is required because the total number of dwelling units exceeds a HUD established threshold.

Alternatives—The alternatives are HUD participation in the development as proposed by the builder, participation in the development provided that HUD required modifications are implemented by the builder, or rejection of participation in the development.

Scoping—A scoping meeting will not be held. HUD will request input from the appropriate Government agencies and service organizations. This notice will also appear in a paper of local circulation in El Paso County, Colorado.

Comments—Comments should be forwarded on or before May 21, 1980, to Mr. Carroll F. Goodwin, Area Office Environmental Clearance Officer, Department of Housing and Urban Development Area Office, 1405 Curtis Street-Executive Tower Inn, Denver, Colorado 80202.

Appendix— EIS on Menoken Golf Course, Montrose County, Colo.

The HUD Area Office in Denver, Colorado, intends to prepare an EIS on Menoken Golf Course, described below, and requests information and comments for consideration in the EIS.

Description—Approximately 1,600 dwelling units (single-family and townhomes) will be constructed in Montrose County, Colorado, approximately five miles north of Montrose.

Need—An EIS is required because the total number of dwelling units exceeds a HUD established threshold.

Alternatives—The alternatives are HUD participation in the development as proposed by the builder, participation in the development provided that HUD required modifications are implemented by the builder, or rejection of participation in the development.

Scoping—A scoping meeting will not be held. HUD will request input from the appropriate Government agencies and service organizations. This notice will also appear in a paper of local circulation in Montrose, Colorado.

Comments—Comments should be forwarded on or before May 21, 1980, to Mr. Carroll F. Goodwin, Area Office Environmental Clearance Officer, Department of Housing and Urban Development Area Office, 1405 Curtis Street-Executive Tower Inn, Denver, Colorado 80202.

[FR Doc. 80-13200 Filed 4-29-80; 8:45 am]
BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F-19155-29, et al.[1]]

Alaska Native Claims Selections

This decision approves for conveyance certain lands in the vicinity of Kandik Basin, Alaska to Doyon, Limited.

Doyon, Limited filed selection applications F-19155-29 [1] on August 11, October 24, December 1, and December 18 of 1975, under the provisions of Sec. 12(c) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 701; 43 U.S.C. 1601, 1611(c) (1976)) (ANCSA), for the surface and subsuface estates of certain lands withdrawn pursuant to Sec. 11(a)(3) of ANCSA.

As to the lands described below, the applications are properly filed and meet the requirements of the Alaska Native Claims Settlement Act and of the regulations issued pursuant thereto. These lands do not include any lawful entry perfected under or being maintained in compliance with laws leading to acquisition of title.

In view of the foregoing, the surface and subsuface estates of the following described lands, selected pursuant to Sec. 12(c) of ANCSA, aggregating approximately 456,678 acres, are considered proper for acquisition by Doyon, Limited and are hereby approved for conveyance pursuant to Sec. 14(e) of ANCSA:

Fairbanks Meridian, Alaska (Unsurveyed),

F- 21904-52

T. 8 N., R. 22 E.,
Secs. 22 to 27, inclusive, all;
Secs. 34, 35 and 36, all.
Containing approximately 5,760 acres.

F-21904-53

T. 8 N., R. 23 E.,
Secs. 1, 2 and 3, all;
Secs. 10 to 15, inclusive, all;
Secs. 19 to 36, inclusive, all.
Containing approximately 17,157 acres.

F-19155-29

T. 8 N., R. 24 E.,
Secs. 4 to 9, inclusive, all;
Secs. 16 to 21, inclusive, all;
Secs. 28 to 33, inclusive, all.
Containing approximately 11,257 acres.

F-19155-30

T. 9 N., R. 24 E.,
Secs. 1, 2 and 3, all;
Secs. 10 to 15, inclusive, all.
Containing approximately 5,760 acres.

F-19155-33

T. 10 N., R. 24 E.,
Secs. 19 to 36, inclusive, all.
Containing approximately 11,472 acres.

F-19155-31

T. 9 N., R. 25 E.,
Secs. 4 to 9, inclusive, all;
Secs. 16, 17 and 18, all.
Containing approximately 5,731 acres.

F-19155-34

T. 10 N., R. 25 E.,
Secs. 19, 20 and 21, all;
Secs. 28 to 33, inclusive, all.
Containing approximately 5,712 acres.

F-19155-32

T. 9 N., R. 26 E.,
Secs. 1 to 4, inclusive, all;
Secs. 9 to 16, inclusive, all;
Secs. 21 to 28, inclusive, all;
Secs. 33 to 36, inclusive, all.
Containing approximately 15,360 acres.

F-19155-43

T. 8 N., R. 27 E.,
Secs. 1 to 4, inclusive, all;
Secs. 9 to 16, inclusive, all;
Secs. 21 to 34, inclusive, all;
Secs. 35, excluding the Kandik River;
Sec. 36, all.
Containing approximately 17,830 acres.

F-19155-44 and F-21902-96

T. 8 N., R. 28 E.,
Secs. 5 to 11, inclusive, all;
Secs. 14 to 36, inclusive, all.
Containing approximately 18,937 acres.

F-21901-13

T. 6 N., R. 29 E.,
Secs. 1 to 36, inclusive, all.
Containing approximately 22,926 acres.

F-21902-93

T. 7 N., R. 29 E.,
Secs. 1 to 36, inclusive, excluding the Kandik River.
Containing approximately 22,747 acres.

[1] F-19155-29, F-19155-30, F-19155-31, F-19155-32, F-19155-33, F-19155-34, F-19155-36, F-19155-40, F-19155-41, F-19155-43, F-19155-44, F-19155-45, F-21901-08, F-21901-09, F-21901-10, F-21901-11, F-21901-12, F-21901-13, F-21901-14, F-21901-15, F-21901-16, F-21901-17, F-21902-91, F-21902-92, F-21902-93, F-21902-94, F-21902-95, F-21902-96, F-21902-97, F-21902-98, F-21902-99, F-21902-00, F-21903-39, F-21903-40, F-21903-49, F-21903-50, F-21904-52, F-21904-53, F-21905-09, F-21905-15.

F-19155-45 and F-21902-97

T. 8 N., R. 29 E.,
Secs. 1, 2 and 3, all;
Secs. 10, 11 and 12, all;
Secs. 13, 14 and 15, excluding the Kandik River;
Secs. 19 and 20, all;
Secs. 21, 22 and 23, excluding the Kandik River;
Secs. 24 to 27, inclusive, all;
Sec. 28, excluding the Kandik River;
Secs. 29, 30 and 31, all;
Secs. 32 and 33, excluding the Kandik River;
Secs. 34, 35 and 36, all.

Containing approximately 16,842 acres.

F-21901-14 and F-21902-91

T. 6 N., R. 30 E.,
Secs. 1 to 11, inclusive, all;
Secs. 12, 13 and 14, excluding the Nation River;
Secs. 15 to 21, inclusive, all;
Secs. 22, 23 and 24, excluding the Nation River;
Secs. 25 and 26, all;
Secs. 27 and 28, excluding the Nation River;
Secs. 29 and 30, all;
Sec. 31, excluding Native allotment F-14487 Parcel A and the Nation River;
Secs. 32 and 33, excluding the Nation River;
Secs. 34, 35 and 36, all.

Containing approximately 22,581 acres.

F-21901-10 and F-21903-39

T. 5 N., R. 31 E.,
Secs. 1 to 36, inclusive, all.

Containing approximately 23,003 acres.

F-21902-92

T. 6 N., R. 31 E.,
Secs. 1 to 36, inclusive, excluding the Nation River.

Containing approximately 22,861 acres.

F-19155-36, F-19155-41 and F-21902-94

T. 7 N., R. 31 E.,
Secs. 1 to 36, inclusive, excluding the Nation River.

Containing approximately 22,547 acres.

F-21905-15

T. 14 N., R. 31 E.,
Secs. 1 to 4, inclusive, all;
Secs. 9 to 16, inclusive, all;
Secs. 21 to 24, inclusive, all.

Containing approximately 10,240 acres.

F-21905-09

T. 15 N., R. 31 E.,
Secs. 13 to 16, inclusive, all;
Secs. 21 to 28, inclusive, all;
Secs. 33 to 36, inclusive, all.

Containing approximately 10,240 acres.

F-21901-08

T. 4 N., R. 32 E.,
Secs. 1 to 36, inclusive, all.

Containing approximately 22,782 acres.

F-21901-11

T. 5 N., R. 32 E.,
Secs. 1 to 36, inclusive, all.

Containing approximately 23,003 acres.

F-21901-15 and F-21903-40

T. 6 N., R. 32 E.,
Secs. 1 to 36, inclusive, all.

Containing approximately 22,926 acres.

F-19155-40 and F-21902-95

T. 7 N., R., 32 E.,
Secs. 1 to 36, inclusive, all.

Containing approximately 22,852 acres.

F-21902-98

T. 8 N., R. 32 E.,
Secs. 1 to 4, inclusive, all;
Secs. 9 to 13, inclusive, all;
Secs. 14, 15 and 16, excluding the Nation River;
Secs. 17 and 18, all;
Secs. 19, 20 and 21, excluding the Nation River;
Secs. 22, all;
Secs. 23 and 24, excluding the Nation River;
Secs. 25 to 36, inclusive, all.

Containing approximately 20,127 acres.

F-21903-00

T 9 N., R. 32 E.,
Sec. 2, excluding the lands lying within sixty (60) feet of the boundary line between the United States and the Dominion of Canada, as provided for in the Proclamations by the President of the United States, dated June 15, 1908 (35 Stat. 2189) and May 3, 1912 (37 Stat. 1741);
Secs. 3 and 10, all;
Secs. 11 and 14, excluding the lands lying within sixty (60) feet of the boundary line between the United States and the Dominion of Canada, as provided for in the Proclamations by the President of the United States, dated June 15, 1908 (35 Stat. 2189) and May 3, 1912 (37 Stat. 1741);
Secs. 15 to 22, inclusive, all;
Secs. 23 and 26, excluding the lands lying within sixty (60) feet of the boundary line between the United States and the Dominion of Canada, as provided for in the Proclamations by the President of the United States, dated June 15, 1908 (35 Stat. 2189) and May 3, 1912 (37 Stat. 1741);
Secs. 27 to 34, inclusive, all;
Sec. 35, excluding the lands lying within sixty (60) feet of the boundary line between the United States and the Dominion of Canada, as provided for in the Proclamations by the President of the United States, dated June 15, 1908 (35 Stat. 2189) and May 3, 1912 (37 Stat. 1741).

Containing approximately 13,888 acres.

F-21903-50

T. 14 N., R. 32 E.,
Sec. 5, excluding the lands lying within sixty (60) feet of the boundary line between the United States and the Dominion of Canada, as provided for in the Proclamations by the President of the United States, dated June 15, 1908 (35 Stat. 2189) and May 3, 1912 (37 Stat. 1741);
Secs. 6 and 7, all;
Secs. 8 and 17, excluding the lands lying within sixty (60) feet of the boundary line between the United States and the Dominion of Canada, as provided for in the Proclamations by the President of the United States, dated June 15, 1908 (35 Stat. 2189) and May 3, 1912 (37 Stat. 1741);
Secs. 18 and 19, all;
Sec. 20, excluding the lands lying within sixty (60) feet of the boundary line between the United States and the Dominion of Canada, as provided for in the Proclamations by the President of the United States, dated June 15, 1908 (35 Stat. 2189) and May 3, 1912 (37 Stat. 1741).

Containing approximately 5,321 acres.

F-21903-49

T. 15 N., R. 32 E.,
Sec. 17, excluding the lands lying within sixty (60) feet of the boundary line between the United States and the Dominion of Canada, as provided for in the Proclamations by the President of the United States, dated June 15, 1908 (35 Stat. 2189) and May 3, 1912 (37 Stat. 1741);
Secs. 18 and 19, all;
Secs. 20 and 29, excluding the lands lying within sixty (60) feet of the boundary line between the United States and the Dominion of Canada, as provided for in the Proclamations by the President of the United States, dated June 15, 1908 (35 Stat. 2189) and May 3, 1912 (37 Stat. 1741);
Secs. 30 and 31, all;
Sec. 32, excluding the lands lying within sixty (60) feet of the boundary line between the United States and the Dominion of Canada, as provided for in the Proclamations by the President of the United States, dated June 15, 1908 (35 Stat. 2189) and May 3, 1912 (37 Stat. 1741).

Containing approximately 5,311 acres.

F-21901-09

T. 4 N., R. 33 E. (fractional), excluding the lands lying within sixty (60) feet of the boundary line between the United States and the Dominion of Canada, as provided for in the Proclamations by the President of the United States, dated June 15, 1908 (35 Stat. 2189) and May 3, 1912 (37 Stat. 1741).

Containing approximately 13,949 acres.

F-21901-12

T. 5 N., R. 33 E. (fractional), excluding the lands lying within sixty (60) feet of the boundary line between the United States and the Dominion of Canada, as provided for in the Proclamations by the President of the United States, dated June 15, 1908 (35 Stat. 2189) and May 3, 1912 (37 Stat. 1741).

F-21901-16

T. 6 N., R. 33 E. (fractional), excluding the lands lying within sixty (60) feet of the boundary line between the United States and the Dominion of Canada, as provided for in the Proclamations by the President of the United States, dated June 15, 1908 (35 Stat. 2189) and May 3, 1912 (37 Stat. 1741).

Containing approximately 4,403 Acres.

F-21901-17

T. 7 N., R. 33 E. (fractional), excluding the lands lying within sixty (60) feet of the boundary line between the United States and the Dominion of Canada, as provided for in the Proclamations by the President of the United States, dated June 15, 1908 (35 Stat. 2189) and May 3, 1912 (37 Stat. 1741).

Containing approximately 4,390 acres.

F-21902-99

T. 8 N., R. 33 E. (fractional), excluding the Nation River and the lands lying within sixty (60) feet of the boundary line between the United States and the Dominion of Canada, as provided for in the Proclamations by the President of the United States, dated June 15, 1908 (35 Stat. 2189) and May 3, 1912 (37 Stat. 1741).

Containing approximately 4,346 acres.

Aggregating approximately 456,678 acres.

The conveyance issued for the surface and subsurface estates of the lands described above shall contain the following reservation to the United States:

Pursuant to Sec. 17(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 708; 43 U.S.C. 1601, 1616(b)), the following public easements, referenced by easement identification number (EIN) on the easement maps attached to this document, copies of which will be found in case file F-21779-55, are reserved to the United States. All easements are subject to applicable Federal, State, or Municipal corporation regulation. The following is a listing of uses allowed for each type of easement. Any uses which are not specifically listed are prohibited.

25 Foot Trail—The uses allowed on a twenty-five (25) foot wide trail easement are: travel by foot, dogsled, animals, snowmobiles, two- and three-wheel vehicles, and small all-terrain vehicles (less than 3,000 lbs. Gross Vehicle Weight (GVW)).

One Acre Site—The uses allowed for a site easement are: vehicle parking (e.g., aircraft, boats, ATV's, snowmobiles, cars, trucks), temporary camping, and loading or unloading. Temporary camping, loading, or unloading shall be limited to 24 hours.

a. (EIN 1 C5) An easement for an existing access trail, twenty-five (25) feet in width, from site EIN 3 C5 on the right bank of the Nation River in Sec. 15, T. 8 N., R. 32 E., Fairbanks Meridian, northwesterly to public lands. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement.

b. (EIN 2 C5) A one (1) acre site easement, upland of the ordinary high-water mark, in Sec. 21, T. 7 N., R. 31 E., Fairbanks Meridian, on the left bank of the Nation River. The uses allowed are those listed above for a one (1) acre site easement.

c. (EIN 3 C5) A one (1) acre site easement, upland of the ordinary high-water mark, in Sec. 15, T. 8 N., R. 32 E., Fairbanks Meridian, on the right bank of the Nation River. The uses allowed are those listed above for a one (1) acre site easement.

The grant of the above-described lands shall be subject to:

1. Issuance of a patent confirming the boundary description of the unsurveyed lands hereinabove granted after approval and filing by the Bureau of Land Management of the official plat of survey covering such lands; and

2. Valid existing rights therein, if any, including but not limited to those created by any lease (including a lease issued under Sec. 6(g) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339, 341; 48 U.S.C. Ch. 2, Sec. 6(g))), contract, permit, right-of-way, or easement, and the right of the lessee, contractee, permittee, or grantee to the complete enjoyment of all rights, privileges, and benefits thereby granted to him. Further, pursuant to Sec. 17(b)(2) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1616(b)(2)) (ANCSA), any valid existing right recognized by ANCSA shall continue to have whatever right of access as is now provided for under existing law.

When the above described lands are surveyed and patented, there will be no further lands to be conveyed and the case files will be closed of record, except for lands within Native allotment F-14487 Parcel A topfiled by regional selection application F-21902-91.

To date approximately 2,330,971 acres of land, selected pursuant to Sec. 12(c) of the Alaska Native Claims Settlement Act, have been approved for conveyance to Doyon, Limited.

Within the above described lands, only the following inland water bodies are considered to be navigable: Kandik River; Nation River.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice of this decision is being published once in the **Federal Register** and once a week, for four (4) consecutive weeks, in the Fairbanks Daily News-Miner. Any party claiming a property interest in lands affected by this decision may appeal the decision to the Alaska Native Claims Appeal Board, P.O. Box 2433, Anchorage, Alaska 99510 with a copy served upon both the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513 and the Regional Solicitor, Office of the Solicitor, 510 L Street, Suite 408, Anchorage, Alaska 99501, also:

1. Any party receiving service of this decision shall have 30 days from the receipt of this decision to file an appeal.

2. Any unknown parties, any parties unable to be located after reasonable efforts have been expended to locate, and any parties who failed or refused to sign the return receipt shall have until May 30, 1980, to file an appeal.

3. Any party known or unknown who may claim a property interest which is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Alaska Native Claims Appeal Board.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeals. Further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

If an appeal is taken, the party to be served with a copy of the notice of appeal is: Doyon, Limited, First and Hall Streets, Fairbanks, Alaska 99701.

Ricky M. Elliott,

Chief, Branch of Adjudication.

[FR Doc. 80-13251 Filed 4-29-80; 8:45 am]

BILLING CODE 4310-84-M

Outer Continental Shelf, List of Restricted Joint Bidders

Correction

In FR Doc. 80-12125 appearing at page 26827 in the issue for Monday, April 21, 1980, second column, the last two companies listed should read as follows:

"Standard Oil Company of California
Texaco Incorporated"

BILLING CODE 1505-01-M

Arizona; Wilderness Intensive Inventory for BLM Lands in Safford District Contiguous to Coronado National Forest

The Bureau of Land Management has completed the preliminary findings on a wilderness intensive inventory of lands in the Safford District in southeastern Arizona. The purpose of the inventory is to identify lands which fulfill the requirements of the definition of wilderness as contained in the Wilderness Act of 1964 ahead of established statewide inventory schedule.

The public comment period for this area is being accelerated ahead of the statewide inventory in order to complete the inventory at an earlier date. This early completion is needed so that inventory results will be available for a scheduled joint wilderness study and land use plan being developed on the Coronado National Forest and BLM wilderness inventory units which are contiguous to the National Forest. This inventory is being conducted pursuant to the Federal Land Policy and Management Act of 1976 (Pub. L. 94-579).

A public comment period beginning the date of this announcement and ending on June 9 is to be conducted for the purpose of receiving public

comments on the preliminary results of the wilderness inventory.

Seven inventory units totalling 13,533 acres were included in the inventory. The following is a summary of the acreage proposed for Wilderness Study Area identification and those proposed to be dropped from further consideration as wilderness:

Inventory unit number and name	Total area inventory (acre)	Proposed for WSA (acre)	Proposed to be dropped (acre)
AZ-4-66 Bowie Mountain	6,617	6,555	62
AZ-4-70 Baker Canyon	4,814	4,812	2
AZ-4-72 Rhodes Peak	279	0	279
AZ-4-73 YLE	960	0	960
AZ-4-79 Galiuro, addition No. 1	63	0	63
AZ-4-80 Galiuro, addition No. 2	160	0	160
AZ-4-81 Galiuro, addition No. 3	640	640	0
Total	13,533	12,007	1,526

Persons wishing to obtain copies of the inventory report may do so by contacting either of the following Bureau of Land Management offices: Safford District Office, 425 East 4th Street, Safford, Arizona 85546, phone (602) 428–4040, or Arizona State Office, 2400 Valley Bank Center, Phoenix, Arizona 85003, phone (602) 261–3831.

Two public open houses for the purpose of public review of the inventory results will be conducted in Safford and Tucson. The Safford open house will be held Wednesday, May 28, 1980, from 9 a.m. to 8 p.m. in the Safford District Office, 425 East 4th Street. The Tucson open house will be held Thursday, May 29, during the same hours at the Ramada Inn, 404 North Freeway.

Comments should be submitted to the BLM Safford District Office no later than the close of business June 9, 1980. Also, more detailed information concerning the inventory results can be obtained from the Safford office.

Clair M. Whitlock,

State Director.

April 24, 1980.

[FR Doc. 80-13295 Filed 4-29-80; 8:45 am]

BILLING CODE 4310-84-M

Alabama; Meeting of Southern Appalachian Regional Coal Team

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Pursuant to the responsibilities set forth at 43 CFR 3400.4(b), the regional coal team for the Southern Appalachian Federal Coal Production Region, Alabama Subregion, will meet on May 29, 1980, to review the preliminary cumulative analysis of the potential Federal coal lease tracts, located in north-central Alabama, that have been ranked and selected on a preliminary basis. Public attendance is welcome. A one-hour time period, from 2:45 p.m. to 3:45 p.m., will be set aside to receive comments from anyone wishing to address the team.

DATE: The regional coal team will meet at 9:00 a.m. on May 29, 1980.

ADDRESS: The regional coal team will meet in the Forum Room on the 3rd floor of the Ferguson Center, University of Alabama Campus, Tuscaloosa, Alabama.

FOR FURTHER INFORMATION CONTACT: H. Robert Moore, Regional Coal Team Chairperson, Bureau of Land Management (141), 18th and C Streets, N.W., Washington, D.C. 20240, (202) 343–4636.

Dated: April 25, 1980.

Ed Hastey,

Associate Director.

[FR Doc. 80-13227 Filed 4-29-80; 8:45 am]

BILLING CODE 4310-84-M

[INT DEIS 80-26; INT DEIS 80-27]

Proposed Wilderness Designation of Wilderness Study Areas in the Butte District, Madison and Silver Bow Counties, Mont.; availability of Draft Environmental Impact Statements and Draft Wilderness Suitability Reports

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of draft environmental impact statements and notice of wilderness public hearings.

SUMMARY: Pursuant to section 102 (2) (c) of the National Environmental Policy Act of 1969, the Bureau of Land Management has prepared two documents containing both a draft environmental impact statement and a draft wilderness suitability report for the following wilderness studies in the Butte District, Montana: (1) Bear Trap Canyon and (2) Humbug Spires.

Pursuant to section 3(d) of the Wilderness Act of 1964, notice is also given that public hearings will be held on the draft wilderness suitability recommendations for each of the areas.

DATES: Wilderness Act Hearings will be held as follows:

May 20, 1980, 7:00 p.m., Butte District Office, Butte, Montana;

May 21, 1980, 7:00 p.m., Holiday Inn, Bozeman, Montana.

Additional Informational Meetings will be held as follows:

May 13, 1980, 7:00 p.m., St. Rose Family Center, Dillion, Montana;

May 14, 1980, 7:00 p.m., Ennis High School, Ennis, Montana.

Comments on the draft environmental impact statements and draft suitability reports will be received for a period of 45 days following the Environmental Protection Agency's Notice to be published in the **Federal Register** on or about May 2, 1980.

ADDRESSES: Comments on the draft environmental impact statements and draft suitability reports should be sent to: Bureau of Land Management, Butte District Office, Box 3388, Butte, Montana 59701.

FOR FURTHER INFORMATION CONTACT: Mr. Jack McIntosh, Butte District Manager, Box 3388, Butte, Montana 59701. (406) 723–6561.

Daniel P. Beard,

Acting Assistant Secretary for Lands and Water Resources.

April 25, 1980.

[FR Doc. 80-13294 Filed 4-29-80; 8:45 am]

BILLING CODE: 4310-84-M

Fish and Wildlife Service

Endangered Species Permit; Receipt of Application

Applicant: Mr. Jaime M. Krauter, 16 Andover Drive, Syosset, NY 11791

The applicant requests a permit to import 2 leopard cats (*Felis bengalensis bengalensis*) from Manila for enhancement of propagation.

Humane care and treatment during transport has been indicated by the applicant.

Documents and other information submitted with this application are available to the public during normal business hours in Room 601, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service (WPO), Washington D.C. 20240.

This application has been assigned file number PRT 2–6192. Interested persons may comment on this application by submitting written data, views, or arguments to the Director at the above address within 30 days of the date of this publication (May 30, 1980). Please refer to the file number when submitting comments.

Dated: April 24, 1980.

Donald G. Donahoo,

Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc. 80-13211 Filed 4-29-80; 8:45 am]

BILLING CODE 4310-55-M

Endangered Species Permit; Receipt of Application

Applicant: University of California, Davis, CA 95616

The applicant requests a permit to inoculate up to 10 white-handed gibbons (*Hylobates lar*) per year with the leukemia virus, GaLV, for scientific purposes.

Humane care and treatment during transport has been indicated by the applicant.

Documents and other information submitted with this application are available to the public during normal business hours in Room 601, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service (WPO), Washington, D.C. 20240.

This application has been assigned file number PRT 2–6190. Interested persons may comment on this application by submitting written data, views, or arguments to the Director at the above address within 30 days of the date of this publication (May 30, 1980). Please refer to the file number when submitting comments.

Dated: April 24, 1980.

Donald G. Donahoo,

Chief, Permit Branch, Federal Wildlife Permit Office. U.S. Fish and Wildlife Service.

[FR Doc. 80–13212 Filed 4–29–80; 8:45 am]

BILLING CODE 4310–55–M

Endangered Species Permit; Receipt of Application

Applicant: San Diego Zoological Garden, P.O. Box 551, San Diego, CA 92112.

The applicant requests a permit to import 2 male and 2 female captive-bred Francois' leaf monkeys (*Presbytis francoisi*) from the Peking Zoo, People's Republic of China for the purpose of enhancement of propagation.

Humane care and treatment during transport has been indicated by the applicant.

Documents and other information submitted with this application are available to the public during normal business hours in Room 601, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service (WPO), Washington, D.C. 20240.

This application has been assigned file number PRT 2–6197. Interested persons may comment on this application by submitting written data, views, or arguments to the Director at the above address within 30 days of the date of this publication (May 30, 1980). Please refer to the file number when submitting comments.

Dated: April 24, 1980.

Donald G. Donahoo,

Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc. 80–13213 Filed 4–29–80; 8:45 am]

BILLING CODE 4310–55–M

Geological Survey

Crude Oil Windfall Profit Tax; Federal Royalty Share of Oil

AGENCY: Geological Survey (GS), Department of the Interior.

ACTION: Interim notice.

SUMMARY: On April 2, 1980, the Crude Oil Windfall Profit Tax Act of 1980 (Pub. L. 96–223) was signed into law. This law imposes a temporary excise tax upon the windfall profit from domestically produced taxable crude oil. Federal royalty oil (including oil production from a National Petroleum Reserve and royalties from Federal leases) is subject to tax under the law.

On April 4, 1980, the Internal Revenue Service (IRS) issued temporary regulations (45 FR 23384) implementing the requirements of the law. This Notice provides interim guidance to Federal lessees and operators and to the first purchasers of oil from Federal oil and gas leases so that their payments to the GS will be in compliance with the requirements of the temporary regulations issued by the IRS.

Basically, the Notice provides that where the Federal royalty share of crude oil is removed from the lease prior to sale, the tax is to be computed and deposited by the GS. The first purchaser is *not* to deduct or withhold any Windfall Profit Tax from the payment due on that share. In those situations where the Federal royalty share of crude oil is sold on the leasehold, the first purchaser of the Federal share shall compute, withhold, and deposit the Windfall Profit Tax from the amounts payable on the difference between the adjusted base price and the removal price of the Federal share in accordance with the appropriate provision of the IRS Regulations.

DATE: The Interim Notice is effective April 24, 1980. Interested persons may submit comments on or before May 30, 1980.

ADDRESS: The address for commenting is: Chief, Conservation Division, Geological Survey, MS600, 12201 Sunrise Valley Drive, Reston, Virginia 22092.

FOR FURTHER INFORMATION: Contact Billy Shoger for Onshore Oil, (703) 860–7535; Gerald Rhodes for Offshore Oil, (703) 860–7531, Conservation Division, Reston, Virginia.

SUPPLEMENTARY INFORMATION: The principal authors of this document are Andrew DeVito, Legal Staff Assistant (703) 860–7521; and Gerald Rhodes, Petroleum Engineer (703) 860–7531, Conservation Division, Reston, Virginia.

A Final Notice will be issued for guidance after the IRS has issued its final regulations.

Dated: April 24, 1980.

Hillary A. Oden,

Chief, Conservation Division.

Notice

Crude Oil Windfall Profit Tax, Federal Royalty Share of Oil

The Crude Oil Windfall Profit Tax Act of 1980 (Pub. L. 96–223) (herein referred to as the Act) levies a new excise tax on crude oil removed after February 29, 1980. The tax is levied on the difference between the adjusted base price and the sale price (removal price) for the crude oil removed. By Notice of April 4, 1980, the Internal Revenue Service, Department of the Treasury, issued temporary regulations (45 FR 23384) implementing the requirements of the Act. This Notice is to provide guidance to Federal lessees and operators and to the first purchasers of oil from Federal oil and gas leases so that their payments to the U.S. Geological Survey (USGS) will be in compliance with the requirements of the interim regulations and the Act.

1. Deduction and Deposition of Windfall Profit Tax

In order to comply with the temporary Excise Tax Regulations under the Crude Oil Windfall Profit Tax Act of 1980 (26 CFR 150.4995–1, Requirement of withholding):

1.1 The purchaser of the Federal royalty share of crude oil removed from the lease prior to sale (the point of custody transfer is off the leasehold) shall *not* deduct or withhold any Windfall Profit Tax from the payment due on that share. The tax due on the Federal royalty share of oil removed from a Federal oil and gas lease before sale will be computed and deposited by the USGS in accordance with the appropriate provisions of § 150.4995–3, Depositary requirements, i.e., § 150.4995–3(f).

1.2 (a) In those situations where the Federal royalty share of crude oil is sold on the premises (point of custody transfer is on the leasehold), the purchaser of the Federal share shall deduct, withhold, and deposit the Windfall Profit Tax from the amounts payable on the difference between the

adjusted base price and the removal price of said Federal share in accordance with the appropriate provisions of § 150.4995–3, Depositary requirements, i.e., § 150.4995–3(a), (b), or (c), depending upon the nature of the purchaser of the Federal share of the oil produced and sold on a Federal oil and gas lease.

(b) In those instances where the operator of a Federal lease is an integrated oil company and the purchaser of the Federal share of the oil from the lease is not the operator, the *purchaser* and not the operator shall deduct, withhold, and deposit the tax from the amounts payable on the Federal share of the oil produced and sold on the premises in accordance with the appropriate provisions of § 150.4995–3, Depositary requirements, i.e., § 150.4995–3 (b) or (c).

1.3 Payments for exempt Indian and Alaskan oil shall recognize the special exemptions granted Indian oil and Alaskan oil.

1.4 Withholding Adjustments (150.4995–1(c)). In order to avoid conflicts with the requirements of Section 10 of the OCS Lands Act, a purchaser of a Federal crude oil interest who ascertains that the amount of tax withheld from any payment for the Federal share was less than the amount of tax imposed by Section 4986 of the Act shall make no adjustment for the underwithholding in the amounts withheld from subsequent payments on Federal crude oil. When such an ascertainment is made, the purchaser shall apprise the Area Oil and Gas Supervisor of its view regarding the need for an adjustment, and the USGS will take appropriate action.

2. Reporting Requirements for Operators

The operator of each Federal oil and gas lease is to furnish a monthly statement, as required by § 150.6050C–1, to the Area Oil and Gas Supervisor which contains the following information:

2.1 The Federal lease number from which the oil was removed.

2.2 The tier, for purposes of the tax imposed by Section 4986 of the Act, of the oil removed during the month and, if the oil is tier 3 oil, whether the oil constitutes newly discovered oil, heavy oil, or incremental tertiary oil.

2.3 The amount of the oil removed and, if the oil removed includes oil of different tiers or categories, the amount of oil removed of each tier or category.

2.4 The adjusted base price (within the meaning of Section 4989 of the Act) for each tier of oil removed.

2.5 The severance tax adjustment, if any, provided under Section 4996(c) of the Act with respect to each tier of oil removed.

2.6 The TAPS adjustment, if any, provided under Section 4996(d), and the average removal price for the month in the case of oil from the Sadlerochit Reservoir.

In those instances where the purchaser of the Federal royalty interest withholds and deposits the Windfall Profit Tax, the operator is to provide the Area Oil and Gas Supervisor with the above information in the same manner as it is to be provided with respect to Federal royalty interests where the purchaser of the Federal interest does not withhold and deposit the Windfall Profit Tax.

3. Information Requirements for Purchasers

The purchaser of a Federal crude oil interest that is subject to the requirements for collection and deposit of the Windfall Profit Tax under §§ 150.4995–1 and 150.4995–3 shall provide the Area Oil and Gas Supervisor with the following:

3.1 A monthly statement showing the total amount of Windfall Profit Tax withheld by the purchaser from payments made on the Federal interest and the property on which said oil was purchased.

3.2 A yearly statement of Windfall Profit Tax deduction containing the following information:

(a) The Federal lease account involved.

(b) The quantity, removal price, adjusted base price, and Windfall Profit Tax withheld for oil in each tier that was removed during the year.

(c) The total quantity of taxable Federal crude oil removed during the year.

(d) The total amount of the Windfall Profit Tax withheld during the year.

(e) The amount of Windfall Profit Tax withheld during each month of the year by the purchaser with respect to the oil removed.

(f) The amount of Windfall Profit Tax ascertained as having been underwithheld or overwithheld.

Dated: April 24, 1980.

Robert L. Rioux,

Deputy Division Chief, Offshore Minerals Regulation.

Dated: April 24, 1980.

John Duletsky,

Deputy Division Chief, Onshore Minerals Regulations.

[FR Doc. 80–13174 Filed 4–29–80; 8:45 am]

BILLING CODE 4310–31–M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Aminoil U.S.A., Inc.

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: Notice is hereby given that Aminoil U.S.A., Inc., has submitted a Development and Production Plan describing the activities it proposes to conduct on lease OCS 0434, Block 149, Ship Shoal Area.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the U.S. Geological Survey is considering approval of the Plan and that it is available for public review at the office of the Conservation Manager, Gulf of Mexico OCS Region, U.S. Geological Survey, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: U.S. Geological Survey, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone 837–4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the U.S. Geological Survey makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: April 24, 1980.

Robert L. Rioux,

Acting Chief, Conservation Division.

[FR Doc. 80–13263 Filed 4–29–80; 8:45 am]

BILLING CODE 4310–31–M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; ARCO Oil and Gas Co.

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: Notice is hereby given that ARCO Oil and Gas Company has submitted a Development and Production Plan describing the activities it proposes to conduct on lease OCS–G 2664, Block A–132, Brazos Area.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the U.S. Geological Survey is considering approval of the Plan and that it is available for public review at the office of the Conservation Manager, Gulf of Mexico OCS Region, U.S. Geological Survey, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: U.S. Geological Survey, Public Records, Room 147, open week days 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone 837–4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the U.S. Geological Survey makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: April 24, 1980.

Robert L. Reorix,

Acting Chief, Conservation Division.

[FR Doc. 80–13265 Filed 4–29–80; 8:45 am]

BILLING CODE 4310–31–M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Exxon Co. U.S.A.

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: Notice is hereby given that Exxon Company U.S.A., has submitted a Development and Production Plan describing the activities it proposes to conduct on leases OCS–G 1250, OCS–G 1251, and OCS–G 1255, Blocks 164, 165, and 177; South Timbalier Area.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the U.S. Geological Survey is considering approval of the Plan and that it is available for public review at the office of the Conservation Manager, Gulf of Mexico OCS Region, U.S. Geological Survey, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: U.S. Geological Survey, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone 837–4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the U.S. Geological Survey makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: April 24, 1980.

Robert L. Rioux,

Acting Chief, Conservation Division.

[FR Doc. 80–13266 Filed 4–29–80; 8:45 am]

BILLING CODE 4310–31–M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Gulf Oil Exploration and Production Co.

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: Notice is hereby given that Gulf Oil Exploration and Production Company has submitted a Development and Production Plan describing the activities it proposes to conduct on lease OCS–G 0983, Block 252, Eugene Island Area.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the U.S. Geological Survey is considering approval of the Plan and that it is available for public review at the office of the Conservation Manager, Gulf of Mexico OCS Region, U.S. Geological Survey, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: U.S. Geological Survey, Public Records, Room 147, open weekdays 9 a.m. to 9:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone 837–4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the U.S. Geological Survey makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: April 24, 1980.

Robert L. Rioux,

Acting Chief, Conservation Division.

[FR Doc. 80–13267 Filed 4–29–80; 8:45 am]

BILLING CODE 4310–31–M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Conoco Inc.

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: Notice is hereby given that Conoco Inc., has submitted a Development and Production Plan describing the activities it proposes to conduct on lease OCS–G 1580, Block 32 N/2, Grand Island Area.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the U.S. Geological Survey is considering approval of the Plan and that it is available for public review at the office of the Conservation Manager, Gulf of Mexico OCS Region, U.S. Geological Survey, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: U.S. Geological Survey, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone 837–4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the U.S. Geological Survey makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: April 24, 1980.

Robert L. Rioux,

Acting Chief, Conservation Division.

[FR Doc. 80–13264 Filed 4–29–80; 8:45 am]

BILLING CODE 4310–31–M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Ocean Production Co.

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: notice of the receipt of a proposed development and production plan.

SUMMARY: Notice is hereby given that Ocean Production Company has submitted a Development and Production Plan describing the activities it proposes to conduct on lease OCS-G 1023, Block 224, Ship Shoal Area.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the U.S. Geological Survey is considering approval of the Plan and that it is available for public review at the office of the Conservation Manager, Gulf of Mexico OCS Region, U.S. Geological Survey, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: U.S. Geological Survey, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone 837–4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the U.S. Geological Survey makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: April 24, 1980.

Robert L. Rioux,

Acting Chief, Conservation Division.

[FR Doc. 80-13268 Filed 4-29-80; 8:45 am]

BILLING CODE 4310-31-M

Oil and Gas and Sulfur Operations in the Outer Continental Shelf; Pennzoil Co.

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice of the receipt of a proposal development and production plan.

SUMMARY: Notice is hereby given that Pennizol Company U.S.A., has submitted a Development and Production Plan describing the activities it proposes to conduct on leases OSC-G 2439 and OCS–G 2062, Blocks 334 and 335, East Cameron Area.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the U.S. Geological Survey is considering approval of the Plan and that it is available for public review at the office of the Conservation Manager, Gulf of Mexico OCS Region, U.S. Geological Survey, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: U.S. Geological Survey, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone 837–4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the U.S. Geological Survey makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: April 24, 1980.

Robert L. Rioux,

Acting Chief, Conservation Division.

[FR Doc. 80-13269 Filed 4-29-80; 8:45 am]

BILLING CODE 4310-31-M

Oil and Gas and Sulfur Operations in the Outer Continental Shelf; Pennzoil Co.

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: Notice is hereby given that Pennzoil Company has submitted a Development and Production Plan describing the activities it proposes to conduct on lease OCS–G 2115, Block 330, Eugene Island Area.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the U.S. Geological Survey is considering approval of the Plan and that it is available for public review at the office of the Conservation Manager, Gulf of Mexico OCS Region, U.S. Geological Survey, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: U.S. Geological Survey, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone 837–4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the U.S. Geological Survey makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: April 24, 1980.

Robert L. Rioux,

Acting Chief, Conservation Division.

[FR Doc. 80-13270 Filed 4-29-80; 8:45 am]

BILLING CODE 4310-31-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Shell Oil Co.

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: Notice is hereby given that Shell Oil Company has submitted a Development and Production Plan describing the activities it proposes to conduct on lease OCS–G 2275, Block 370, Vermilion Area.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the U.S. Geological Survey is considering approval of the Plan and that it is available for public review at the office of the Conservation Manager, Gulf of Mexico OCS Region, U.S. Geological Survey, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: U.S. Geological Survey, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone 837–4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the U.S. Geological Survey makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: April 24, 1980.

Robert L. Rioux,

Acting Chief, Conservation Division.

[FR Doc. 80-13271 Filed 4-29-80; 8:45 am]

BILLING CODE 4310-31-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Superior Oil Co.

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice of the receipt of a proposed development and production Plan.

SUMMARY: Notice is hereby given that The Superior Oil Co. has submitted a Development and Production Plan describing the activities it proposes to conduct on lease OCS–G 3043, Block 831, Mustang Island Area.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the U.S. Geological Survey is considering approval of the Plan and that it is available for public review at the office of the Conservation Manager, Gulf of Mexico OCS Region, U.S. Geological Survey, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: U.S. Geological Survey, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone 837–4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the U.S. Geological Survey makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: April 24, 1980.

Robert L. Rioux,

Acting Chief, Conservation Division.

[FR Doc. 80-13272 Filed 4-29-80; 8:45 am]

BILLING CODE 4310-31-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Tenneco Oil Exploration and Production

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: Notice is hereby given that Tenneco Oil Exploration and Production has submitted a Development and Production Plan describing the activities it proposes to conduct on lease OCS–G 3946, Block A–416, High Island Area.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the U.S. Geological Survey is considering approval of the Plan and that it is available for public review at the office of the Conservation Manager, Gulf of Mexico OCS Region, U.S. Geological Survey, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: U.S. Geological Survey, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone 837–4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the U.S. Geological Survey makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: April 24, 1980.

Robert L. Rioux,

Acting Chief, Conservation Division.

[FR Doc. 80-13273 Filed 4-29-80; 8:45 am]

BILLING CODE 4310-31-M

Heritage Conservation and Recreation Service

Inventory of Suggested U.S. World Heritage Properties

AGENCY: Heritage Conservation and Recreation Service, Department of the Interior.

ACTION: Notice and request for public comment.

SUMMARY: The Department of the Interior, through the Heritage Conservation and Recreation Service, previously solicited suggestions for a World Heritage inventory from Federal agencies, State and local officials, private organizations, and individual citizens in the **Federal Register** on January 9, 1980 (45 FR 1947). The inventory includes recommendations of natural and cultural properties in the United States for the World Heritage List. Listing a property on the inventory confers no official status. The inventory provides the basis for selecting U.S. nominations for 1981 and subsequent years.

DATES: Comments on any property on the inventory, or suggestions of additional properties, should be received by May 30, 1980. A list of potential U.S. nominations for 1981 will be published in the **Federal Register** on or before June 1, 1980. A final list of proposed U.S. nominations will be published in the **Federal Register** on or before July 15, 1980. A Federal interagency panel will meet in November 1980 to review the accuracy and completeness of the proposed 1981 nominations and will recommend properties to the Secretary of the Interior. The Secretary will then transmit formal nomination(s) to the Department of State on or before December 1, 1980, for submission to the United Nations Educational, Scientific, and Cultural Organization (UNESCO) by January 1, 1981.

ADDRESS: Comments or suggestions should be sent to the Director, Heritage Conservation and Recreation Service, U.S. Department of the Interior, Washington, D.C. 20243.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Ritsch, Acting Associate Director for Natural Programs, Heritage Conservation and Recreation Service, U.S. Department of the Interior, Washington, D.C. 20243 (202–343–4278).

SUPPLEMENTARY INFORMATION: The Convention Concerning the Protection of World Cultural and Natural Heritage, ratified by the United States and 47 other Nations as of this date, establishes a means by which natural and cultural areas of outstanding universal value to mankind may be recognized and protected.

The country nominating a property for inclusion on the World Heritage list assumes responsibility for taking all necessary and appropriate legal, scientific, technical, administrative and financial measures for the protection, conservation, presentation, rehabilitation and transmission to future generations of the property it nominates. For property in the United States not in Federal ownership, arrangements would have to be made with the owner(s), whether State or local governments or private citizens, to guarantee the integrity of the site in perpetuity before it could be nominated.

Inventory of Suggested U.S. World Heritage Properties

The natural and cultural properties listed below, arranged alphabetically by State, have been recommended to the Heritage Conservation and Recreation

Service for consideration as potential United States nominations to the World Heritage List. The inventory is not a complete listing of areas in the United States which may have World Heritage potential, nor are future U.S. nominations necessarily limited to properties listed herein. None of the areas have been thoroughly evaluated or screened. Inclusion on the inventory confers no status on the properties listed. The inventory provides a pool from which the Heritage Conservation and Recreation Service can select properties for further review and possible nomination. Suggestions for the World Heritage inventory and comments thereon will be solicited by the Department of the Interior on an annual basis.

Alabama

Moundville
Tuskegee National Historic Site

Alaska

Aleutian Islands
Aniakchak Crater
Bering Expedition Landing Site
Cape Krusenstern Archaeological District
Dry Creek Archaeological Site
Fur Seal Rookeries, Pribilof Islands
Gallagher Flint Station Archaeological Site
Glacier Bay National Monument
Katmai National Monument
Mt. McKinley National Park
William O. Douglas Arctic Wildlife Range
Yukon Kuskokwin Delta

Arizona

Casa Grande Ruins
Hoover Dam
Lowell Observatory
Organ Pipe National Monument—Cabeza Prieta National Wildlife Range—Pinicate Volcanic Area (extends into Mexico)
Roosevelt Dam
San Xavier del Bac
Taliesin West

California

Death Valley National Monument (extends into Nevada)
Edwin Hubble House
Gilman Hall, University of California
Jack London Ranch
Joshua Tree National Monument
Luther Burbank House and Garden
San Andreas Fault
San Francisco City Hall
Sequoia and Kings Canyon National Parks
Sutter's Fort
Tao House (Eugene O'Neill National Historic Site)
Yosemite National Park

Colorado

Great Sand Dunes National Monument
Ophir Needles
Rocky Mountain National Park

Connecticut

Armsmear (Samuel Colt House)
Connecticut Agricultural Experiment Station
First Church of Christ, Farmington
Frederick Remington House
Mark Twain Home
Monte Cristo Cottage (Eugene O'Neill House)
Noah Webster Birthplace
Othniel C. Marsh House

District of Columbia

Carnegie Endowment for International Peace
Dumbarton Oaks
Memorial Continental Hall
National Mall
Smithsonian Building
The White House
United States Capitol
Volta Bureau
Washington Monument
Woodrow Wilson House

Florida

Cape Canaveral
Castillo de San Marcos National Monument
Ernest Hemingway House
Florida Keys
Okefenokee Swamp National Wildlife Refuge
Pelican Island National Wildlife Refuge

Georgia

Martin Luther King, Jr., Historic District
Okefenokee Swamp
Savannah Historic District
Warm Springs Historic District

Hawaii

Cook Landing Site
Hawaii Volcanoes National Park
Kalaupapa
Kauai Volcano
U.S. Naval Base, Pearl Harbor

Idaho

Lemhi Pass (extends into Montana)
Snake River Birds of Prey Natural Area

Illinois

Arthur H. Compton House
Auditorium Building
Cahokia Mounds
Carson, Pirie Scott and Company
Charles G. Dawes House
Daniel Hale Williams House
Eads Bridge (extends into Missouri)
Frank Lloyd Wright Home and Studio
Frederick C. Robie House
Goose Lake Prairie Nature Preserve
Heron Pond-Little Black Slough Natural Preserve
Illinois Beach Nature Preserve
John Deere Home and Shop
Koster Site
Leiter II Building
Lincoln Home National Historic Site
Marquette Building
Morrow Plots, University of Illinois
Pine Hills-LaRue Swamp Ecological Area
Pullman Historic District
Reliance Building
Riverside Historic District
Rookery Building
Site of First Self-Sustaining Nuclear Reaction
South Dearborn Street-Printing House Row North Historic District
Unity Temple
University of Chicago, George Herbert Jones Laboratory

Indiana

Eugene V. Debs Home
New Harmony Historic District

Iowa

Amana Colonies
Herbert Hoover National Historic Site

Kentucky

Mammoth Cave Region, including Mammoth Cave National Park
Shakertown

Louisiana

Poverty Point
Vieux Carre

Maine

Acadia National Park
Wickyup (Admiral Richard E. Byrd Estate)

Maryland

Antietam National Battlefield Site
Baltimore and Ohio Transportation Museum and Mount Clare Station
Edgar Allan Poe House
Patuxent Wildlife Research Center

Massachusetts

Adams National Historic Site
Arrowhead (Herman Melville House)
Boston National Historical Park
Cape Cod National Seashore
Ether Dome, Massachusetts General Hospital
Goddard Rocket Launching Site
Henry Cabot Lodge Residence
Lowell Locks and Canals
Minute Man National Historical Park
Norfolk County Courthouse (Site of Sacco-Vanzetti Trial)
Ralph Waldo Emerson House
Springfield Armory National Historic Site
Trinity Church
Walden Pond
William Lloyd Garrison House

Michigan

Fair Lane (Henry Ford Estate)
Ford River Rouge Complex
General Motors Building
Highland Park Ford Plant
Sleeping Bear Dunes National Lakeshore
Windemere (Ernest Hemingway Cottage)

Minnesota

Boundary Waters Canoe Area
Charles A. Lindbergh, Sr., House
F. Scott Fitzgerald House (Summit Terrace)
Frank B. Kellogg House
Mayo Clinic Buildings
O. E. Rolvaag House

Mississippi

Rowan Oak (William Faulkner House)
Vicksburg National Military Park

Missouri

General John J. Pershing Boyhood Home
George Washington Carver National Monument
Harry S. Truman Historic District
Mark Twain Boyhood Home
Sanborn Field and Soil Erosion Plots
Wainwright Building
Westminster College Gymnasium

Montana

Custer Battlefield National Monument
Glacier National Park

Pilot Peak

Nebraska

Nebraska Sand Hills

Nevada

Snake Range

New Hampshire

Joy Farm (E. E. Cummings House)
Presidential Range Alpine Area and Great Gulf Wilderness
St. Gaudens National Historic Site

New Jersey

Fink Truss Bridge
Great Falls of the Passaic
Hangar No. 1, Lakehurst Naval Air Station
Joseph Henry House
Walt Whitman House

New Mexico

Anderson Basin-Blackwater Draw (extends into Texas)
Carlsbad Caverns National Park
Chaco Canyon National Monument
Ladron Mountain
Los Alamos Scientific Laboratory
San Andres National Wildlife Refuge
Taos Pueblo
Trinity Site

New York

Adirondack Park
Bayard-Condict Building
Bell Telephone Laboratories
Brooklyn Bridge
Central Park
Chrysler Building
Eleanor Roosevelt National Historic Site
Empire State Building
Franklin D. Roosevelt National Historic Site
George Eastman House
General Electric Research Laboratory
John D. Rockefeller Estate
Locust Grove (Samuel F. B. Morse House)
Louis Armstrong House
Matthew Henson Residence
Metropolitan Life Insurance Company Building
New York Stock Exchange Building
Paul Robeson Residence
Prudential (Guaranty) Building
Pupin Physics Laboratory, Columbia University
Quarters A (Matthew C. Perry House), Brooklyn Navy Yard
Ralph Bunche House
Rockefeller Center
Sagamore Hill National Historic Site
Saratoga National Historical Park
Seagrams Building
Soho Cast Iron Historic District
Statute of Liberty National Monument
Sunnyside (Washington Irving House)
Thomas Paine Cottage
United Nations Building
Woolworth Building

North Carolina

Great Smoky Mountains National Park (extends into Tennessee)
Wright Brothers National Memorial

Ohio

Goodyear Airdock
Perry's Victory and International Peace Memorial

Oregon

Columbia River Gorge (extends into Washington)
Crater Lake National Park
Newberry Crater

Pennsylvania

Drake Oil Well
Eastern State Penitentiary
Edgar Allan Poe House
Eisenhower National Historic Site
Fallingwater
Forks of the Ohio
Fort Necessity National Battlefield
Gettysburg National Military Park
John Bartram House
Joseph Priestley House
Pearl Buck House
Philadelphia Savings Fund Society Building
Robert Fulton Birthplace
U.S.S. Olympia

Puerto Rico

La Fortaleza
San Juan National Historic Site

Rhode Island

Old Slater Mill
Original U.S. Naval War College

South Carolina

Fort Hill (John C. Calhoun House)
William Aiken House and Associated Railroad Structures

South Dakota

Wounded Knee Battlefield

Tennessee

X-10 Reactor, Oak Ridge National Laboratory

Texas

Aransas National Wildlife Refuge
Big Bend National Park
Chamizal National Memorial
San Jacinto Battlefield
U.S.S. Texas

Trust Territory

Nan Madol
Ollei Peninsula

Utah

Canyonlands National Park
Dinosaur National Monument
Golden Spike National Historic Site
Great Salt Lake and Bonneville Salt Flats
Reed O. Smoot House
Temple Square

Vermont

George Perkins Marsh Boyhood Home

Virgin Islands

Columbus Landing Site
Virgin Islands National Park

Virginia

Arlington House, the Robert E. Lee Memorial
Booker T. Washington National Monument
Colonial National Historical Park
Charles Richard Drew House
Cyrus McCormick Farm and Workshop
Drydock No. 1, Norfolk Naval Shipyard
Dulles International Airport
Fort Myer Historic District
Jamestown National Historic Site
General William "Billy" Mitchell House
Monticello
Montpelier (James Madison House)
Mount Vernon
Oak Hill (James Monroe House)
St. John's Episcopal Church
University of Virginia
Virginia Coast Reserve
Williamsburg Historic District

Washington

Chinook Point
North Cascades National Park
Olympic National Park
Ozette Village

West Virginia

Wheeling Suspension Bridge

Wisconsin

Administration Building and Research Tower, S. C. Johnson Company
Ice Age National Scientific Reserve
Taliesin East

Wyoming

Grand Teton National Park (suggested addition to Yellowstone National Park World Heritage Site)

Joint Nomination With Canada

Roosevelt Campobello International Park

Other

North Atlantic Ocean—Georges Bank

Dated: April, 25, 1980.

David F. Hales,

Deputy Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior.

[FR Doc. 80-13281 Filed 4-29-80; 8:45 am]

BILLING CODE 4310-03-M

National Park Service

Chesapeake and Ohio Canal National Historical Park Commission; Meeting

Notice is hereby given in accordance with Federal Advisory Committee Act that a meeting of the Chesapeake and Ohio Canal National Historical Park Commission will be held Saturday, May 17, 1980, at 1:00 p.m. at Great Falls Park in Great Falls, Virginia.

The Commission was established by Pub. L. 91-664 to meet and consult with the Secretary of the Interior on general policies and specific matters related to the administration and development of the Chesapeake and Ohio Canal National Historical Park.

The members of the Commission are as follows:

Mr. Donald R. Frush, Chairman, Hagerstown, Maryland
Mrs. Constance Morella, Bethesda, Maryland
Miss Nancy Long, Glen Echo, Maryland
Mrs. Constance Lieder, Baltimore, Maryland
Mr. James B. Coulter, Annapolis, Maryland
Mrs. Dorothy Grotos, Arlington, Virginia
Miss Margaret Dietz, Lovettsville, Virginia

Mr. William H. Ansel, Jr., Romney, West Virginia
Mr. Silas F. Starry, Shepherdstown, West Virginia
Mr. Donald H. Shannon, Washington, D.C.
Mr. Rockwood H. Foster, Washington, D.C.
Mr. Kenneth S. Rollins, Brookmont, Maryland
Mr. Edwin F. Wesely, Jr., Brookmont, Maryland
Mrs. Minny Pohlmann, Dickerson, Maryland
Dr. James H. Gilford, Frederick, Maryland
Mr. R. Lee Downey, Williamsport, Maryland
Mr. John C. Frye, Gapland, Maryland
Ms. Bonnie Troxell, Cumberland, Maryland
Mr. John D. Millar, Cumberland, Maryland

Matters to be discussed at this meeting include:

1. Great Falls Development Concept Plan
2. Resolution on Philosophy of Treatment of Towpath
3. Boteler Cement Mill
4. Potomac River Legislation
5. Land Acquisition Plan
6. H.R. 5841, National Hostel System Legislation

The meeting will be open to the public. Any member of the public may file with the Commission, a written statement concerning the matters to be discussed.

Persons wishing further information concerning this meeting, or who wish to submit written statements, may contact William R. Failor, Superintendent, C&O Canal National Historical Park, P.O. Box 4, Sharpsburg, Maryland 21782, telephone 301–739–4200.

Minutes of the meeting will be available for public inspection four (4) weeks after the meeting at Park Headquarters, Sharpsburg, Maryland.

Dated: April 21, 1980.

Robert Stanton,

Acting Regional Director, National Capital Region.

[FR Doc. 80–13284 Filed 4–29–80; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

Decision-Notice

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by Special Rule 240 of the Commission's Rules of Practice (49 CFR 1100.240). These rules provide, among other things, that opposition to the granting of an application must be filed with the Commission within 30 days after the date of notice of filing of the application is published in the **Federal Register.** Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. Oppostition under these rules should comply with Rule 240(c) of the Rules of Practice which requires that it set forth specifically the grounds upon which it is made, and specify with particularity the facts, matters and things relied upon, but shall not include issues or allegations phrased generally. Opposition not in reasonable compliance with the requirements of the rules may be rejected. The original and one copy of any protest shall be filed with the Commission, and a copy shall also be served upon applicant's representative or applicant if no representative is named. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 240(c)(4) of the special rules and shall include the certification required.

Section 240(c) further provides, in part, that an applicant who does not intend timely to prosecute its application shall promptly request its dismissal.

Further processing steps will be by Commission notice or order which will be served on each party of record. *Broadening amendments will not be accepted after the date of this publication except for good cause shown.*

Any authority granted may reflect administratively acceptable restrictive amendments to the transaction proposed. Some of the applications may have been modified to conform with Commission policy.

We find with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In those proceedings containing a statement or note that dual operations are or may be involved we find, preliminarily and in the absence of the issue being raised by a protestant, that the proposed dual operations are consistent with the public interest and the national transportation policy subject to the right of the Commission, which is expressly reserved, to impose such conditions as it finds necessary to insure that applicant's operations shall conform to the provisions of 49 U.S.C. 10930.

In the absence of legally sufficient protests as to the finance application *or* any application directly related thereto filed within 30 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

Decided: April 17, 1980.

By the Commission, Review Board No. 5 Members Krock, Taylor, and Williams (Member Taylor dissents in MC–F–14341 and would not publish at this time, stating that unless and until the application in MC–F–14071F is granted and consummated, we have no jurisdiction under 49 U.S.C. 11343–44.

Agatha Mergenovich,

Secretary.

MC–F–14341F, filed March 12, 1980. FREIGHTWAYS, INC. (Freightways), 438 East 2nd Street, Eldon, MO 65026 purchase (portion)—Earnest McRae, trustee in bankruptcy, and the first National Bank and Trust Company of Salina, KS, a secured creditor, for Dalke Transport, Inc. (Dalke) (104 South Broadway, Wichita, KS 67107). Representatives: Larry D. Knox, 600 Hubbell Bldg., Des Moines, IA 50309, and William B. Barker, 641 Harrison Street, Topeka, KS 66608. Freightways seeks authority to purchase a portion of the interstate operating rights of Dalke. Claude Hayes and Ruth Ann Hayes, equal stockholders of Freightways, also seek authority to acquire control of said rights through the transaction. Freightways is purchasing the interstate operating rights contained in Dalke's Certificate MC–140241 (Sub-24F), which authorizes the transportation, as a motor common carrier, over irregular routes, of *construction materials* (except commodities in bulk), from the facilities of Celotex Corporation, at Chicago and

Wilmington, Il, to points in IA, IN, KS, KY, MO, MN, NE, and WI. Freightways has been granted Temporary Authority to operate as a common carrier pursuant to MC 144484TA. Condition: In MC–F–14071F Claude Hayes and Ruth Ann Hayes seek authority to commonly control H & S Motor Feight, Inc., a motor common carrier in MC 107838, and Otten Truck Line, a motor common carrier in MC 70090, and Freightways. Authorization and approval of MC–F–143341F, is condition upon the prior authorization and approval in MC–F–14071F, and compliance with the conditions thereunder. (Hearing site: Kansas City, MO.)

Note.—Application for temporary authority has been filed.

MC–F–14324F, filed February 25, 1980. Gilchrist Trucking, Inc. (Gilchrist), 105 North Keyser Avenue, Old Forge, PA 18518 purchase (portion)—Northeast Delivery, Inc. (Northeast), P.O. Box 127, Taylor, PA 18517. Representative: John W. Fram, P.O. Box 626, 2207 Old Gettysburg Road, Camp Hill, PA 17011. Gilchrist seeks authority to purchase a portion of the interstate operating rights of Northeast. John Gilchrist, the sole stockholder of Gilchrist, seeks authority to acquire control of said rights through the transaction. Gilchrist is purchasing the interstate operating rights that were granted to Northeast in MC–F–13687. The decision served December 17, 1979, in MC–F–13687, authorizes Northeast to operate as a motor common carrier, as follows: (A) *Regular routes,* (1) *general commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment), (a) between Cleveland, OH and Newark, NJ, serving the intermediate point of New York, NY: From Cleveland over Hwy. 84 to junction OH Hwy. 46, then over OH Hwy. 46 to Ashtabula, OH, then over U.S. Hwy. 20 to junction NY Hwy. 78, then over NY Hwy. 78 to junction NY 33, then over NY Hwy. 33 to Batavia, NY, then over NY Hwy. 5 to Albany, NY, then over NY Hwy. 9J to junction U.S. Hwy. 9, then over U.S. Hwy. 9 to Newark and return over the same route. (b) Between Philadelphia, PA and Beach Haven and Barnegat, NJ, serving all intermediate points and the off-route points of Chatsworth, New Gretna, Tuckerton, West Creek, Parkertown, Cedar Run, Mayetta, Staffordville, and Barnegat, NJ, as follows: (i) From Philadelphia by bridge to Camden, NJ, then over NJ Hwy. 70 to Junction NJ Hwy. 72, then over NJ Hwy. 72 to junction unnumbered highway at a point one mile south of Beach Arlington, NJ, then south over said unnumbered highway to Beach Haven, and return over the same route. (ii) From Philadelphia to junction unnumbered highway and NJ Hwy. 72 at a point one mile south of Beach Arlington, NJ, as specified immediately above, then north over unnumbered highway to Barnegat City, and return over the same route. (2) *General commodities* (except commodities of unusual value, Classes A and B explosives, and commodities requiring special equipment), (a) between New York, NY and Atlantic City, NJ, serving the intermediate point of Newark, NJ, and the intermediate and off-route points on and east of U.S. Hwy. 9 between Toms River, NJ and Pleasantville, NJ, and on and north of U.S. Hwy. 40: From NY over U.S. Hwy. 9 to junction NJ Hwy. 34, then over NJ Hwy. 34 to junction NJ Hwy. 79, then over NJ Hwy. 79 to junction U.S. Hwy. 9, then over U.S. Hwy. 9 to junction U.S. Hwy. 40 at Pleasantville, NJ, then over U.S. Hwy. 40 to Atlantic City, and return over the same route. (b) Between Manahawkin, NJ, and Beach Haven and Barnegat, NJ, serving all intermediate points and off-route points on Long Beach Island, as follows: (i) From Manahawkin over NJ Hwy. 72 to junction unnumbered highway, then south over unnumbered highway to Beach Haven, and return over the same route. (ii) From Manahawkin to junction unnumbered highway and NJ Hwy. 72, as specified immediately above, then north over unnumbered highway to Barnegat City, and return over the same route. (B) *Irregular routes:* (1) *General commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment) between New York, NY, on the one hand, and, on the other, points in Kings, Queens, Nassau and Suffolk Counties, NY. (2) *General commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment), (a) from New York, NY to Newburgh and Middletown, NY. (b) Between points in Bergen Essex, Hudson, Morris, Passaic, Union, Middlesex, Monmouth, Hunterdon, and Sommerset Counties, NJ, on the one hand, and, on the other, New York, NY, restricted against the transportation of shipments between Newark, Perth Amboy, Paterson and Passaic, NJ, and points in their respective commercial zones, as defined by the Commission, on the one hand, and, on the other, New York, NY. Gilchrist is authorized to operate as a motor common carrier pursuant to certificates issued in MC 124821 and sub-numbers thereunder. (Hearing site: Harrisburg, PA.)

Notes.—Application for temporary authority has been filed. Applicant intends to tack the above authority with regular-route authority pending in MC 124821 (Sub-61F).

MC–F–14312F, filed January 30, 1980. BEN COTTON (an individual)—continuance in control—State Express, Inc. (State) and All Cities Transfer Co. (All Cities), all of P.O. Box 90130, East Point, GA 30364. Representative: Bruce E. Mitchell, Suite 520, Lenox Towers South, 3390 Peachtree Road, NE, Atlanta, GA 30326. Ben Cotton, the sole stockholder and President, of State and All Cities, seeks authority to continue in common control and management of State and All Cities, upon the institution by All Cities of operations, in interstate or foreign commerce, as a motor common carrier. State holds motor contract carrier authority pursuant to permits issued in MC 143358 and sub-numbers thereunder, under continuing contract(s) with K-Mart Corporation and Vlasic Foods, Inc. All Cities, pursuant to the approval conditionally granted in MC 146449F, was authorized to operate, in interstate or foreign commerce, as a motor common carrier, over regular routes, transporting *general commodities* (usual exceptions), between Atlanta and Shenandoah, GA, from Atlanta over Interstate Hwy. 85 to junction GA Hwy. 34, then over GA Hay. 34 to Shenandoah, and return over the same route, serving no intermediate points. (Hearing site: Atlanta, GA, or Washington, DC.)

Note.—Dual operations may be involved.

[FR Doc. 80-13197 Filed 4-29-80; 8:45 am]
BILLING CODE 7035-01-M

Motor Carrier Temporary Authority Application

The following are notices of filing of applications for temporary authority under Section 10928 of the Interstate Commerce Act and in accordance with the provisions of 49 CFR 1131.3. These rules provide that an original and two (2) copies of protests to an application may be filed with the Regional Office 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, specify 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 ICC Regional Office to which protests are to be transmitted.

Note.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

Motor Carriers of Property

MC 111812 (Sub-693TA), filed September 13, 1979. Applicant: MIDWEST COAST TRANSPORT, INC., P.O. Box 1233, Sioux Falls, SD 57101. Representative: Lamoyne Brandsma, P.O. Box 1233, Sioux Falls, SD 57101. Authority sought to operate as a *common* carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting: Self-contained portable aerial lifts, from the facilities of Continental Lift Corporation located at or near Austin, MN to points in AZ and CA, for 180 days. Supporting shipper: Continental Lift Corporation, Old Highway 218 South, Austin, MN 55912. Send protests to Mr. James L. Hammond, District Supervisor, Bureau of Operations and Compliance, Interstate Commerce Commission, 455 Federal Building, Pierre, SD 57501.

Notice No. 25

April 22, 1980.

MC 99919 (Sub-6TA), filed October 15, 1979. Applicant: FREMONT EXPRESS, INC., 620 E. Factory, P.O. Box Q, Fremont, NE 68025. Representative: Scott T. Robertson, Peterson, Bowman & Johanns, 521 S. 14th St., Suite 500, P.O. Box 81849, Lincoln, NE 68501. *Chemicals* from Fremont, NE and its commercial zone to points in AL, AZ, CO, ID, IL, IN, IA, KS, KY, LA, MI, MN, MS, MO, MT, ND, OK, OR, SD, TN, TX, UT, WA, WI, and WY for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): (1) Platte Chemical Company, Inc., Phillip F. Snow, General Manager, 150 South Main, Fremont, NE 68025; (2) American Cyanamid Company, Joseph H. Palka, Transportation Coordinator, P.O. Box Princeton, NJ 08540. Send protests to: D/S Carroll Russell, ICC Suite 620, 110 North 14th Street, Omaha, NE 68102.

The following applications were filed in Region 3. Send protests to ICC, Regional Authority Center, P.O. Box 7520, Atlanta, GA 30357.

MC 145072 (Sub-3–1TA), filed April 15, 1980. Applicant: M. S. CARRIERS, INC., 1797 Florida Street, Memphis, TN 38109. Representative: A. Doyle Cloud, Jr., 2008 Clark Tower, 5100 Poplar Avenue, Memphis, TN 38137. *Plastic articles and materials, equipment and supplies used in the manufacture of plastic articles* between Atlanta, GA and Swainsboro, GA on the one hand, and on the other points in TX, LA, MS, AL, TN, AR, OK, MO, IL, IA, WI, IN, MI, OH, KY, WV, PA, NY, DE, NJ, MA, and CT. Supporting shipper: Kyowa America Corporation, 500 Wharton Circle, P.O. Drawer 43205, Atlanta, GA 30336.

MC 2253 (Sub-3–1TA), filed April 11, 1980. Applicant: CAROLINA FREIGHT CARRIERS CORPORATION, P.O. Box 697, Cherryville, North Carolina 28021. Representative: J. S. McCallie, P.O. Box 697, Cherryville, North Carolina 28021. *Synthetic plastic granuels,* in bulk, from Celriver, SC to Norfolk, VA. Supporting shipper: Celanese Fibers Company, Charlotte, N.C. 28232.

MC 146281 (Sub-3–3TA), filed April 15, 1980. Applicant: SILVER FLEET EXPRESS, INC. P.O. Box 6089, Knoxville, TN 37914. Representative: Henry E. Seaton, 929 Penn. Bldg., Washington, DC 20004. *General Commodities* (except those 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 Electrovoice at or near Newport, TN, as an off route point in connection with existing regular route authority. Applicant intends to tack the authority sought here with its existing authority and to interline with other carriers at New Orleans, LA and Cincinnati, OH. Supporting shipper: Electrovoice Division of Gulton Industries, Ranking Road, Newport, TN 37821.

MC 146281 (Sub-3–2TA), filed April 15, 1980. Applicant: SILVER FLEET EXPRESS, INC. P.O. Box 6089, Knoxville, TN 37914. Representative: Henry E. Seaton, 929 Penn. Bldg., 425 13th St. NW., Washington, DC 20004. *Furniture, mattresses and springs and materials, equipment and supplies used in the manufacture of same* from Pontotoc, MS, to points in AR, AL, LA, TN, FL, GA, MS, TX, NC, SC. Supporting shipper: Walter Byrd, Stearns and Foster Co., East Wyoming and Williams Ave., Lockland, OH 45215.

MC 145560 (Sub-3–2TA), filed March 10, 1980. Republication—originally published in **Federal Register** of March 3, 1980, page 19076, volume 45, No. 58. Applicant: NORTH ALABAMA TRANSPORATION, INC., P.O. Box 38, Ider, AL 35981. Representative: William P. Jackson, Jr., 3426 N. Washington Boulevard, Post Office Box 1240, Arlington, VA 22210. *Contract carrier,* irregular routes, *carpet,* from the facilities of Philadelphia Carpet Company, at or near Cartersville, GA, to points in AZ, NV, and CA, Restriction: Restricted to the transportation of shipments under a continuing contract or contracts with Philadelphia Carpet Company. Supporting shipper: Philadelphia Carpet Company.

MC 147644 (Sub-III–3TA), filed April 15, 1980. Applicant: J. M. C. TRANSPORT, INC., 114 N. 11th St., Louisville, KY 40203. Representative: Gerald K. Gimmel, Suite 145, 4 Professional Dr., Gaithersburg, MD 20760. (1) *Alcoholic beverages* (except in bulk) and *water in bottles, from Louisville, KY and Bardstown, KY to Atlanta, GA and Columbus, GA and (2) wine and brandy* (except in bulk) from San Jose, CA, Ripon, CA, Modesto, CA, St. Helena, CA, and Mt. LaSalle, CA to Atlanta, GA and Columbus, GA. Supporting shipper: Georgia Crown Distributing Co., P.O. Box 46065, 255 Villanova Dr., Atlanta, GA 30336.

MC 138157 (Sub-3–13TA), filed April 15, 1980. Applicant: SOUTHWEST EQUIPMENT RENTAL, INC., d.b.a. SOUTHWEST MOTOR FREIGHT, P.O. Box 9596, Chattanooga, TN 37412. Representative: Patrick E. Quinn, P.O. Box 9596, Chattanooga, TN 37412. *Chemicals* (except in bulk) from points in CT, DE, IL, LA, MD, MI, MO, NJ, NY, OH, PA, TN, TX and WV to Bedford Heights, Columbus, Dayton and Evendale, OH; Louisville, KY; Grand Rapids, Taylor and Saginaw, MI; Buffalo, Brooklyn and Schenectday, NY; Medford, MA; North Haven, CT; Duncansville, Carnegie, Hummelstown and Philadelphia, PA; and Woodbridge, NJ. Restricted to traffic destined to McKesson Chemical Co. Supporting shipper: Foremost McKesson Chemical Group, 136 Summit Ave., Montvale, NJ 07646.

Note.—Dual operations may be involved.

MC 150576 (Sub-3–1TA), filed April 15, 1980. Applicant: COASTAL TRANSPORT, INC., 703 South George Street, Goldsboro, North Carolina 27530. Representative: Ralph McDonald,

Attorney at Law, Post Office Box 2246, Raleigh, North Carolina 27602. *Nitrogen fertilizer solutions* from Wilson, NC to points in VA. Supporting shipper(s): Columbia Nitrogen Corporation, Post Office Box 1483 (13), Augusta, Georgia 30913.

MC 95540 (Sub-3–6TA), filed April 15, 1980. Applicant: WATKINS MOTOR LINES, INC., 1144 West Griffin Road, P.O. Box 1636, Lakeland, Florida 33802. Representative: Benjy W. Fincher (address same as applicant). *Frozen foods* from Plover, WI to points in FL, GA, TN, TX, LA, MS, AL, NC, SC, and AR. Supporting shipper: Great American Basic Commodities, 1 Great American Way, Plover, WI 54467.

MC 95540 (Sub-3–7TA), filed April 15, 1980. Applicant: WATKINS MOTOR LINES, INC., 1144 West Griffin Road, P.O. Box 1636, Lakeland, Florida 33802. Representative: Benjy W. Fincher (address same as applicant). (1) *Such commodities as are dealt in by manufacturers and distributors of small electric appliances* from facilities of Hamilton Beach at Washington, NC; Clinton, NC; Farmville, NC and Byesville, OH to points in the United States (except AK and HI), and (2) such materials, equipment and supply commodities as are dealt in by manufacturers and distributors of small electric applicances from points in the United States (except AK and HI), to facilities of Hamilton Beach Division at Washington, NC; Clinton, NC; Farmville, NC and Byesville, OH. Supporting shipper: Hamilton Beach Division, Scovill, Inc., P.O. Box 1158, Washington, NC 27889.

MC 121081 (Sub-3–3TA), filed April 15, 1980. Applicant: COLUMBUS MOTOR LINES, INC., P.O. Box 26741, Charlotte, NC 28213. Representative: Terrell C. Clark, P.O. Box 25, Stanleytown, VA 24168. (1) *Non Alcoholic Beverages, in containers,* (a) from the facilities of Coca Cola Consolidated at or near Charlotte, Greensboro, and Raleigh, NC to points in FL, GA, MD, PA, SC, TN, and VA, (b) from points in FL to the facilities of Coca Cola Consolidated at or near Charlotte, Greensboro, and Raleigh, NC, (2) *materials, supplies, and equipment, used in the production, distribution, and sale of non alcoholic beverages, except commodities in bulk,* from points in FL, GA, MD, PA, SC, TN, and VA to the facilities of Coca Cola Consolidated at or near Charlotte, Greensboro, and Raleigh, NC, (3) *glass containers,* from the facilities of Consolidated Coca Cola at or near Charlotte, NC to Savannah, GA. Supporting shipper: Coca Cola Consolidated, 4901 Chesapeake Drive, Charlotte, NC 28216.

MC 107515 (Sub-3–11TA), filed April 15, 1980. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Alan E. Serby, Marc A. Pearl, 3390 Peachtree Rd. NE., 5th Floor-Lenox Towers South, Atlanta, GA 30326. *Liquid soap, in plastic containers,* from the facilities of Minnetonka, Inc. at or near San Jose, CA and Minneapolis, MN to points in CA, OR, WA, WI, IL, IN, OH, TN, PA, AL, FL, MO, LA, KS, OK, AR, MI, GA, NV, UT, TX, AZ, IA, NC, MD, NY and MA. Supporting shipper: Minnetonka, Inc., Jonathan Industrial Park, Chaska, MN 55318.

MC 121081 (Sub-3–2TA), filed April 18, 1980. Applicant: COLUMBUS MOTOR LINES, INC., P.O. Box 26741, Charlotte, NC 28213. Representative: Terrell C. Clark, P.O. Box 25, Stanleytown, VA 24168. *Plastic containers,* (1) from the facilities of Sewell Plastics, Inc. at Charlotte, NC to points in GA, MD, PA, SC, TN, and VA, (2) from the facilities of Sewell Plastics, Inc. at Mauldin, SC to points in GA, NC, and TN, (3) from the facilities of Sewell Plastics, Inc. at or near Havre de Grace, MD and New Stanton, PA to points in NC, SC, and VA, *Plastic container parts; equipment; materials and supplies used in the distribution, production, and sale of plastic containers,* (4) from points in GA, MD, NC, PA, SC, TN, and VA. Supporting shipper: Sewell Plastics, Inc., P.O. Box 8051, Charlotte, NC 28208.

MC 107515 (Sub-3–10TA), filed April 15, 1980. Applicant: REFRIGERATED TRANSPORT CO., INC, P.O. Box 308, Forest Park, GA 30050. Representative: Alan E. Serby, Richard M. Tettelbaum, 3390 Peachtree Road NE., 5th Floor, Atlanta, GA 30326. *(1) Synthetic motor oil and (2) such commodities as are dealt in by automobile supply houses* (except commodities in bulk, in tank vehicles) from the facilities of Amsoil, Inc., Superior, WI and points in its commercial zone to Orlando, FL; Atlanta, GA; and Memphis, TN and points in their respective commercial zones. Supporting shipper: Amsoil, Inc., 925 Tower Avenue, Superior, WI 54880.

MC 25798 (Sub-3–2TA), filed April 11, 1980. Applicant: CLAY HYDER TRUCKING LINES, INC., Post Office Box 1186, Auburndale, FL 33823. Representative: Tony G. Russell, Post Office Box 1186, Auburndale, FL 33823. *Meat, meat by-products, meat products, and articles distributed by meat packinghouses* as described in sections A & C of appendix I to the report in descriptions on motor carrier certificate 61, MCC 209 and 766 (except in hides and commodities in bulk). From the facilities of Iowa Beef Processors, Inc., at or near Luverne, MN, and West Point, NE, to points in Florida.

MC 107002 (Sub-3–8TA), filed April 10, 1980. Applicant: MILLER TRANSPORTERS, INC., P.O. Box 1123, Jackson, Mississippi 39205. Representative: Larry M. Ford, P.O. Box 1123, Jackson, MS 39205. *Hexamethylamine Diamine,* in bulk, from the facilities of DuPont at or near Victoria and Orange, TX to the facilities of DuPont at or near Seaford, DE; Chattanooga, TN; Camden, SC; Richmond, Waynesboro and Martinsville, VA. Supporting shipper: E. I. du Pont de Nemours and Company, 1007 Market St., Wilmington, DE 19898.

MC 142680 (Sub-3-2TA), filed April 9, 1980, Applicant: SUMTER TIMBER CO., INC., P.O. Box 104, Cuba, AL 36907. Representative: Virgil H. Smith, Suite 12, 1587 Phoenix Blvd., Atlanta, GA 30349. *Lumber,* From Tuscaloosa, AL to points in MS. Supporting shipper: Pearson Lumber Co., P.O. Box 1548, Tuscaloosa, AL.

MC 147127 (Sub-3-5TA), filed April 17, 1980, Applicant: McLAURIN TRUCKING COMPANY, P.O. Box 26506, Charlotte, NC 28213. Representative: Donald J. Balsley, Jr., Esq., Wick, Vuono & Lavelle, 2310 Grant Building, Pittsburgh, PA 15219. *Freight all kinds, in containers or in trailers, having an immediately prior or subsequent movement by water,* (1) between Wilmington, NC, Charleston, SC and Savannah, GA, on the one hand, and, on the other, Mecklenberg County, NC, and (2) between Wilmington, NC and Amherst, VA. Supporting shippers: Meiwa, U.S.A., Inc., 11600 Westinghouse Blvd., Charlotte, NC; Kanematsu-Gosho, U.S.A., Inc., 11800 Westinghouse Blvd., Charlotte, NC; Crompton, Knowles Corporation, 3001 N. Graham Street, Charlotte, NC; Feibus and Company, Inc., 4933 Brookshire Blvd., Charlotte, NC and Hermle Black Forest Clocks, P.O. Box 670, Amherst, VA 24521.

MC 150558 Sub-3-1-TA), filed April 10, 1980, Applicant: Georgeton Construction Co., Inc., Route 4, Box 509, Georgetown, SC 29440. Representative: Frank A. Graham, Jr., 707 Security Federal Building, Columbia, SC 29201. *Iron oxide granules,* in bulk, in dump vehicles from Georgetown, South Carolina to Castle Hayne, North Carolina. Supporting shipper: Paul Blum Company, Inc., 189 Van Rensselaer St., P.O. Box. 1026, Buffalo, NY.

MC 120910 (Sub-3-3TA), filed April 15, 1980. Applicant: SERVICE EXPRESS, INC., P.O. Box 1009, Tuscaloosa, AL 35401. Representative: Donald B. Sweeney, Jr., Esq., Bishop, Sweeney &

Colvin, 603 Frank Nelson Building, Birmingham, AL 35203. *Alcoholic beverages, equipment, materials, and supplies used in or in connection therewith* from all points in the United States to points in AL. Supporting shipper: Alabama Beverage Control Board, P.O. Box 1151, Montgomery, AL 36130.

MC 150506 (Sub-3-1TA), filed April 16, 1980. Applicant: T. D. TRUCKING, INC., An Alabama corporation, P.O. Box 5149, Birmingham, Alabama 35214. Representative: W. Randall Tye, 1400 Candler Building, Atlanta, Georgia 30303. *Canned foodstuffs,* between the facilities of Sweet Sue Kitchens, Inc., at or near Athens, AL, on the one hand, and Jacksonville, Lakeland, Miami, Orlando, and Tampa, FL; Indianapolis, IN; Davenport, IA; Lawrence, KS; Louisville, KY; Shreveport, LA; Jackson, MS; Wright City, MO; Sparks, NV; Charlotte, Hickory and Raleigh, NC; Cincinnati and Columbus, OH; Fairless Hills, Mechanicsburg, Milton, and Oaks, PA; Columbia and Greenville, SC; Bristol, Chattanooga, Knoxville, and Memphis, TN; Grand Prairie, TX; Arlington, Bristol, Norfolk, Richmond and Roanoke, VA; and Huntington, WV; on the other hand. Supporting shipper: Sweet Sue Kitchens, Inc., P.O. Box 1107, Athens, AL 35611.

MC 121821 (Sub-3-3TA, filed April 16, 1980. Applicant: TENNESSEE MOTOR LINES, INC., 402 Maple Avenue, Nashville, TN 37210. Representative: M. Bryan Stanley (same address as applicant). *General commodities (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission commodities in bulk, and commodities requiring special equipment)* between Chattanooga, TN and Pulaski, TN over US Hwy 64 serving Fayetteville, TN as an intermediate point. Note.—Applicant intends to tack this authority in MC–121821 and to interline at Chattanooga, TN and Pulaski, TN. Supporting shipper: There are 26 supporting shippers. Their statements may be examined at the ICC Regional office in Atlanta, GA.

MC 145315 (Sub-3-1TA), filed April 3, 1980. Applicant: CHARLES LINCOLN VICKERS, d.b.a., C. L. VICKERS TRANSFER, Route 2, Albemarle, N.C. 28001. Representative: Charles Lincoln Vickers, Route 2, Albemarle, N.C. 28001. *Fertilizer and fertilizer materials,* hauled over irregular route, in bulk, in dump vehicles from Hartsville, S.C. to Charlotte, N.C. Supporting shipper: Royster Company, P.O. Drawer 1940, Norfolk, VA 23501.

MC 56679 (Sub-3-10TA), filed April 14, 1980. Applicant: BROWN TRANSPORT CORP., 352 University Ave., SW, Atlanta, GA 30310. Representative: Leonard S. Cassell (same as applicant). *General commodities, with usual exceptions,* 1) Between Gadsden, AL and Atlanta, GA. (a) From Gadsden, AL over US Hwy 411 to the junction US 411 and 41, then over US 41 to Marietta, GA, then over Interstate Hwy 75 to Atlanta, (b) From Gadsden over US 278 to Atlanta, GA. 2) Between Centre, AL and Rome, GA. From Centre over Alabama Hwy 9 to the AL–GA state line, then over GA Hwy 20 to Rome. 3) Between Atlanta, GA and Anniston, AL. From Atlanta over US 78 to junction 78 and US 431 then US 431 to Anniston, 4) Between junction US Hwy 431 and Interstate Hwy 20 and Atlanta, GA. From junction US 431 and Interstate 20 over Interstate 20 to Atlanta, GA. 5) Between junction US Hwy 29 and Interstate 85 at or near Opelika, AL and Atlanta, GA. From junction US 29 and 85 at or near Opelika, AL over Interstate 59 to Tuscaloosa, AL. 6) Between Chattanooga, TN and Tuscaloosa, AL. From Chattanooga, TN over US Hwy 11 and/or Interstate 59 to Tuscaloosa, AL. 7) Between Gadsden, AL and Demopolois, AL. From Gadsden over US 431 to Opelika, then over Interstate 85 to Montgomery, then over U.S. 80 to Demoplis. 8) Between Opelika, AL and Mobile, AL. From Opelika over U.S. 280 to junction U.S. 31, then over U.S. 31 to Mobile. 9) Between Gadsden over U.S. 431 to Huntsville, then over U.S. 72A and/or U.S. 72 and U.S. 43 to Florence. 10) Between Forence, AL and Mobile, AL. From Florence over U.S. 43 to Mobile. 11) Between Opelika, AL and Mobile, AL; a) From Opelika over U.S. 29 to junction U.S. 31 then over U.S. 31 to Mobile. b) From Opelika over Interstate 85 to junction Interstate 65, then over Interstate 65 to Mobile. Serving in connection with routes 1 through 11, all intermediate points in AL and GA; also, serving points in Commercial Zones of authorized points; and serving all points in AL as off-route points. Carrier may interline, and may tack his authority with all present and future regular routes. There are 66 supporting shipper statements which may be examined at ICC Regional Office.

MC 140389 (Sub-3–3TA), filed March 18, 1980. Republication—Originally published in **Federal Register** of 04–09–80, Page 24265, volume 45, No. 70. Applicant: OSBORN TRANSPORTATION, INC., P.O. Box 1830, Gadsden, AL 35902. Representative: Clayton R. Byrd, P.O. Box 304, Conley, GA 30027. (1) *Such commodities as are dealt in by manufacturers and distributors of electric appliances,* from the facilities of Hamilton Beach Divison . . . . Scoville, Inc. at Washington, NC, Clinton, NC, Farmville, NC and Byesville, OH to points in the United States (except Alaska and Hawaii), and (2) *such material, equipment and supplies as are dealt in by manufacturers and distributors of electric appliances,* from points in the United States (except Alaska and Hawaii) to the facilities of Hamilton Beach Division. . . Scoville, Inc. at Washington, NC, Clinton, NC, Farmville, NC and Byesville, OH. Supporting shipper: Hamilton Beach Division. . . . Scoville, Inc., P.O. Box 1158 Washington, NC 27889.

MC 93980 (Sub-3–1TA), Filed February 5, 1980, Republication—originally published in **Federal Register** of 02–27–80 page 12923 volume 45, No. 40. Applicant: VANCE TRUCKING COMPANY, P.O. Box 1119, Henderson, NC 27536. Representative: Edward G. Villalon, Suite 1032 Pennsylvania Bldg., Pennsylvania Ave. & 13th St., NW., Washington, D.C. 20004. *Board, Building Wall* or *Insulating VIZ, Fibre Board of Pulpboard of Vegetable wood and/or mineral fibre.* Woodstock, VA to NC, SC, GA, FL, KY and TN for 180 days. Supporting shipper: Johns Manville Sales, Inc., 200 N. Main St., Manville, NJ 08835.

The following applications were filed in Region 4. Send protests to: ICC, Dirksen Bldg., 219 S. Dearborn St., Room 1386, Chicago, IL 60604.

MC 139481 (Sub-4–10TA), filed April 9, 1980. Applicant: NEW ULM FREIGHT LINES, INC., Post Office Box 877, New Ulm, MN 56073. Representative: Samuel Rubenstein, Post Office Box 5, Minneapolis, MN 55440. *Carbon steel, stainless steel, brass, copper, bronze and aluminum,* between Milwaukee, WI; Minneapolis, MN; Chicago, IL; Hialeah, FL; St. Louis, MO; Washington, PA; Detroit, MI; New Castle, IN, and Kansas City, MO. Supporting shipper: Fullerton Metals Company, Northbrook, IL 60062.

MC 145842 (Sub-4–1TA), filed April 11, 1980. Applicant: SUNDERMAN TRANSFER INC., P.O. Box 63, Windom, MN 56101. Representative: Carl E. Munson, 469 Fischer Building, Dubuque, IA 52001. *(1) Fresh hanging meat; and (2) Fresh and Frozen meat,* (1) From the facilities of Marshall Foods Inc., at or near Marshall, MN, to Omaha, NE; (2) From Rock Port, MO, and Nebraska City, NE, to the facilities of Marshall Foods Inc., at or near Marshall, MN. Supporting shipper: Marshall Foods, Inc., Box 218, Marshall, MN 56258.

MC 120364 (Sub-4–3TA), filed April 10, 1980. Applicant: A & B FREIGHT LINE,

INC., 4805 Sandy Hollow Road, Rockford, IL 61109. Representative: James A. Spiegal, Attorney, Olde Towne Office Park, 6425 Odana Road, Madison, WI 53719. *Containers* from the plant site of Parkside Warehouse, Inc., Rockford, IL, to LaCrosse, WI, and *Materials, equipment and supplies* from LaCrosse, WI, to Rockford, IL. Supporting shipper: Parkside Warehouse, Inc., Rockford, IL.

MC 15975 (Sub-4–3TA), filed April 11, 1980. Applicant: BUSKE LINES, INC., 123 W. Tyler Ave., Litchfield, IL 62056. Representative: Howard H. Buske (same address as applicant). *Alcoholic liquors,* in bottles, in cartons, from Bardstown, KY, to points in GA and FL. Restricted to traffic originating at the facilities utilized by Hiram Walker & Sons, Inc. An underlying ETA seeks up to 90 days authority. Supporting shipper(s): Hiram Walker & Sons, Inc., P.O. Box 479, Peoria, IL 61606.

MC 128205 (Sub-4–3TA), filed April 10, 1980. Applicant: BULKMATIC TRANSPORT COMPANY, 12000 South Doty Avenue, Chicago, Illinois 60628. Representative: Arnold L. Burke, 180 N. LaSalle Street, Chicago, Illinois 60601. *Ammonium Nitrate Fertilizer,* in bulk, from Seneca, Illinois to Chicago, Illinois, RESTRICTED to commodities having an immediately prior or subsequent movement by rail. Supporting shipper(s): E. I. du Pont de Nemours and Company, 1007 Market St., Wilmington, Delaware 19898.

MC 113651 (Sub-4–11TA), filed April 9, 1980. Applicant: INDIANA REFRIGERATOR LINES, INC., Box 522, Riggin Rd., Muncie, IN 47305. Representative: Thomas E. Leahy, Jr., 1980 Financial Center, Des Moines, IA 50309. *Malt beverages* from the facilities of Van Munching & Co., Inc. within the New York, NY Commercial Zone to points in IL, IA, MI, MN, NE and WI.* Supporting shipper Van Munching & Co., Inc., 51 West 51st St., NY, NY 10019.

MC 150527 (Sub-4–1TA), filed April 9, 1980. Applicant: TLX, INC., 215 S. 11th St., Minneapolis, MN 55403. Representative: Robert Sack, P.O. Box 6010, West St. Paul, MN 55118. *Plastic materials, plastic articles, plastic pipe, tubing, fittings and connections, and materials, supplies and accessories used in the manufacture and installation thereof (except in bulk in tank vehicles),* between at or near Springfield, KY, Vestal, NY, and Anderson, SC on the one hand, and on the other points in KY, NY, NC, and SC, restricted to traffic originating at or destined to the facilities of Robintech, Inc. An underlying ETA seeks 90 days authority. Supporting shipper: Robintech, Incorporated, P.O. Box 2342, Fort Worth, TX 76113.

MC 123407 (Sub-4–27TA), filed April 9, 1980. Applicant: SAWYER TRANSPORT, INC., Sawyer Center, Rt. 1, Chesterton, IN 46304. Representative: H. E. Miller, Jr. (same address as applicant). *Dinette sets, wood and metal, knocked down and assembled,* from the facilities of Congoleum Corp., Kinder Div., located at Cassopolis, MN, to points in Bryan, Sabina, Homesville, and Sugarcreek, OH, Portland, IN, Winfield and Leola, PA, Newton and Yoder, KS, Marshfield, Spencer, and Dorchester, WI, Charlotte, NC, Americus and Thomasville, GA, Haleyville, AL, Ocala, FL, and Denison, TX.* Supporting shipper: Congoleum Corp.—Kinder Div., 70k Parkshore Drive, Cassopolis, MI 49031.

MC 134477 (Sub-4–20TA), filed April 9, 1980. Applicant: SCHANNO TRANSPORTATION, INC., 5 W. Mendota Rd., West St. Paul, MN 55118. Representative: Thomas Fischbach, P.O. Box 43496, St. Paul, MN 55164. *Metal shelving and store fixtures, and materials, equipment and supplies used in the manufacture or distribution of metal shelving and store fixtures (except commodities in bulk),* from the facilities of Maytex, Inc. located at or near Terrell, TX to points in and east of ND, SD, NE, KS, OK, and LA. An underlying ETA seeks 90 days authority. Supporting shipper: Maytex, Inc., P.O. Box 729, Terrell, TX 75160.

MC 110988 (Sub-4–18TA), filed April 9, 1980. Applicant: SCHNEIDER TANK LINES, INC., 4321 W. College Avenue, Appleton, WI 54911. Representative: Patrick M. Byrne, P.O. Box 2298, Green Bay, WI 54306. *Chemicals,* in bulk, from the facilities of GAF Corporation at Linden, NJ to points in OH, IN, MI, IL, KY, WI, MN, IA, and MO, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: GAF Corporation, 1361 Alps Road, Wayne, NJ 07470.

MC 35628 (Sub-4–4TA), filed April 3, 1980. Applicant: INTERSTATE MOTOR FREIGHT SYSTEM, 110 Ionia Avenue, NW., P.O. Box 175, Grand Rapids, Michigan 49501. Representative: Michael P. Zell, Vice President-General Counsel, Interstate Motor Freight System, 110 Ionia Avenue, P.O. Box 175, Grand Rapids, Michigan 49501. *Common carrier:* Regular routes: *General commodities,* (except those of unusual value, Class A & B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment) serving the facilities of Monterey Mills of Tennessee, Inc., at or near Cowen, Tennessee as an off-route point connection with applicant's presently authorized regular route authority to serve Chatanooga, Tennessee. Supporting shipper: Monterey Mills of Tennessee, Inc., P.O. Box 261, Jonesville, WI 53545.

MC 144926 (Sub-4–1TA), filed April 2, 1980. Applicant: E. W. WYLIE CORPORATION, 222 40th Street SW., P.O. Box 1188, Fargo, ND 58107. Representative: Thomas J. Van Osdel, 502 First National Bank Bldg., Fargo, ND 58126. *Contract carrier:* Irregular routes: *Lumber, lumber mill products, wood products, composition board,* and *millwork,* from points in WA west and north of a line beginning at the International Boundary line between the United States and Canada at or near Danville, then south on Washington Hwy 21 to junction U.S. Hwy 2 at or near Wilbur, then west on U.S. Hwy 2 to junction U.S. Hwy 97, thence on U.S. Hwy 97 to the WA–OR State line and points in that part of OR west of U.S. Hwy 395 and south of U.S. Hwy 20, except Burns, OR to points in MN, IA, NE, ND and SD. An underlying ETA seeks 90 days authority. Supporting shippers: Georgia-Pacific Corporation 900 SW. Fifth Avenue, Portland, OR 97204.

MC 126276 (Sub-4–6TA), filed April 7, 1980. Applicant: FAST MOTOR SERVICE, INC., 9100 Plainfield Road, Brookfield, IL 60513. Representative: Albert A. Andrin, 180 North La Salle Street, Chicago, IL 60601. *Contract carrier:* Irregular routes: *Non-alcoholic beverages and supplies used in the sale and manufacture of non-alcoholic beverages,* between Austin, IN and IL, OH, KY, MO and KS. An underlying ETA seeks 90 days authority. Supporting shipper: Kolmar Products Corporation, 1745 N. Kolmar, Chicago, IL 60639.

MC 146976 (Sub-4–1TA), filed March 31, 1980. Applicant: FOREWAY TRANSPORTATION, INC., 6633 Lake Michigan Drive, Allendale, MI 49401. Representative: D. Richard Black, Jr., Black, Hall and Nicewander, 7610 Cottonwood Drive, Jenison, MI 49428. *Paper tapes and related articles and materials used in the manufacture and distribution thereof,* FROM the facilities of Permacel, Inc. at New Brunswick, NJ to points in MI, PA, OH and IN. Restricted to the transportation of traffic originating at the above named origin and destined to the named destinations. Supporting shipper: Permacel, Inc., P.O. Box 671, New Brunswick, NJ 08903.

MC 148726 (Sub-4–1TA), filed April 7, 1980. Applicant: TRS, INC., P.O. Box 688,

*An underlying ETA seeks 90 days authority.

*An underlying ETA seeks 90 days authority.

Addison, Illinois 60101. Representative: Bernard J. Kompare, Sullivan & Associates, Ltd., 10 South LaSalle Street, Suite #1600, Chicago, Illinois 60603. *Contract Carrier:* Irregular routes; *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), from the facilities of FMC Corporation at Itasca, IL, to the facilities of FMC Corporation at Colmar, PA, under contract(s) with FMC Corporation. Supporting shipper: FMC Corporation, 1800 West FMC Drive, Itasca, IL 60143.

MC 117068 (Sub-4–4TA), Applicant MIDWEST SPECIALIZED TRANSPORTATION, INC., P.O. Box 6418–North Highway 63, Rochester, MN 55901. Representative: Richard C. McGinnis, 711 Washington Building, Washington, DC 20005. *Material handling equipment, parts and attachments,* from Waco, TX, to points in the U.S. (except AK & HI) days. Supporting shipper: K–D Manufacturing Co., Inc., P.O. Box 454, Waco, TX 76705.

MC 124078 (Sub-4–16TA), filed April 7, 1980. Applicant: SCHWERMAN TRUCKING CO., 611 South 28th Street, Milwaukee, WI 53215. Representative: Richard H. Prevette, P.O. Box 1601, Milwaukee, WI 53201. *Crushed limestone,* from Hillsville, PA and Middletown, VA to Riversville, WV. Supporting shipper: Pope Evans and Robbins, Inc., P.O. Box 533, Riversville, WV 26588.

MC 59206 (Sub-4–1TA), filed: April 3, 1980. Applicant: HOLLAND MOTOR EXPRESS, INC., 750 East 40th Street, Holland, Michigan 49423. Representative: Kenneth De Vries, 750 East 40th Street, Holland, Michigan 49423. *Common Carrier: Regular routes: General Commodities* (except those of unusual value, classes A & B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment) between South Haven, MI and Kalamazoo, MI serving all intermediate points; from South Haven over MI St. Hwy. 43 to Kalamazoo and return over the same route. Supporting shipper: American Filler and Abrasives, Inc., P.O. Box 122, Bangor, ME 49013.

Caption Summary

MC 69116 (Sub-4–8TA), filed April 8, 1980. Applicant: SPECTOR INDUSTRIES, INC., d.b.a. SPECTOR FREIGHT SYSTEM, 1050 Kingery Highway, Bensenville, IL 60106. Representative: Edward G. Bazelon, 39 South LaSalle Street, Chicago, IL 60603. Common carrier, *regular routes: General Commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving Old Fort and Green Springs, OH, as off-route points in connection with carrier's otherwise authorized operations, for 180 days. Supporting shipper: Church & Dwight Co., Inc., P.O. Box 369, Piscataway, NJ 08854.

MC 110988 (Sub-4–16TA), filed April 7, 1980. Applicant: SCHNEIDER TANK LINES, INC., 4321 W. College Avenue, Appleton, WI 54911. Representative: Patrick M. Byrne, P.O. Box 2298, Green Bay, WI 54306. *Water soluble liquid plastics and chemicals* from Amherst, WI to Duluth and Minneapolis/St. Paul, MN; Indianapolis, IN; Louisville and Owensboro, KY; Erie, PA; Decatur, IL; Nashville, TN; Cincinnati, OH; and Marquette, MI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: Seco-Dyne, Inc., P.O. Box 9, Amherst, WI 54406.

MC 135598 (Sub-4–3TA), filed April 8, 1980. Applicant: SHARKEY TRANSPORTATION INC., 3803 Dye Road, Quincy, IL 62301. Representative: Carl L. Steiner, 39 South LaSalle Street, Chicago, IL 60603. *Carbon, charcoal, wood chips, lighter fluid, advertising matter, promotional material, and equipment, material and supplies used in the manufacture and distribution of the above commodities* (except commodities in bulk) between Isanti, MN; Branson, Meta and Poplar Bluff, MO; and Waupaca, WI; on the one hand, and, on the other, points in the states of AL, AR, CO, GA, IL, IN, IA, KS, KY, LA, MI, MN, MS, MO, NE, NY, ND, OH, OK, PA, SD, TN, TX, WV, and WI, restricted to traffic originating at or destined to the facilities utilized by Husky Industries, Inc. Supporting shipper: Husky Industries, Inc., 62 Perimeter Center East, Atlanta, GA 30346.

MC 110988 (Sub-4–17TA), filed April 9, 1980. Applicant: SCHNEIDER TANK LINES, INC., 4321 W. College Avenue, Appleton, WI 54911. Representative: Patrick M. Byrne, P.O. Box 2298, Green Bay, WI 54306. *Tanning oils* from Salem, MA to points in WI and IL, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: Salem Oil and Grease Company, 60 Grove St., Salem, MA 01970.

MC 55896 (Sub-4–3TA), filed April 7, 1980. Applicant: R-W SERVICE SYSTEM, INC., 20225 Goddard Road, Taylor, MI 48180. Representative: George E. Batty, 20225 Goddard Road, Taylor, MI 48180. *Zinc and zinc slabs, ingots, dross, residue, skimmings, ashes and scrap and containers used in the transportation of said commodities,* between East Liverpool, OH and Braddock, PA on the one hand, and, on the other, points in CT, DE, MD, PA, WV, OH, MI, IN, IL, KY, NY, and NJ for 180 days. Supporting shipper: St. Joe Zinc Company, Two Oliver Plaza, Pittsburgh, PA 15222.

By the Commission.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-13194 Filed 4-29-80; 8:45 am]

BILLING CODE 7035-01-M

Released Rate Application

AGENCY: Interstate Commerce Commission.

ACTION: Notice, released rate application No. MC 1510.

SUMMARY: AAA Cartage, Inc., wants authority to establish and maintain released rates on general commodities between Milwaukee, WI, Chicago, IL, and Minneapolis, MN (restricted to shipments having a prior or subsequent movement by air) when released to three different values, one not exceeding $50 per shipment or 50 cents per pound, at the base transportation rate; second, exceeding those amounts but not exceeding $9.07 per pound, at 104 percent of the base transportation rate; and a third released to a value exceeding $9.07 per pound, at 104 percent of the base rate plus an excess value charge of 10 cents per $100 of value over $9.07 per pound.

ANYONE SEEKING COPIES OF THIS APPLICATION SHOULD CONTACT: Mr. Phillip Beitz, President, AAA Cartage, Inc., 5938 13th Street, Milwaukee, WI 53221, Tel. (414) 747–5175.

FOR FURTHER INFORMATION CONTACT: Mr. Max Pieper, Bureau of Traffic, Interstate Commerce Commission, Washington, DC 20423, Tel. (202) 275–7553.

SUPPLEMENTARY INFORMATION: Relief is sought from 49 USC 10730.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-13196 Filed 4-29-80; 8:45]

BILLING CODE 7035-01-M

Transportation of Government Traffic; Special Certification Letter Notice(s)

The following letter notices request participation in a Special Certificate of Public Convenience and Necessity for the transportation of general commodities, (except classes A and B explosives, radioactive materials,

etiologic agents, shipments of secret materials, and weapons and ammunition which are designated sensitive by the United States Government), between points in the United States (including Alaska and Hawaii), restricted to the transportation of traffic handled for the United States Government or on behalf of the United States Government where the government contractor (consignee or consignor), is directly reimbursed by the government for the transportation costs, under the Commission's regulations (49 CFR 1062.4), pursuant to a general finding made in Ex Parte No. MC–107, *Government Traffic*, 131 M.C.C. 845 (1979).

An original and one copy of verified statement in opposition (limited to argument and evidence concerning applicant's fitness) may be filed with the Interstate Commerce Commission *within 20 days* from the date of this publication. A copy must also be served upon applicant or its representative. Opposition to the applicant's participation will not operate to stay commencement of the proposed operation.

If applicant is not otherwise informed by the Commission, operations may commence *within 30 days* of the date of its notice in the **Federal Register**, subject to its tariff publication's effective date, or the filing of an effective tender pursuant to 49 U.S.C. 10721.

GT–172–80 (Special Certificate—Government Traffic), filed April 2, 1980. Applicant: AMERICAN HOLIDAY VAN LINES, INC., 2323 Chipman St., Knoxville, TN 37917. Representative: George W. Mankel Jr., President (address same as applicant). Government Agency involved: General Service Administration.

GT–173–80 (Special Certificate—Government Traffic), filed April 2, 1980. Applicant: THOM'S TRANSPORT COMPANY, INC., P.O. Box 405, Blackshear, GA 31516. Representative: Sol H. Proctor, 1101 Blackstone Bldg., Jacksonville, FL 32202. Government Agency involved: U.S. Government Manual (1979–80 edition).

GT–174–80 (Special Certificate—Government Traffic), filed April 2, 1980. Applicant: ARGO TRUCKING COMPANY, INC., Lower Heard St., Elberton, GA 30635. Representative: Sol H. Proctor, 1101 Blackstone Bldg., Jacksonville, FL 32202. Government Agency involved: U.S. Government Manual (1979–80 edition).

GT–175–80 (Special Certificate—Government Traffic), filed April 2, 1980. Applicant: PETROLEUM TRANSPORT SERVICE, INC., 3908 Richland Dr., Council Bluffs, IA 51501. Representative: Arthur J. Cerra, Stinson, Mag & Fizzell, 2100 TenMain Center, P.O. Box 19251, Kansas City, MO 64141. Government Agency involved: Defense Fuel Supply Center, Alexandria, VA.

GT–176–80 (Special Certificate—Government Traffic), filed April 1, 1980. Applicant: WASHBURN STORAGE COMPANY, 83 Fifth St., Macon, GA 31202. Representative: Charles D. McEachern, 83 Fifth St., P.O. Box 278, Macon, GA 31202. Government Agency involved: Department of Defense, and General Services Administration.

GT–177–80 (Special Certificate—Government Traffic), filed March 31, 1980. Applicant: WALES TRANSPORTATION, INC., P.O. Box 226186, Dallas, TX 75266. Representative: James W. Hightower, Hightower, Alexander and Cook, P.C., 5801 Marvin D. Love Freeway, Suite 301, Dallas, TX 75237. Government Agency involved: Department of Defense; Commodity Credit Corporation; Department of Agriculture; Federal Aviation Authority; General Services Administration; National Aeronautics and Space Administration; Tennessee Valley Authorty; U.S. Weather Bureau; Atomic Energy Commission.

GT–178–80 (Special Certificate—Government Traffic), filed March 18, 1980. Applicant: REED LINES, INC., 634 Ralston Avenue, Defiance, OH 43512. Representative: Wayne C. Pence (address same as applicant). Government Agency involved: Department of Defense, and General Services Administration.

GT–179–80 (Special Certificate—Government Traffic), filed March 19, 1980. Applicant: NESTER TRANSFER, INC., 4508 Krick Street, Norfolk, VA 23513. Representative: Robert J. Gallagher, Esquire, 1000 Connecticut Avenue, N.W., Suite 1200, Washington, DC 20036. Government Agency involved: Department of Defense, and General Services Administration.

GT–180–80 (Special Certificate—Government Traffic), filed March 27, 1980. Applicant: HOME TRANSPORTATION COMPANY, INC., 1425 Franklin Road, S.E., Maretta, GA 30067. Representative: J. Michael May (address same as applicant). Government Agency involved: Commodity Credit Corporation; Departments of Agriculture, Air Force, Army, and Navy; U.S. Weather Bureau; Federal Aviation Administration; Federal Maritime Commission; General Services Administration; National Aeronautical & Space Administration; Nuclear Regulatory Commission; and Tennessee Valley Authority.

GT–181–80 (Special Certificate—Government Traffic), filed April 2, 1980. Applicant: CUSTOM TRANSPORT, INC., P.O. Box 310, Lincolnton, NC 28092. Representative: Fred L. Kistler, (address same as applicant). Government Agency involved: Department of Defense, Transportation, Commerce, Agriculture; Tennessee Valley Authority; General Services Administration, National Aeronautics and Space Administration.

GT–182–80 (Special Certificate—Government Traffic), filed April 2, 1980. Applicant: NATIONAL TRAILER CONVOY, INC., P.O. Box 3329, 705 South Elgin, Tulsa, OK 74101. Representative: Leonard A. Jaskiewicz, Esquire, Grove, Jaskiewicz, Gilliam and Cobert, 1730 M Street N.W., Suite 501, Washinton, DC 20036. Government Agency involved: Department of Defense, and General Services Administration.

GT–183–80 (Special Certificate—Government Traffic), filed April 2, 1980. Applicant: MULLEN BROS., INC., P.O. Box 1285, Pittsfield, MA 01201. Representative: Robert J. Gallagher, Esquire, 1000 Connecticut Avenue, N.W., Suite 1200 Washington, DC 20036. Government Agency involved: Department of Defense.

GT–184–80 (Special Certificate—Government Traffic), filed April 2, 1980. Applicant: INDUSTRIAL TRANSPORT, INC., 11910 Harvard Avenue, Cleveland, OH 44105. Representatives: Brian S. Stern, Stern & Jones, 2425 Wilson Boulevard, Suite 367, Arlington, VA 22201. Government Agency involved: Department of Defense, General Services Administration, and Internal Revenue Service.

GT–185–80 (Special Certificate—Government Traffic), filed April 2, 1980 Applicant: CAROLINA FREIGHT CARRIERS CORPORATION, P.O. Box 697, Cherryville, NC 28021. Representative: J. S. McCallie (address same as applicant). Government Agency involved: Department of Defense, General Services Administration, General Accounting Office, U.S. Government Printing Office, Internal Revenue Service, U.S. Postal Service.

GT–186–80 (Special Certificate—Government Traffic), filed April 2, 1980. Applicant: ROADRUNNER TRUCKING, INC., P.O. Box 26748, Albuquerque, NM 87125. Representative: Don F. Jones (address same as applicant). Government Agency involved: Departments of Defense, Interior, and Agriculuture, General Services Administration, Atomic Energy Commission, Forest Service, Federal Aviation Administration.

GT-187-80 (Special Certificate—Government Traffic), filed April 3, 1980. Applicant: NORTHEAST DELIVERY, INC., P.O. Box 127, Taylor, PA 18517. Representative: John W. Frame, P.O. Box 626, 2207 Old Gettysburg Road, Camp Hill, PA 17011. Government Agency involved: Department of Defense, General Service Administration, and Department of Agriculture.

GT-188-80 (Special Certificate—Government Traffic), filed April 3, 1980. Applicant: EAST TEXAS MOTOR FREIGHT LINES, INC., 2355 Stemmons Freeway, Dallas, TX 75207. Representative: J. Raymond Chesney (address same as applicant). Government Agency involved: Departments of Defense, Treasury, and Transportation, General Services Administration, Internal Revenue Service, Government Printing Office. Bureau of Alcohol, Tobacco, and Firearms, Federal Aviation Agency, Veterans Administration.

GT-189-80 (Special Certificate—Government Traffic), filed April 3, 1980. Applicant: R. F. WESTBURY, an individual, P.O. Box 498, Sandston, VA 23150. Representative: Carroll B. Jackson, 1810 Vincennes Road, Richmond, VA 23229. Government Agency involved: Agencies listed in U.S. Government Manual (1979-80 edition).

GT-190-80 (Special Certificate—Government Traffic), filed April 3, 1980. Applicant: UNITED AGRICULTURAL TRANSPORTATION, ASSOCIATION OF AMERICA MARKETING CO-OP, P.O. Box 692, Ennis, TX 75119. Representative: William J. Lippman, Suite 330 Steele Park, 50 South Steele Street, Denver, CO 80209. Government Agency involved: Department of Defense.

GT-191-80 (Special Certificate—Government Traffic), filed March 31, 1980. Applicant: BREWTON EXPRESS, INC., P.O. box 508, Winnfield, LA 71483. Representative: Brian E. Brewton (address same as applicant). Government Agency involved: Department of Defense.

GT-192-80 (Special Certificate—Government Traffic), filed April 3, 1980. Applicant: L. H. BRYAN d.b.a. BRYAN TRUCKING COMPANY, Route 4, Circle Creek Drive, Stockbridge, GA 30281. Representative: Marc A. Pearl, Serby & Mitchell, P.C., Lenox Towers South, 3390 Peachtree Road, Atlanta, GA 30326. Government Agency involved: Department of Defense.

GT-193-80 (Special Certificate—Government Traffic), filed April 3, 1980. Applicant: FLORIDA ROCK & TANK LINES, INC., 155 East 21st Street, Jacksonville, FL 32206. Representative: Martin Sack, Jr., 1754 Gulf Life Tower, Jacksonville, FL 32207. Government Agency involved: Agencies listed in U.S. Government Manual (1979-80 edition).

GT-194-80 (Special Certificate—Government Traffic), filed April 4, 1980. Applicant: PLANTATION TRANSPORT COMPANY, 1122 W. Oglethorpe Avenue, P.O. Box 1171, Albany, GA 31702. Representative: Robert L. Arnold (address same as applicant). Government Agency involved: Department of Defense.

GT-195-80 (Special Certificate—Government Traffic), filed April 4, 1980. Applicant: HARRY EARL NEWLON JR., d.b.a. NEWLON'S TRANSFER, 1511 N. Nelson Street, Arlington, VA 22201. Representative: Harry Earl Newlon, Jr. (address same as applicant). Government Agency involved: Department of Defense, and General Services Administration.

GT-196-80 (Special Certificate—Government Traffic), filed April 4, 1980. Applicant: MILLER TRANSPORTERS, INC., P.O. Box 1123, Jackson, MS 39205. Representative: Harold D. Miller, Jr., P.O. Box 22567, Jackson, MS 39205. Government Agency involved: Department of Defense.

GT-197-80 (Special Certificate—Government Traffic), filed April 4, 1980. Applicant: CAMPBELL SIXTY-SIX EXPRESS, INC., P.O. Box 807, 2333 East Trafficway, Springfield, MO 65801. Representative: Harold D. Miller, Jr., P.O. Box 22567, Jackson, MS 39205. Government Agency involved: Department of Defense.

GT-198-80 (Special Certificate—Government Traffic), filed April 4, 1980. Applicant: DONALD R. MULDER, d.b.a. DON MULDER TRUCKING, 1735 North 50th Street, Lincoln, NE 68504. Representative: Max H. Johnston, P.O. Box 6597, Lincoln, NE 68506. Government Agency involved: U.S. Government Printing Office, Departments of Commerce, and Defense; Bureau of Commerce, General Services Administration.

GT-199-80 (Special Certificate—Government Traffic), filed April 4, 1980. Applicant: BULK CARRIERS, INC., P.O. Box 423, Auburn, NE 68305. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. Government Agency involved: Department of Defense.

GT-200-80 (Special Certificate—Government Traffic), filed April 4, 1980. Applicant: TRI-STATE TRANSPORT, INC., P.O. Box 2168, Long Beach, CA 90801. Representative: William J. Lippman, Suite 330; Steel Park, 50 South Steel Street, Denver, CO 80209. Government Agency involved: General Services Administration, and Department of Defense.

GT-201-80 (Special Certificate—Government Traffic), filed April 4, 1980. Applicant: BERMAN'S MOTOR EXPRESS, INC., P.O. Box 1566, Binghamton, NY 13902. Representative: J. Edward Derrick (address same as applicant). Government Agency involved: Department of Defense.

GT-202-80 (Special Certificate—Government Traffic), filed April 4, 1980. Applicant: E. L. MURPHY TRUCKING COMPANY, P.O. Box 43010, St. Paul, MN 55164. Representative: Andrew R. Clark, Mackall, Crounse & Moore, 1000 First National Bank Building, Minneapolis, MN 55402. Government Agency involved: Departments of Defense, Justice, Energy, and Transportation; National Aeronautical & Space Administration, U.S. Environmental Protection Agency.

GT-203-80 (Special Certificate—Government Traffic), filed April 4, 1980. Applicant: BARNES MOVING & STORAGE CO., INC., 116 Lucille Avenue, Carrollton, GA 30117. Representative: Marion L. New, President (address same as applicant). Government Agency involved: Department of Defense, and General Services Administration.

GT-204-80 (Special Certificate—Government Traffic), filed April 4, 1980. Applicant: A. ARNOLD & SON TRANSFER & STORAGE COMPANY, INC., 2600 W. Broadway, Louisville, KY 40211. Representative: Charles W. Arnold (same as applicant). Government Agency involved: Department of Defense, U.S. Coast Guard, and General Services Administration.

GT-205-80 (Special Certificate—Government Traffic), filed April 4, 1980. Applicant: JOSEPH RUFFIN, d.b.a. RUFFIN'S MOTOR FREIGHT, 3033 South 63rd Street, Philadelphia, PA 19153. Representative: Brian S. Stern, Stern & Jones, 2425 Wilson Boulevard, Suite 367, Arlington, VA 22201. Government Agency involved: Department of Defense, and General Services Administration.

GT-206-80 (Special Certificate—Government Traffic), filed April 4, 1980. Applicant: YOUNG'S EXPRESS, INC., 1501 North Warwick Avenue, Baltimore, MD 21216. Representative: Brian S. Stern, Stern & Jones, 2425 Wilson Boulevard, Suite 367, Arlington, VA 22201. Government Agency involved: Department of Defense, and General Services Administration.

GT-207-80 (Special Certificate—Government Traffic), filed April 7, 1980. Applicant: NORTHWEST TRANSPORT SERVICE, INC., 5231 Monroe Street, Denver, CO 80216. Representative: Milton D. Gordon, General Traffic Manager (address same as applicant). Government Agency involved: Departments of Defense, Navy, Army Air Force, and Marine Corps, General Services Administration, U.S. Postal Service, U.S. Government Printing Office, Veterans Administration, Defense Contract Administration, Department of Energy, and Bureau of Mint.

GT-208-80 (Special Certificate—Government Traffic), filed April 7, 1980. Applicant: COAST EXPRESS, INC., 14280 Monte Vista Avenue, Chino, CA 91710. Representative: William J. Lippman, Suite 330; Steele Park, 50 South Steele Street, Denver, CO 80209. Government Agency involved: Department of Defense, and General Services Administration.

GT-209-80 (Special Certificate—Government Traffic), filed April 7, 1980. Applicant: WOODLAND TRUCK LINES, INC., P.O. Box 70, 635 Park Street, Woodland, Washington 98674. Representative: Lawrence V. Smart, Jr., 419 N.W. 23rd Avenue, Portland, OR 97210. Government Agency involved: General Services Administration, and U.S. Forest Service.

GT-210-80 (Special Certificate—Government Traffic), filed April 7, 1980. Applicant: VOLUNTEER TRANSPORTATION, INC., Route 6, Box 404, McMinnville, TN 37110. Representative: Roland M. Lowell, 618 United American Bank Building, Nashville, TN 37219. Government Agency involved: Department of Housing and Urban Development, Office of Emergency Preparedness, Federal Emergency Mangement Agency.

GT-211-80 (Special Certificate—Government Traffic), filed April 7, 1980. Applicant: MERCURY MOTOR EXPRESS, INC., P.O. Box 23406, Tampa, FL 33623. Representative: Joseph W. Watson, (address same as applicant). Government Agency involved: General Services Administration, Government Printing Office, Veterans Administration, Internal Revenue Service, Department of Defense.

By the Commission

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-13195 Filed 4-29-80; 8:45 am]

BILLING CODE 7035-01-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-17 (Preliminary)]

Clams in Airtight Containers From Canada

Determination

On the basis of the record in this investigation No. 731-TA-17 (Preliminary), the Commission unanimously determined that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishement of an industry in the United States is materially retarded, by reason of the importation from Canada of clams in airtight containers, provided for in items 114.01 and 114.05 of the Tariff Schedules of the United States (TSUS), which are allegedly sold at less than fair value (LTFV).

Background

On March, 5, 1980, the United States International Trade Commission received notice from the Department of Commerce that an antidumping investigation had been initiated with respect to clams in airtight containers from Canada, in accordance with section 732(a) of the Tariff Act of 1930, as added by title I of the Trade Agreements Act of 1979. Accordingly, the Commission instituted a preliminary antidumping investigation 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 from Canada of clams in airtight containers, provided for in TSUS items 114.01 and 114.05, allegedly sold at LTFV. The statute directs that the Commission make its determination within 45 days of its receipt of notice of the investigation or in this case by April 18, 1980.

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was duly given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, D.C., and at the Commission's New York Office, and by publishing the notice in the **Federal Register** on March 13, 1980 (45 FR 16359). A public conference was held in Washington, D.C., on March 31, 1980.

In arriving at its determination, the Commission has given due consideration to the information provided by the administering authority, to all written submissions from interested parties, and information adduced at the conference and obtained by the Commission's staff from questionnaires, documented personal interviews, and other sources, all of which have been placed on the administrative record of this preliminary investigation.

Statement of Reasons of Chairman Catherine Bedell, Commissioner George M. Moore and Commissioner Paula Stern

In this investigation, No. 731-TA—17 (Preliminary), on the basis of the best information available, 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 in the United States is materially retarded,[1] by reason of imports of clams in airtight containers[2] from Canada, which are allegedly sold at less than fair value (LTFV).

Discussion

In this investigation, we consider the relevant domestic industry to consist of the facilities producing canned clams, whether whole, minced, or chopped, in the United States. In the United States there are three plants canning whole clams and 16 plants producing minced or chopped canned clams.[3]

The Question of Material Injury

On the basis of the statutory definition of material injury as set forth in section 771(7) of the Tariff Act of 1930 (19 U.S.C. 1677(7)), we find no reasonable indication that the domestic industry has been materially injured by alleged LTFV [4] sales of canned clams from Canada.

Imports of Canadian canned clams into the United States, which had risen from 6,000 pounds in 1977 to 69,000 pounds in 1978, dropped to 25,000 pounds in 1979.[5] In addition, imports of canned clams from Canada accounted for only a small fraction (0.1 percent by quantity in 1979) of domestic

[1] The question of the material retardation of the establishment of an industry in the United States was not an issue in this investigation.

[2] The product is provided for in items 114.01 and 114.05 of the Tariff Schedules of the United States (TSUS).

[3] See Commission report (hereinafter referred to as Report), pp. A-5-6.

[4] The petitioner alleged in the Commerce petition that imports of canned clams from Canada were being sold at LTFV margins of as much as 65 percent. Report, p.A-20.

[5] Report, p. A-26.

consumption of canned clams during 1977–79.[6]

A price comparison shows that the price of imported canned clams from Canada during 1979 and the latter part of 1978, the period during which the alleged LTFV sales occurred, exceeded the average weighted price of domestic canned clams. During four of the last six quarters, imports were more expensive than the domestic product, were less expensive during one quarter, and were about the same price during one quarter.[7] Thus, there appears to be no pattern of price depression or suppression of the domestic product by the alleged LTFV sales of Canadian canned clams.

The domestic industry showed an overall favorable economic performance during 1977–79. U.S. production of canned clams for firms responding to Commission questionnaires rose from 10.2 million pounds in 1977 to 13.5 million pounds in 1979, or by 32 percent.[8] The number of plants producing canned clams in the United States rose from 8 in 1975 to 16 in 1978.[9] Moreover, capacity utilization increased steadily during 1977–79.[10] Employment within the U.S. industry producing canned clams rose by approximately 32 percent from 1977 to 1979,[11] and man-hours worked by approximately 40 percent.[12]

Usable profit and loss information was received by the Commission from two firms which represent nearly half of domestic production. Combined net sales for these firms from 1977 to 1979 rose by 19 percent. However, combined profits dropped sharply because one reporting company indicated substantial increases in production and operation costs.

On the basis of this analysis of material injury as set forth in the statute, we do not find a reasonable indication that any material injury to the U.S. industry could have been caused by the imports in question.

The Threat of Material Injury

Canadian exports of canned shellfish, including canned clams, to markets other than the United States showed substantial increases between 1977 and 1979. Such exports to the United States dropped from 77 percent of the total in 1977 to approximately 12 percent of the total in 1979.[13] Specifically, as noted above, U.S. imports of canned clams from Canada decreased between 1978 and 1979. Furthermore, there is information in the record that the Canadian plant producing the imports in question is incapable of expanding its output significantly in the near future.[14] Therefore, we find no reasonable indication of threat of material injury to a domestic industry.

Views of Vice Chairman Bill Alberger and Commissioner Michael J. Calhoun

Determination and Conclusion of Law

On the basis of the record in investigation No. 731–TA–17 (Preliminary), 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 that the establishment of an industry in the United States is materially retarded,[15] by reason of imports of clams in airtight containers[16] from Canada which are allegedly sold at less than fair value (LTFV).

Discussion

In this investigation, we consider the relevant domestic industry to consist of the facilities producing canned clams, whether whole, minced or chopped, in the United States. In the United States there are three plants canning whole clams and 16 plants producing minced or chopped canned clams.[17]

In 1979, Canadian imports represented only 0.1 percent of U.S. consumption of canned clams and there is no evidence of price undercutting by the Canadian imports. In fact, the price of imported canned clams from Canada exceeded the average weighted price of domestic canned clams during the latter part of 1978 and 1979, the period during which the alleged LTFV sales were made.

Production and shipments of canned clams rose by about 32 percent between 1977 and 1979, and there were increases in employment and hours worked by production employees during this same time period. Capacity utilization increased from 1977 through 1979 and the ratio of inventories to production declined during the same time-frame. Profits are down, but for reasons other than imports.

U.S. imports of Canadian canned clams dropped in 1979 and the record indicates a sharp shift from the United States to Asia as the major export market for the Canadian product. Clearly, with the overall domestic industry healthy, there is no material injury, or threat thereof, to U.S. industry by imports of canned clams from Canada.

Findings of Fact [18]

Section 771(7)(B) of the Tariff Act of 1930 requires the Commission to consider (i) the volume of the 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 section 77(7)(c), the Act further specifies a series of economic factors that the Commission must consider. The following findings, based on the record in this investigation, set forth our evaluation of these factors.

I. No Reasonable Indication of Material Injury

A. Volume of imports. 1. U.S. imports of canned clams from Canada rose from 6,000 pounds in 1977 to 69,000 pounds in 1978, but then declined to 25,000 pounds in 1979. (Report at p. A–26, Table 1)

2. U.S. imports of canned clams from Canada have supplied only a negligible share of the domestic market for such items. During 1977–79, imports from Canada were equivalent to 0.4 percent or less of apparent annual domestic consumption of canned clams. (Report at pp. A–15, 27, Table 2)

B. Effect of imports on the prices of canned clams in the United States. 3. A comparison of prices for imported clams allegedly sold at LTFV with those for domestic products indicate that imports were more expensive during four out of the last six quarters; were less expensive for one quarter; and were about the same price during one quarter. Thus there was no consistent pattern of price undercutting by these imports from Canada during the six quarters in which the imports were alleged to be sold at LTFV. (Report at pp. A–15–17)

4. The price of imported canned clams from Canada generally exceeded the average weighted price of domestic canned clams during the latter part of 1978 and all of 1979. As a result, there is no direct evidence of price suppression or depression by reason of the alleged LTFV imports. (Report at pp. A–16, 17)

[6] Report, p. A–15.
[7] Report, pp. A–15–16.
[8] Report, p. A–11. These firms represent almost two-thirds of the domestic industry.
[9] Report, p. A–5.
[10] Report, p. A–11.
[11] Report, p. A–13.
[12] Report, p. A–13.
[13] Report, p. A–9.
[14] Report, p. A–12.
[15] The question of the material retardation of the establishment of an industry in the United States was not an issue in this investigation.
[16] The product is provided for in items 114.01 and 114.05 of the Tariff Schedules of the United States (TSUS).
[17] Canned clams from Canada, Report to the Commission in Investigation No. 731–TA–17 (Preliminary) under Section 733(a) of the Tariff Act of 1930, as amended (hereinafter referred to as "Report"), pp. A–5–6.
[18] Vice Chairman Alberger included, for informational purposes, the Recommended Determination and Supporting Statement of the Director of Operations in this investigation which appears at the conclusion of these views.

C. Impact on affected industry. 5. U.S. production of canned clams by producers responding to Commission questionnaires rose from 10.2 million pounds in 1977 to 13.5 million pounds in 1979 or a rise of about 32 percent. These firms represented about 59 percent of the commercial production of canned clams in the United States in 1978 (the latest year for which official data are available). (Report at p. A–11)

6. Domestic shipments of canned clams by the U.S. industry paralleled the rise in production. Domestic shipments rose from 10.1 million pounds in 1977 to 13.3 million pounds in 1979. (Report at p. A–11)

7. U.S. consumption of canned clams has risen from 17.9 million pounds in 1977 to 19.1 million pounds in 1979. (Report at p. A–27, Table 2)

8. The net operating profit for reporting firms dropped from 1977 to 1979. One of the two reporting firms attributed its drop to increases in the cost of raw materials (clams) as well as other operating costs. (Report at p. A–19)

9. Domestic producers indicated that while their production capacity remained unchanged during 1977–79, the ratio of capacity utilization steadily increased from 12.5 percent in 1977 to 20.5 percent in 1979. (Report at p. A–13)

10. The ratio of year-end U.S. producer-held stocks of canned clams to U.S. production of canned clams declined from 27 percent in 1977 to 23 percent in 1979. (Report at p. A–12)

11.Domestic producers responding to the Commission's questionnaires reported increases during 1977–79 in employment (32 percent) and in the hours worked by production workers and other related workers (40 percent). (Report at p. A–13)

12. The major research and development efforts related to this industry (improving the supply of fresh clams rather than improving the productivity of canning operations) is carried out by the Federal Government. (Report at p. A–14)

13. Only one firm regarding cash flow indicated its concern and the ability to raise capital and investment. Other reporting firms made no comment. The Commission has no aggregate information in these categories. (Report at p. A–14)

14. U.S. imports of canned clams from Canada rose from 1977 to 1978 and then declined in 1979. (Report at p. A–26, Table 1)

15. The Canadian cannery producing the imported clams apears to be incapable, under present conditions, of increasing its production. (Report at p. A–12)

16. Canadian exports of shellfish, including canned clams, to markets other than the United States have shown substantial increases during 1977–79. Exports to the United States dropped from 77 percent of the total exports in 1977 to 12 percent of the total exports in 1979. (Report at p. A–9)

I. Recommendation

Supporting Statement By the Director of Operations For a Negative Determination on Canned Clams From Canada (Investigaton No. 731–TA–17 (Preliminary))

I recommend that the Commission 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 in the United States is materially retarded. The question of material retardation of the establishement of an industry in the United States is not an issue in this investigation. There are approximately 15 companies producing canned clams in the United States.

II. The Industry

The industry of the United States producing canned clams shipped in excess of $25 million in 1978. Production rose in 16 plants.

III. Material Injury

(1) In 1979, the year in which the allegerd less than fair value (LTFV) sales occurred, Canada supplied only 0.1 percent of the quantity of U.S. consumption of canned clams. Imports from all other countries suppled 30.4 percent of the quantity of U.S. consumption of all types of canned clams. Imports of canned whole clams from Canada supplied 0.8 percent of domestic consumption of canned whole clams in 1979.

(2) The quantity of U.S. production of canned clams rose from 10,192,000 pounds in 1977 to 13,456,000 pounds in 1979. This is an an increase of 32 percent.

(3) Employment within the U.S. industry for the production of canned clams rose by approximately 32 percent from 1977 to 1979. The hours worked rose by approximately 40 percent.

(4) A price comparison of the domestic and imported clams allegedly sold at LTFV indicated that imports were more expensive during four out of the last six quarters; were less expensive for one quarter; and were about the same price during one quarter.

(5) The price of imported canned clams from Canada has generally exceeded the average weighted price of domestic canned clams during 1978–1979. As a result, there is no direct evidence of price suppression or depression by reason of the alleged LTFV imports.

(6) Only the petitioner, a domestic producer of canned clams, indicates that it has lost sales to imports from Canada, but the staff was unable to confirm the evidence of lost sales.

(7) The petitioner was the only domestic producer complaining of imports from Canada. It represents an insignificant proportion of U.S. production. During the period of the alleged LTFV sales, its shipments increased.

IV. Threat of Material Injury

(1) The United States has declined in importance as an export market of Canadian shellfish including canned clams. In 1977 the United States accounted for 77 percent of the Canadian export market for canned shellfish, while by 1979 its share was 12 percent. The quantity of U.S. imports of canned clams from Canada dropped from 69,000 pounds in 1978 to 25,000 pounds in 1979.

(2) There is evidence that the Canadian plant producing the imported canned clams is not capable at this time of significantly expanding its output. There is evidence that the Canadian plant is experiencing production and other difficulties.

V. Recommendation

In conclusion, on the basis of my review of the information developed during the investigation, I recommend that the Commission 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 in the United States is materially retarded.

Issued: April 18, 1980.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 80–13289 Filed 4–29–80; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–71]

Certain Anaerobic Impregnating Compositions and Components Therefor; Order Denying Respondents' Motion for Leave To File a Response to Complainant's Exceptions To Recommended Determination

Having reviewed and considered Motion docket No. 71–44 wherein respondents Ultraseal America, Inc. *et*

al. request leave to file a response to complainant Loctite's exceptions to the presiding officer's recommended determination issued on March 12, 1980, THE COMMISSION HEREBY ORDERS THAT—

(1) the motion of respondents Ultraseal America, Inc. *et al.* is denied; and

(2) The Secretary serve a copy of this Commission order upon each party of record to this investigation.

Dated: April 23, 1980.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 80-13290 Filed 4-29-80; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-69]

Certain Airtight, Cast-Iron Stoves; Termination

Upon consideration of the presiding officer's recommendation and the record in this proceeding, the Commission is ordering the termination of investigation No. 337-TA-69, Certain Airtight Cast-Iron Stoves, as to respondent Gambles Import Corporation, by granting motion No. 69-20 by Gambles. The motion to terminate was unopposed by the Commission Investigative Attorney and by the complainants.

The order is effective as of April 25, 1980.

Any party wishing to petition for reconsideration of the Commission's action must do so within fourteen (14) days of service of the Commission order. Such petitions must be in accord with Commission rule 210.56 (19 CFR 210.56).

Copies of the Commission's action and order, the Commissioners' opinion(s), and any other public documents in this investigation are available to the public during official working hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, United States International Trade Commission, 701 E Street, N.W., Washington, D.C. 20436, telephone (202) 523-0161.

Notice of the institution of this investigation was published in the Federal Register of July 12, 1979 (44 FR 40732).

By order of the Commission.

Issued: April 25, 1980.

Kenneth R. Mason,

Secretary.

[FR Doc. 80-13288 Filed 4-29-80; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

U.S. Circuit Judge Nominating Commission Second Circuit Panel Chairman: Lawrence E. Walsh

April 25, 1980.

The Second Circuit Panel of the United States Circuit Judge Nominating Commission will hold its first meeting on Wednesday, May 7, 1980, at the Association of the Bar, 42 West 44th Street, New York at 10:00 a.m.

The morning session will be an orientation session for the panel and will be open to the public; the afternoon session will be devoted to a discussion of applicants and will be closed to the public pursuant to Pub. L. 92-463, Section 10(d) as amended. [CF 5 U.S.C. 552b(c)(6)]. Due to the exigency of completing the panels work by June 27, 1980, the scheduling of the panel's first session could not meet the 15 day requirement for public notice.

Phillip B. Cover,

Committee Management Control Officer.

[FR Doc. 80-13285 Filed 4-29-80; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 79-10]

David H. Blanck & Co.; Denial of Registration

On March 21, 1979, the Administrator of the Drug Enforcement Administration (DEA), directed to David H. Blanck and Company (Respondent) an Order to Show Cause why the Respondent's application for registration as a distributor of controlled substances in Schedules II-V should not be denied for the reasons stated in the Order. On April 12, 1979, the Respondent requested a hearing on the proposed denial. A formal hearing was conducted on June 19, 1979, before Administrative Law Judge Francis L. Young. Respondent appeared pro se.

On August 17, 1979 Judge Young certified the entire record with his recommended findings of fact and conclusions of law and decision to the Administrator pursuant to Title 21, Code of Federal Regulations (CFR), § 1316.65.

Purusant to 21 CFR 1316.66, the Respondent, through its President, David H. Blanck, filed a letter dated August 31, 1979 taking exception to Judge Young's opinion, recommended rulings and decision.

The Administrator has carefully considered Respondent's exceptions and has caused them to be part of the entire record in this matter. The Administrator, pursuant to 21 CFR 1316.67, hereby publishes the final order in this matter.

Judge Young found, *inter alia,* that an audit of Respondent's controlled substances by DEA covering April 2, 1977 to July 5, 1978, revealed that Respondent could not account for 115,000 dosage units of Valium 10 mg., a Schedule IV controlled substance, which represented more than 50% of the amount of that drug for which Respondent was held accountable. Judge Young found that DEA investigators were told by Respondent's warehouse manager that the cage for Schedule IV controlled substances was kept locked when in fact, Respondent's employees purposefully kept it unlocked but created the illusion that it was padlocked.

Judge Young found that Respondent's employees also purposefully frustrated other security measures required by DEA regulations: they routinely slowed the closing momemtum of Respondent's self-closing, self-locking day-gate on its Schedule II controlled substances vault so that it would not completely close and hence, would not lock, to avoid the necessity, and purpose, of having to unlock the day-gate each time they needed to enter the vault.

Judge Young found Respondent's recordkeeping was a failure in that it does not maintain, and sometimes destroys, records of controlled substances it receives, and on shipping records which it does keep, it does not record actual dates of shipment of controlled substances to its customers.

Judge Young further found that Respondent's present controlled substance regulatory failures are rooted in its past history, which in 1975 revealed that then, too, Respondent's Schedule II security was lacking (no self-closing, self-locking day-gate on the vault), it could not account for 50% of a particular controlled substance, (Schedule II Dilaudid), it failed to afford Schedule III-V security, and it failed to record its receipt of controlled substances on the appropriate and required records.

Judge Young stated in his discussion that Respondent presented no satisfactory excuse nor explanation, and he concluded that Respondent, in the past, failed to maintain effective controls against diversion, and failed to keep records as required by applicable regulations, and again has failed to do so in both regards. Judge Young's recommendation to the Administrator is that Respondent's application for registration as a distributor of controlled substances be denied, in full.

The Administrator adopts the findings and recommendations of the

Administrative Law Judge and upon consideration of the entire record and pursuant to the authority vested in the Attorney General and redelegated to the Administrator of the Drug Enforcement Administration, the Administrator hereby orders that the application for registration submitted by David H. Blanck and Company be, and it hereby is, denied, effective May 30, 1980.

Dated: April 24, 1980.

Peter B. Bensinger,

Administrator.

[FR Doc. 80-13253 Filed 4-29-80; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 80-1]

Daniel P. Elizaga, M.D.; Hearing

Notice is hereby given that on January 11, 1980, the Drug Enforcement Administration, Department of Justice, issued to Daniel P. Elizaga. M.D., Morton, Washington, an Order To Show Cause as to why the Drug Enforcement Administration should not deny Respondent's application to possess, dispense and distribute Schedule II–IV controlled substances under section 303 of the Controlled Substances Act (21 U.S.C. 823).

Thirty days having elapsed since the said Order To Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 9:30 a.m. on Wednesday, May 21, 1980, in the U.S. Customs Court Courtroom, No. 1057, Federal Office Building, 9091 First Avenue, Seattle, Washington.

Dated: April 24, 1980.

Peter B. Bensinger,

Administrator, Drug Enforcement Administration.

[FR Doc. 80-13252 Filed 4-29-80; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 80-2]

Aaron A. Moss, D.D.S.; Hearing

Notice is hereby given that on February 6, 1980, the Drug Enforcement Administration, Department of Justice, issued to Aaron A. Moss, D.D.S., New York, New York, an Order To Show Cause as to why the Drug Enforcement Administration should not deny Respondent's pending application for registration.

Thirty days having elapsed since the said Order To Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 10:00 a.m. on Tuesday, May 6, 1980, in the Hearing Room, Room 1210, Drug Enforcement Administration, 1405 I Street, N.W., Washington, D.C.

Dated: April 24, 1980.

Peter B. Bensinger,

Administrator, Drug Enforcement Administration.

[FR Doc. 80-13254 Filed 4-29-80; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 80-34]

NASA Advisory Council (NAC) Life Sciences Advisory Committee; Meeting

Notice of a meeting of the NASA Advisory Council, Life Sciences Advisory Committee, was published in the **Federal Register** on April 11, 1980, (45 FR 24950). The meeting, scheduled to be held on May 5, 1980, from 3:00 p.m. to 5:30 p.m., in Room 5026, Federal Building 6, 400 Maryland Avenue SW, Washington, DC 20546, is changed as follows:

1. The meeting will start earlier than indicated in the cited publication.

2. The agenda will have additional items as indicated in this revision. A closed session will be held to allow consideration to be given to expanding the Committee to include specialists in ecology and planetary biology. This topic will include a candid discussion of potential new members and their qualifications. There will also be a discussion of the quality of the overall Life Sciences Program and of the individuals involved in it. Since this session will be concerned throughout with matters listed in 5 U.S.C. 552b(c)(6), it has been determined that this session should be closed to the public.

The revised agenda is:

9:00 a.m. Introductory Remarks.
9:30 a.m. NASA and Advisory Structure and Charter.
10:00 a.m. Review of Life Sciences Program:
a. Research Program.
b. Flight Program.
1:00 p.m. Executive Session (Closed).

For further information, contact Dr. Paul Rambaut, Executive Secretary of the Committee, Code SBR-3, National Aeronautics and Space Administration, Washington, DC 20546, telephone (202) 755-3723.

Russell Ritchie,

Deputy Associate Administrator for External Relations.

April 24, 1980.

[FR Doc. 80-13176 Filed 4-29-80; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

Humanities Panel; Advisory Committee, Changes

This is to announce changes in a meeting of the Humanities Panel Advisory Committee.

1. The meeting to be held on April 25, 1980 in Room 807, National Endowment for the Humanities, 806 15th Street, N.W., Washington, D.C. to review Media Humanities Challenge Grant Program applications submitted to the National Endowment for the Humanities for projects beginning after October, 1980 has been changed. It will be held in Room 807 of the National Endowment for the Humanities on April 30, 1980.

This meeting was announced on page 11965 of the Federal Register dated February 22, 1980.

Stephen J. McCleary,

Advisory Committee, Management Officer.

[FR Doc. 80-13214 Filed 4-29-80; 8:45]

BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-313]

Arkansas Power & Light Co. (Arkansas Nuclear One, Unit No. 1); Confirmatory Order

I

The Arkansas Power and Light Company (the Licensee) is the holder of Facility Operating License No. DPR-51 which authorizes the Licensee to operate the Arkansas Nuclear One, Unit No. 1 (the facility) at power levels not in excess of 2568 megawatts thermal (rated power). The facility is a pressurized water reactor located at the Licensee's site in Pope County, Arkansas.

II

Following the incident of February 26, 1980, at the Crystal River facility, the NRC staff held meetings with the Licensee, other operating licensees with Babcock and Wilcox (B&W) reactor systems, and B&W. The meetings were held in Bethesda, Maryland on March 4, 17 and 18, 1980. These meetings resulted in the development of three actions.

1. Actions which will allow the operator to cope with various combinations of loss of instrumentation and control functions. This includes changes in (A) equipment and control systems to give clear indications of functions which are lost or unreliable; (B) procedures and training to assure positive and safe manual response by the operator in the event that competent instruments are unavailable.

2. Determination of the effects of various combinations of loss of instrumentation and control functions by design review analysis and verification by test.

3. Correction of electrical deficiencies which may allow the power operated relief valve and pressurizer spray valve to open on non-nuclear instrumentation power failures, such as, the event which occurred at Crystal River, Unit 3 on February 26, 1980.

The Licensee confirmed by letters dated March 24 and April 18, 1980, that it would implement all three actions at its facility prior to June 21, 1980. The Licensee's letter of April 18, 1980 provided the detailed listing of various combinations of loss of instrumentation which constitutes the commitment in Item 1 and the specific list of tests which constitutes the commitment in Item 2. I have concluded that timely implementation of these three short term actions, at operating B&W system nuclear power plants is necessary to provide continued assurance of public health and safety. The Licensee confirmed by letter dated March 24, 1980 that it would implement all three actions at its facility within 90 days of the date of this Order.

III

The Office of Inspection and Enforcement (IE) issued Bulletin 79–27 following an event at the Oconee Nuclear Station, Unit No. 3, on November 10, 1979 which was similar to the Crystal River incident. This event was described in Information Notice 79–29, dated November 16, 1979, which was sent to this Licensee. This Licensee was requested by IE Bulletin 79–27, dated November 30, 1979, Loss of Non Class 1–E Instrumentation and Control Power Bus During Operation, to review, among other things, busses supplying power to certain instrument and control systems, emergency procedures related to loss of power to such busses and failure to certain power supplies. In accordance with Bulletin 79–27 the Licensee was requested to submit to the Commission the results of its review by February 28, 1980. This Licensee has not met this date.

The responses to IE Bulletin 79–27 must be submitted in order that NRC can determine whether this license should be modified to protect the health and safety of the public. The Licensee's letter of March 26, 1980 committed to respond to the Bulletin by April 26, 1980.

IV

In view of the importance of this matter I have determined that these commitments be formalized by order and that the public health, safety and interest require that this order be made immediately effective. Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered, effective immediately, that:

(1) The Licensee within 90 days of this Order will implement all three actions provided in Part II of this Order or in the alternative, place and maintain its facility in a cold shutdown or refueling mode of operation.

(2) The Licensee shall submit by April 28, 1980 the written responses to IE Bulletin 79–27 to the NRC.

V

Any person who has an interest affected by this Order may request a hearing within twenty-five days of the date of the Order. Any request for a hearing will not stay the effectiveness of this Order. Any request for a hearing shall be submitted to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, with a copy to the Executive Legal Director at the above address. If a hearing is requested by a person who has an interest affected by this Order, the Commission will issue an Order designating the time and place of any such hearing.

In the event any person who has an interest affected by this Order requests a hearing as provided above and a hearing is held, the issues to be considered at such a hearing shall be:

(1) Whether the facts set forth in Parts II and III of this Order provide an adequate basis for the actions ordered, and

(2) Whether the Licensee should perform the actions required by Part IV of this Order in accordance with the schedule stated therein.

Operation of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order.

Dated at Bethesda, Maryland this 22nd day of April 1980.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 80–13255 Filed 4–29–80; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–255]

Consumers Power Co. (Palisades); Confirmatory Order

I

Consumers Power Company (the "license") is the holder of Provisional Operating License No. DPR–20 (the "license") with an expiration date of March 1, 1974, which authorizes operation of the Palisades unit (the "facility"). The licensee had applied in a timely manner for a conversion to a full term operating License. This application is under NRC review.

II

On November 10, 1979, an event occurred at the Oconee Power Station, Unit 3, that resulted in loss of power to a nonclass 1–E 120 Vac single phase power panel that supplied power to the Intergrated Control System and the Nonclear Instrumentation System. This loss of power resulted in control system malfunctions and significant loss of information to the control room operator.

This event was described in Information Notice 79–29, dated November 16, 1979, which was sent to this licensee. This licensee was requested by IE Bulletin 79–27, dated November 30, 1979, "Loss of Nonclass 1–E Instrumentation and Control Power Bus During Operation" to review, among other things, buses supplying power to certain instrument and control systems, emergency procedures related to loss of power to such buses and failure to certain power supplies.

In accordance with Bulletin 79–27 the licensee was requested to submit to the Commission the results of its review by February 28, 1980. A partial response was provided in a letter dated March 3, 1980 and a commitment was made to complete the response by April 1, 1980. The licensee notified the Commission in a letter of April 3, 1980 that the parts of the review related to procedures had not yet been completed but would be completed prior to startup from the present refueling outage on or about May 1, 1980.

On February 26, 1980, an event occurred at Crystal River Unit No. 3 that also involved a loss of instrument and control power. This event was described in Information Notice 80–10, "Partial Loss of Nonnuclear Instrument System Power Supply During Operation," dated

March 7, 1980. Because of the implications of the Crystal River Unit No. 3 event on February 26, 1980 and because of the potential adverse effects on public health and safety that could result from future events of this type, the information requested in IE Bulletin 79–27 must be submitted in order that NRC can determine whether this license should be modified to protect the health and safety of the public.

The Licensee has committed by letter dated April 18, 1980, supplemented by a telephone conversation between Commission representatives and Mr. D. P. Hoffman of the Licensee organization on April 17 and April 18, 1980, that it would provide the information required by Bulletin 79–27 as revised in Attachment A to this Order, prior to startup from the current outage.

III

In view of the importance of this matter, I have determined that these commitments should be formalized by order and that the public health, safety and interest require that this action be made immediately effective. Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered, effective immediately, that:

(1) The license shall submit to the Director of Reactor Operations Inspection, Washington, D.C. 20555 and to the Director of the appropriate NRC Regional Office, written statements under oath containing the information required in Attachment A to this Order; and

(2) The license shall submit the statements prior to startup from the current outage.

IV

Any person who has an interest affected by this Order may request a hearing within twenty-five (25) days of the date of the Order. Any request for a hearing will not stay the effectiveness of this Order. Any request for a hearing shall be submitted to the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, with a copy to the Executive Legal Director at the above address. If a hearing is requested by a person who has an interest affected by this Order, the Commission will issue an Order designating the time and place of any such hearing.

V

In the event a person who has an interest affected by this Order requests a hearing as provided above and a hearing is held, the issues to be considered at such a hearing shall be:

(1) Whether the facts set forth in Part II of this Order provide an adequate basis for the actions ordered;

(2) Whether the Licensee should perform the actions required in Part III of this Order in accordance with the schedule stated therein.

Operation of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order.

Dated at Bethesda, Maryland on this 22nd day of April, 1980.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Director, Office of Inspection and Enforcement.

Attachment A

Review procedures that will be used by control room operators, including procedures required to achieve a cold shutdown condition, upon loss of power to each class 1–E and nonclass 1–E bus supplying power to safety and non-safety related instrument and control systems. At a minimum, the review shall assure that emergency procedures include:

(a) The diagnostics/alarms/indicators/symptoms resulting from the review and evaluation conducted per item 1 of IE Bulletin 79–27.

(b) The use of alternate indication and/or control circuits which may be powered from other nonclass 1–E or class 1–E instrumentation and control buses.

(c) Methods for restoring power to the bus.

Provide a description of the changes to the emergency procedures and administrative controls that have been prepared to conform to items 1a, 1b and 1c above and provide a description of and schedule for implementation of any design changes resulting from the changes to emergency procedures and administrative controls.

[FR Doc. 80-13256 Filed 4-29-80; 8:45]

BILLING CODE 7590-01-M

[Dockets Nos. 50-277 and 50-278]

Philadelphia Electric Co., et al.; Issuance of Amendments to Facility Operating Licenses and Negative Declaration

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment Nos. 67 and 66 to Facility Operating License Nos. DPR–44 and DPR–56, issued to the Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, which revised Technical Specifications for operation of the Peach Bottom Atomic Power Station, Units Nos. 2 and 3 (the facility) located in York County, Pennsylvania. The amendments are effective as of the date of issuance.

These amendments revise the Appendix B Environmental Technical Specifications to delete those portions of the Environmental Surveillance and Special Study Programs covering *Fisheries* (ETS Section 6.1.a.1), *Limnology* (ETS Section 6.1.a.2) and *Thermal Plume Mapping* (ETS Section 6.3.a).

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has prepared an environmental impact appraisal for the revised Technical Specifications and has concluded that an environmental impact statement for this particular action is not warranted because there will be no significant environmental impact attributable to the proposed action other than that which has already been predicted and described in the Commission's Final Environmental Statement for the Peach Bottom Atomic Power Station, Units Nos. 2 and 3 published in April 1973.

For further details with respect to this action, see (1) the application for amendments dated August 20, 1979, (2) Amendment No. 67 to License No. DPR–44, and (3) Amendment No. 66 to License No. DPR–56 and (4) The Commission's related Environmental Impact Appraisal. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and at the Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania. A copy of items (2), (3) and (4) 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 24th day of April 1980.

For the Nuclear Regulatory Commission.

Thomas A. Ippolito,

Chief, Operating Reactors Branch No. 3, Division of Operating Reactors.

[FR Doc. 80-13257 Filed 4-29-80; 8:45 am]

BILLING CODE 7590-01-M

Privacy Act of 1974; Systems of Records, Minor Amendments

AGENCY: United States Nuclear Regulatory Commission (NRC).

ACTION: Proposed minor amendments of systems of records.

SUMMARY: The Nuclear Regulatory Commission is proposing minor amendments to the NRC Systems of Records, NRC–30. The amendments clarify and update the information contained in the NRC Systems of Records, in order to allow for contractor access to records on a need-to-know basis.

COMMENT DATE: Comments are due on or before May 30, 1980.

ADDRESS: Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

FOR FURTHER INFORMATION CONTACT: Sarah N. Wigginton, FOI/PA Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Phone: (301) 492–8133.

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, the Nuclear Regulatory Commission has published notices of those systems of records maintained by the NRC which contain personal information about individuals and from which such information can be retrieved by an individual identifier. The notices were published as a document subject to publication in the annual compilation of Privacy Act documents.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and sections 552 and 552a of Title 5 of the United States Code, as amended, notice is hereby given that adoption of the following amendments to the NRC System of Records is contemplated. All interested persons who desire to submit written comments or suggestions for consideration in connection with the proposed amendments should send them to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch by May 30, 1980. Copies of comments on the proposed amendments may be examined at the Commission's Public Document Room at 1717 H Street, N.W., Washington, DC.

1. The paragraphs of NRC–30 entitled "Routine uses of records maintained in the system, including categories of uses and the purposes of such uses," "Storage," "Safeguards," "Retention and disposal," and "System manager(s) and address," are amended to read as follows:

NRC–30

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records in the system of records are used as a project management tool in various management records throughout the NRC.

Information in these records may be disclosed for the routine uses specified in paragraph numbers 5 and 6 of the Prefatory Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in computer files, computer records, on tapes, disks, cards, and microfiche.

* * * * *

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Retained indefinitely in computer files.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Management and Program Analysis, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

* * * * *

Dated at Bethesda, Maryland, this 21st day of April 1980.

For the Nuclear Regulatory Commission.

William J. Dircks,

Acting Executive Director for Operations.

[FR Doc. 80-13308 Filed 4-29-80; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE U.S. TRADE REPRESENTATIVE

Anhydrous Ammonia From the Union of Soviet Socialist Republics: Discontinuation of Temporary Restraints on Imports

Below is a letter to the Commissioner of Customs advising that temporary restraints imposed upon imports of anhydrous ammonia from the the Union of Soviet Socialist Republics authorized by Presidential Proclamation 4714 of January 18, 1980 have ceased to be effective.

Reubin O'D. Askew,

U.S. Trade Representative.

The U.S. Trade Representative, Washington 20506.

April 18, 1980.

Hon. Robert E. Chasen,

Commissioner, U.S. Customs Service, Department of the Treasury, Washington, D.C. 20229.

Dear Commissioner Chasen: This is to inform you that on Friday, April 11, 1980 the United States International Trade Commission submitted to the President through the United States Trade Representative a determination that imports of anhydrous ammonia from the Union of Soviet Socialist Republics were not causing market disruption.[1] Therefore, the temporary action imposed with respect to such imports by Proclamation 4714 of January 18, 1980 ceased to be effective on Friday, April 11, 1980 by operation of section 406(c) of the Trade Act of 1974 (19 U.S.C. 2436(c)).

You should take appropriate action consistent with this letter, which shall be published in the **Federal Register.**

Sincerely,

Reubin O'D. Askew.

[FR Doc. 80-12509 Filed 4-29-80; 8:45 am]

BILLING CODE 3190-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 1822]

Arkansas; Declaration of Disaster Loan Area

As a result of the President's major declaration, I find that the following 5 counties: Crittenden, Faulkner, Johnson, Lonoke and Pulaski counties and adjacent counties within the State of Arkansas, constitute a disaster area because of damage resulting from severe storms and tornadoes which occurred on April 7, 1980. Eligible persons, firms and organizations may file application for loans for physicial damage until the close of business on June 16, 1980, and for economic injury until close of business on January 16, 1981, at: Small Business Administration, District Office, Savors Federal Building, 320 West Capitol Avenue, Little Rock, Arkansas 72201 or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

[1] Editorial Note: See the **Federal Register** of Wednesday, April 23, 1980, 45 FR 27570.

Dated: April 22, 1980.

A. Vernon Weaver,

Administrator.

[FR Doc. 80-13160 Filed 4-29-80; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1827]

Connecticut; Declaration of Disaster Loan Area

Fairfield and New Haven Counties within the State of Connecticut constitute a disaster area as a result of damage caused by heavy rainfall and flooding which occurred on April 9–10, 1980. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on June 23, 1980, and for economic injury until the close of business on January 23, 1981, at: Small Business Administration, District Office, One Financial Plaza, Hartford, Connecticut 06103 or other locally announced locations.

(Catalog of Federal Assistance Program Nos. 59002 and 59008)

Dated: April 23, 1980.

William H. Mauk, Jr.

Acting Administrator.

[FR Doc. 80-13164 Filed 4-29-80; 8:45 am]

BILLING CODE 8025-01-M

[Proposed License No. 03/03-5145]

Greater Baltimore City Venture Capital Corp; Application for License To Operate as a Small Business Investment Company

Notice is hereby given that an Application has been filed with the Small Business Administration pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102(1980)) under the name of Greater Baltimore City Venture Capital Corporation, for a License to operate as a Small Business Investment Company under the provisions of the Small Business Investment Act of 1958, as amended (Act), and the Rules and Regulations promulgated thereunder.

The Applicant will be incorporated under the laws of the State of Maryland, and it will commence operations with a capitalization of $650,000, of which $150,000 will be obtained through the issuance of its Common Stock to five (5) proposed Officers and Directors of the Applicant; $400,000 through the issuance of its Class B Preferred Stock to Mr. William Hoffman, a proposed Officer and Director of the Applicant; and $100,000. through the issuance of its Class C Preferred Stock to the Trustees for loans and Guarantees for Baltimore City.

The Applicants Class A Preferred Stock will be reserved for issuance only to the Small Business Administration.

The following are proposed to be the Officers and Directors of the Applicant.

Name and Title

John E. Meyers,[1] 123 Gothard Road Lutherville, MD 21903; President and Director

Pasquale A. Antonelli,[1] 16587 Daver Road, Upperco, MD 21155; Vice President and Director

Jack Kowitz,[1] 6 Falling Brook Court, Owings Mills, MD 21117; Secretary and Director

William Hoffman,[1] 4102 Windrige Road, Baltimore, MD 21208; Treasurer and Director

Edward L. Halpern,[1] 8901 Iron Gate Court, Potomac, MD 20854; Assistant Treasurer, Director

Cynthia L. Parker, 2623 Rockwood Avenue, Baltimore, MD 21215; Director.

The Applicant will have its principal place of business at 3655A Old Court Road, Suite 16, Baltimore, Maryland 21208, and it will maintain a branch office at 100 St. Paul Street, Baltimore, Maryland 21202. It intends to make investments principally in the City of Baltimore, and in other areas within the United States of America and its territories and possessions.

The Applicant intends to provide assistance to all qualified socially or economically disadvantaged small business concerns as the opportunity to profitably assist such concerns is presented.

As a Small Business Investment Company under Section 301(d) of the Act, the Applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activies contemplated under the Small Business Investment Act of 1958, as amended from time to time, and will provide assistance solely to small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the Applicant include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the Applicant under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act and SBA Rules and Regulations.

Notice is hereby given that any person may, not later than 15 days from the date of publication of this Notice, submit written comments on the Applicant to the Deputy Associate Administrator for Finance and Investment, Small Business Administration 1441 "L" Street, N.W., Washington, D.C. 20416.

A copy of this Notice shall be published by the Applicant in a newspaper of general circulation in Baltimore, Maryland.

(Catalog of Federal Domestic Assistance Program No. 59-011, Small Business Investment Companies)

Dated: April 22, 1980.

Peter F. McNeish,

Deputy Associate Administrator for Finance and Investment.

[FR Doc. 80-13165 Filed 4-29-80; 8:45 am]

BILLING CODE 8025-01-M

[1] Each of these individuals, together with their spouses, will be the owners of twenty percent (20%) of the Applicants' Common Stock. In addition, Mr. & Mrs. William Hoffman will own one hundred percent (100%) of the Applicants's Class B Preferred Stock.

[Declaration of Disaster Loan Area No. 1824]

Oklahoma; Declaration of Disaster Loan Area

Craig, Delaware and Le Flore Counties and adjacent counties within the State of Oklahoma constitute a disaster area as a result of damage caused by a tornado which occurred on April 7, 1980. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on June 23, 1980, and for economic injury until the close of business on January 23, 1981, at: Small Business Administration, District Office, 200 NW. 5th Street, Suite 670, Federal Building, Oklahoma City, Oklahoma 73102, or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: April 23, 1980.

William H. Mauk, Jr.,

Acting Administrator.

[FR Doc. 80-13163 Filed 4-29-80; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1708; Amdt. No. 2]

Texas; Declaration of Disaster Loan Area

The above numbered Declaration (See 44 FR 61720) and Amendment #1 (See 44 FR 61720) are amended by extending the filing date for physical damage until the close of business on May 12, 1980.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: April 22, 1980.

A. Vernon Weaver,

Administrator.

[FR Doc. 80-13161 Filed 4-29-80; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1823]

Wisconsin; Declaration of Disaster Loan Area

Dodge county and Adjacent counties within the State of Wisconsin constitute a disaster area as a result of damage by a tornado which occurred on April 7, 1980. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on June 23, 1980, and for economic injury until the close of business on January 22, 1981, at: Small Business Administration, District Office, 212 East Washington Avenue, Room 213, Madison, Wisconsin 53703

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: April 22, 1980.

A. Vernon Weaver,

Administrator.

[FR Doc. 80-13162 Filed 4-29-80; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice CM-8/291]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea; Meeting

The Panel of Bulk Cargoes under the Safety of Life at Sea Subcommittee Working Group on Subdivision and Stability will conduct an open meeting at 10:00 a.m. on Monday, May 12, 1980 in Room 8334 of the Department of Transportation, 400 Seventh Street, SW., Washington, D.C.

The purpose of the meeting will be to review the report of the Twenty-first Session of the Intergovernmental Maritime Consultative Organization Subcommittee on Containers and Cargoes, and in particular, prepare for studies on Direct Reduced Iron Products (DRI).

For further information contact either Captain S. Fraser Sammis, National Cargo Bureau, Inc., Suite 2757, One World Trade Center, New York, NY 10048, Telephone: (212) 432-1280; or Mr. Edward H. Middleton, U.S. Coast Guard (G-MM/TP24), Washington, D.C. 20593, Telephone: (202) 426-2170.

John Todd Stewart,

Chairman, Shipping Coordinating Committee.

April 18, 1980.

[FR Doc. 80-13172 Filed 4-29-80; 8:45 am]

BILLING CODE 4710-07-M

TENNESSEE VALLEY AUTHORITY

Low-Level Radioactive Waste Management at the Sequoyah Nuclear Plant, Hamilton County, Tenn.; Notice of Negative Determination (Finding of No Significant Impact)

In accordance with section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA) and section V-B-1 of the Tennessee Valley Authority's Procedures for Environmental Planning and Assessment (39 FR 5,671-75 (1974)) and consistent with § 1501.4 of the Council on Environmental Quality Provisions for Implementing NEPA (43 FR 55,978-56,007 (1978)), the Tennessee Valley Authority (TVA) hereby gives notice that it has determined that the construction and operation of temporary low-level radioactive waste (LLRW) storage facilities, a life-of-plant onsite storage facility, and a volume reduction/solidification facility at the Sequoyah Nuclear Plant site (located in Hamilton County, near Chattanooga, Tennessee), are not a major Federal action significantly affecting the quality of the human environment; and an environmental impact statement is not necessary for this proposed action. TVA has prepared an environmental evaluation of the impacts related to this proposal and has identified measures to minimize the effects of construction and operation on the environment. The proposal is compatible with both regional and local planning.

TVA's environmental evaluation considers, among other areas, the potential for impacts to air, land, and water; impacts from noise, radiation, and solid waste generation; and impacts to the operation of the Sequoyah Nuclear Plant during construction and operation of the facilities. The evaluation addresses alternatives to the proposal, including taking no action or delaying action. There are no significant environmental impacts associated with this proposal.

During construction, some siltation may occur; and the release of small amounts of gaseous and particulate pollutants can be expected. Small amounts of radioactive and nonradioactive gaseous emissions will occur during operation of the facilities. The cumulative dose rates from these facilities and the Sequoyah Nuclear Plant under worst case conditions at the site boundary would be much less than allowed under regulatory guidelines.

Copies of the environmental evaluation are available to the public by calling TVA's toll-free Citizen Action Line at 1-800-362-9250 (inside Tennesee), 1-800-251-9242 (outside Tennessee), 632-4100 in Knoxville, or by contacting TVA's Information Office, 400 Commerce Avenue, Knoxville, Tennessee 37902.

Any question or comments concerning this proposal should be directed to: Dr. Mohamed T. El-Ashry, Director of Environmental Quality, Forestry Building, Norris, Tennessee 37828.

TVA is beginning immediately some earth-moving activities connected with the LLRW storage facilities in an area previously disturbed and used for spoils storage during construction of the Sequoyah Nuclear Plant. No further construction action will take place, however, on this proposal for 30 days from the date of publication of this notice pending receipt of public comment.

W. F. Willis,

General Manager.

[FR Doc. 80-13168 Filed 4-29-80; 8:45 am]

BILLING CODE 8120-01-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

Treasury Small Business Advisory Committee; Meeting

Pursuant to the Federal Advisory Committee Act, Pub. L. 92-263, notice is hereby given that a meeting of the Treasury Small Business Advisory Committee will be held on May 12 and 13, 1980, at the Main Treasury Building, 15th and Pennsylvania Avenue, NW, Washington, DC, and the Internal Revenue Service Building, 1111 Constitution Avenue, NW, Washington, DC.

The Committee was formed to provide a means of communication between the small business community and Treasury officials on numerous economic issues, including capital formation, tax policy, tax administration and governmental regulations.

The meeting will be open to the public. A limited number of seats will be available on a first-come, first-serve basis. In order to facilitate admittance, persons interested in attending are asked to call 566-3887 so that confirmation of space and access procedures can be provided.

Interested persons may file a written statement with the Committee before, during and after the meeting. The Chairman will, as time permits, entertain oral comments from members of the public attending the meeting. Persons interested in making oral statements are asked to call 566–3887 before 5:00 p.m. on May 9.

Minutes of the meeting will be available on request from the Treasury Small Business Advisory Committee thirty days after the meeting.

Inquiries may be directed to William A. Anawaty, Executive Assistant to the Deputy Secretary, Department of the Treasury, Main Treasury Building, Room 3327, 15th and Pennsylvania Avenue, NW, Washington, DC 20220, Telephone (202) 566–3887.

Dated: April 28, 1980.

Robert Carswell,

Deputy Secretary.

[FR Doc. 80–13382 Filed 4–29–80; 8:45 am]

BILLING CODE 4810–25–M

Performance Review Board; Amendment

By Notice published in the **Federal Register** on November 1, 1979, Volume 44 Fr 62988, the Office of the Secretary, Department of the Treasury, announced the appointment of the members of the Performance Review Board in accordance with 5 U.S.C. 4314(c)(4). This notice amends the composition of the Board as follows:

Deletions

Robert R. Fredlund, Director, Office of Administrative Programs.

Additions

Walter R. Niles, Director of Sales, U.S. Savings Bonds Division.
Jesse L. Adams, Jr., Deputy National Director, U.S. Savings Bonds Divison.
Arthur F. Brandstatter, Director, Federal Law Enforcement Training Center.
John P. Simpson, Deputy Assistant Secretary (Operations).
William J. Rhodes, Director, Office of Management and Organization.

W. J. McDonald,

Assistant Secretary (Administration).

[FR Doc. 80–13221 Filed 4–29–80; 8:45 am]

BILLING CODE 4810–25–M

VETERANS ADMINISTRATION

Station Committee on Educational Allowances; Meeting

Notice is hereby given pursuant to Section V, Review Procedure and Hearing Rules, Station Committee on Educational Allowances that on May 28, 1980, at 10 a.m., the Muskogee Station Committee on Educational Allowances shall at Room 2A20, 125 South Main Street, Muskogee, Oklahoma, conduct a hearing to determine whether Veterans Administration benefits to all eligible persons enrolled at Aircraft Service Company, Harvey Young Airport, 1500 South 135th East Avenue, Tulsa, Oklahoma, should be discontinued, as provided in 38 CFR 21.4134, because a requirement of law is not being met or a provision of the law has been violated. All interested persons shall be permitted to attend, appear before, or file statements with the committee at that time and place.

Dated: April 22, 1980.

Ray E. Smith,

Director, VA Regional Office, 125 South Main Street, Muskogee, OK 74401.

[FR Doc. 80–13245 Filed 4–29–80; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 45, No. 85
Wednesday, April 30, 1980

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Items
Civil Aeronautics Board	1
Commodity Futures Trading Commission	2, 3
Federal Energy Regulatory Commission	4
Federal Maritime Commission	5
Federal Reserve System	6
Foreign Claims Settlement Commission	7
Nuclear Regulatory Commission	8, 9
Occupational Safety and Health Review Commission	10-12
Postal Service	13-15
Securities and Exchange Commission	16
Chrysler Corporation Loan Guarantee Board	17

1

[M-277; April 24, 1980]

CIVIL AERONAUTICS BOARD.

TIME AND DATE: 9:30 a.m., May 1, 1980.

PLACE: Room 1027 (open), 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUBJECT:

1. Ratification of items adopted by notation.

2. Dockets 37013 and 37014, Applications of Munz Northern for certification with subsidy at points previously served as a Wien subcontractor, and petition for an investigation to delete such points from Wien's certificate and transfer them to Munz with subsidy eligibility (memo No. 9462-A, BDA)

3. Dockets 37670, 37695 and 37982, Requests by the ATA and United for an amendment of the Board's current policy to provide for the broadest possible zones of reasonableness within which airline management may pursue flexible pricing policies without threat of suspension action by the Board (memo No. , BDA).

4. Docket 37982, In the matter of a motion filed by the Air Transport Association of America to make Domestic Fare Policies more flexible (memo No. , BDA).

5. Docket 33836, Final rule extending the Board's fare flexibility policy to the Puerto Rico/Virgin Islands markets (memo No. 7847-T, BDA).

6. Travel Committee, Inc.—Petition for review of staff action denying waiver of the major change provisions of Part 380 (memo No. 9568, BDA).

7. Docket 38003, Application of Western for commpensation for losses at Sheridan, Wyoming (memo No. , BDA).

8. Docket 38063, Application of World Airways, Inc., for an Exemption from the Hawaii Common Fare Condition (memo No. , BDA).

9. Docket 36804, Draft Notice of Proposed Rulemaking for one-day special tariff permission for fare decreases, draft order denying exemption request of Western Air Lines (memo No. , OGC, BDA).

10. Docket 38003, Application of Western for compensation for losses at Sheridan, Wyoming (memo No. BDA).

11. Docket 36863, Notice of Western Air Lines to terminate service at Sheridan, Wyoming (memo No. , BDA).

12. Docket 35307, Ozark's notice of intent to suspend service at Clarksville, Tennessee-Ft. Campbell-Hopkinsville, Kentucky (memo No. , BDA).

13. Docket 37632,—Hughes Airwest's notice to terminates service at Sun Valley-Hailey-Ketchum, Idaho (memo No. , BDA).

14. Dockets 36333, 36339, 36567—Southeast Airlines, Inc. exemption requests (memo No. , BDA).

15. Application of Part 250 to Operators of Small Aircraft (memo No. , BDA).

16. Docket 36858, Air New England, Inc., violations of Part 250 (memo No. , BDA).

17. Docket 36357, Applications of Altair Airlines, Inc., Docket 37424, Air New England, Docket 37380, Big Sky Airlines, Docket 37401, New Haven Airways, Inc., Docket 37618, Imperial Airlines, Docket 37667, Mid-South Aviation, Inc. for exemption from Part 250 of the Board's Economic Regulations (memo No. , BDA).

18. Docket 36294, Petition by the Aviation Consumer Action Project to clarify carrier's obligations to pay denied boarding compensation to passengers bumped from an oversold flight when they are offered alternate transportaion of an extra section of that flight (memo No. , OGC, OEA).

19. Amendment of delegation of authority to Director, Bureau of Consumer Protection (memo No. , BCP).

20. Annual Review of Outstanding Delegation to the Bureau of Consumer Protection (memo No. 9643, BCP).

21. Docket 36288, *(A. V. Costantini v. Pan American World Airways, Inc.)* Motion for review of the Director. BCP's dismissal of third-party complaint (memo No. 9647, OGC).

Dockets 3271, Dallas/Ft. Worth Service Investigation (Part II); 33019, Chicago-Midway Expanded Service Preceding Investigation-Order dismissing applications of Air Florida and Midway (Southwest) to serve Dallas, Love, Field, and dismissing petition for reconsideration of Order 79-9-192 awarding Southwest AME Authority between Dallas (Love Field) and New Orleans.

23. Docket 32495, 32496, *Application of DHL Airways, Inc.:* Docket 33363, *Former Large Irregular Air Service Investigation;* Order on Discretionary Review (memo No. 9645 OGC).

24. Docket 37865, Petition of the Las Vegas Parties for leave to intervene in the *Denver-London Service Case* (memo No. , BIA, OGC).

25. Docket 35416, Application of Laker Airways Limited for transfer of its foreign air carrier permit pursuant to section 402(g) (memo No. , BIA, OGC, BLJ).

26. Docket 34141 and 36785—Applications to Trans-Panama for an initial foreign air carrier permit to engage in non-scheduled foreign air transportation of property and mail between Panama and Miami, New York and Los Angeles, and exemption authority to operate 40 non-scheduled cargo flights between Panama and Miami (memo No. BIA, OGC, BALJ, BCP).

27. Docket 37640, Application of Skocdopole Brothers Aviation Ltd. for an initial foreign air carrier permit to operate Charters betweeen Canada and the United State using small aircraft (memo No. BIA, OGC, BALF).

28. Docket 37164, United States-Bermuda Show Cause Proceeding. Dockets 37259, 37264, 30382, 32188, 31146, 37258, 37269, 37266, 31170, 37271, 35261, 37263, 37084, and 36829: Applications of American, Delta, Eastern, Evergreen, Ozark, Pan American, Republic, Transamerica, Trans Carib Air, Trans World, USAir, and Mackey International for Bermuda authority (memo No. , BIA, OGC, BALJ, BDA, BCAA).

29. Docket 37486, Servicio Aereo de Honduras, S.A. (SAHSA's) application for an amended foreign air carrier permit for the transportation of person's property, and mail to add Houston and New York (memo No. 9644, BIA, OGC, BALJ).

30. Docket 34507, Application of El Al Israel Airlines for amended 402 permit (memo No. , BIA, OGC, BLJ).

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary, (202) 673-5068.

[S-860-80 Filed 4-28-80; 3:18 pm]

BILLING CODE 6320-01-M

2

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 11 a.m., May 2, 1980.

PLACE: 2033 L Street NW., Washington, D.C., eighth floor conference room.

STATUS: Closed.

MATTERS TO BE DISCUSSED: Surveillance matters.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254-6314.

[S-850-80 Filed 4-28-80; 12:07 pm]

BILLING CODE 6351-01-M

3

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 11 a.m., May 9, 1980.

PLACE: 2033 K Street, NW., Washington, D.C., eighth floor conference room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance matters.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254–6314.

[S–851–80 Filed 4–28–80; 8:45 am]

BILLING CODE 6351–01–M

4

FEDERAL ENERGY REGULATORY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 45 FR 28033, April 25, 1980.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., April 30, 1980.

CHANGE IN THE MEETING: The following item has been added:

Item Number, Docket Number, and Company

M–12 (B)—CI77–412, Phillips Petroleum Company.

Kenneth F. Plumb,

Secretary.

[S–857–80 Filed 4–28–80; 3:18 pm]

BILLING CODE 6450–85–M

5

FEDERAL MARITIME COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 45 FR 28034, April 25, 1980.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., April 30, 1980.

CHANGES IN THE MEETING: Date of meeting changed from April 30, 1980 to April 29, 1980 at 10 a.m. Addition of the following item to the open session:

11. Agreement No. 10247–2: Extension of the term of approval of the Australian Loading Expense Agreement to December 31, 1980.

[S–847–80 Filed 4–28–80; 10:47 am]

BILLING CODE 6730–01–M

6

FEDERAL RESERVE SYSTEM.

Board of Governors.

TIME AND DATE: 10 a.m, Monday, May 5, 1980.

PLACE: 20th Street and Constitution Avenue NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Request by the Government Accounting Office for Board comment on a draft report concerning Federal Reserve compliance with the 1970 Bank Holding Company Act Amendments.

2. Request by the Government Accounting Office for Board comment on a draft report entitled "Internal Auditing in the Federal Reserve System".

3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

4. Any agenda items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board (202) 462–3204.

Dated: April 25, 1980.

Griffith L. Garwood,

Deputy Secretary of the Board.

[S–846–80 Filed 4–28–80; 8:53 am]

BILLING CODE 6210–01–M

7

[FCSC Meeting Notice No. 4–80]

FOREIGN CLAIMS SETTLEMENT COMMISSION.

Announcement in Regard to Commission Meetings and Hearings.

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date, Time, and Subject Matter

Wednesday, May 7, 1980 at 10:30 a.m. (canceled).
Wednesday, May 14, 1980 at 10:30 a.m. (canceled).
Wednesday, May 21, 1980 at 10:30 a.m. (canceled).
Wednesday, May 28, 1980 at 10:30 a.m. (canceled).

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 1111–20th Street, N.W.; Washington, D.C. 20579. Requests for information, or advance notices of intention to observe a meeting, may be directed to: Executive Director, Foreign Claims Settlement Commission, 1111–20th Street, N.W., Washington, D.C. 20579. Telephone: (202) 653–6155.

Dated at Washington, D.C. on April 24, 1980.

Francis T. Masterson,

Executive Director.

[S–861–80 Filed 4–28–80; 3:54 pm]

BILLING CODE 6770–01–M

8

NUCLEAR REGULATORY COMMISSION.

TIME AND DATE: April 30, 1980.

STATUS: Open/closed.

MATTERS TO BE CONSIDERED: Wednesday, April 30:

2 p.m.

1. Discussion and Vote on Revised Philippines Opinion (approximately 1 hour, if required) (public meeting) (postponed from April 21).

2. Discussion of Management-Organization and Internal Personnel Matters (postponed from April 22) (approximately 1½ hours), closed—exemptions 2 and 6).

CONTACT PERSON FOR MORE INFORMATION: Walter Magee (202) 634–1410.

AUTOMATIC TELEPHONE ANSWERING SERVICE FOR DAILY UPDATE: (202) 634–1498. Those planning to attend a meeting should reverify the status whenever possible.

Roger M. Tweed,

Office of the Secretary.

April 24, 1980.

[S–855–80 Filed 4–28–80; 1:32 pm]

BILLING CODE 7590–01–M

9

NUCLEAR REGULATORY COMMISSION.

DATE: May 2, 1980.

PLACE: Room 1046, 1717 H Street.

STATUS: Open.

MATTERS TO BE CONSIDERED: Friday, May 2, room 1046, 1717 H Street, NW.:

2:30 p.m.

1. ACRS Meeting on Status of ACRS Responses to Commission Requests and Other Topics. (approx. 1 hour, public meeting) (NRC Commissioners to attend).

CONTACT PERSON FOR MORE INFORMATION: Walter Magee (202) 634–1410.

AUTOMATIC TELEPHONE ANSWERING SERVICE FOR DAILY UPDATE: (202) 634–1498. Those planning to attend a meeting should reverify the status on the day of the meeting.

April 25, 1980.

Walter Magee,

Office of the Secretary.

[S–856–80 Filed 4–28–80; 1:32 pm]

BILLING CODE 7590–01–M

10

[Form 1]

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.

TIME AND DATE: 9:30 a.m., May 9, 1980.

PLACE: Room 1101, 1825 K Street NW., Washington, D.C.

STATUS: Because of the subject matter, it is likely that this meeting will be closed.

MATTERS TO BE CONSIDERED: Discussion of specific cases in the Commission adjudicative process.

CONTACT PERSON FOR MORE INFORMATION: Ms. Patricia Bausell (202) 643–4015.

Dated: April 28, 1980.

[S-852-80 Filed 4-28-80; 1:32 pm]

BILLING CODE 7600-01-M

11

[Form 1]

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.

TIME AND DATE: 10 a.m., May 15, 1980.

PLACE: Room 1101, 1825 K Street NW., Washington, D.C.

STATUS: Because of the subject matter, it is likely that this meeting will be closed.

MATTERS TO BE CONSIDERED: Discussion of specific cases in the Commission adjudicative process.

CONTACT PERSON FOR MORE INFORMATION: Ms. Patricia Bausell, (202) 634–4015.

Dated: April 28, 1980.

[S-853-80 Filed 4-28-80; 1:32 pm]

BILLING CODE 7600-01-M

12

[Form 1]

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.

TIME AND DATE: 10 a.m., May 21, 1980.

PLACE: Room 1101, 1825 K Street NW., Washington, D.C.

STATUS: Because of the subject matter, it is likely that this meeting will be closed.

MATTERS TO BE CONSIDERED: Discussion of specific cases in the Commission adjudicative process.

CONTACT PERSON FOR MORE INFORMATION: Ms. Patricia Bausell (202) 634–4015.

Dated: April 28, 1980.

[S-852-80 Filed 4-28-80; 1:32 pm]

BILLING CODE 7600-01-M

13

POSTAL SERVICE.

Board of Governors.

Notice of Committee Meeting

The Committee on Audit of the Board of Governors of the United States Postal Service, pursuant to the Bylaws of the Board (39 CFR 5.2, 7.5) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice that it intends to hold a meeting at 2:30 on Monday, May 5, 1980, in the Benjamin Franklin Room, 11th Floor, Postal Service Headquarters, 475 L'Enfant Plaza, S.W., Washington, D.C. 20260. The meeting is open to the public. Request for information about the meeting should be addressed to the Secretary of the Board, Louis A. Cox, at (202) 245–4632.

The Committee will discuss with representatives of postal management their responses to the most recent "management letter" from the Postal Service's outside auditors. The management letter was discussed at the Committee's last meeting of February 5, 1980.

The Committee will generally discuss with the Postal Service's internal auditors the internal audit practices of the Postal Service.

Louis A. Cox,

Secretary.

[S-848-80 Filed 4-28-80; 10:59 am]

BILLING CODE 7710-12-M

14

POSTAL SERVICE.

Board of Governors.

Notice of Meetings

The Board of Governors of the United States Postal Service pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 USC § 552b), hereby gives notice that it intends to hold meetings at 4 p.m. on Monday, May 5, and at 9 a.m. on Tuesday, May 6, 1980, at Postal Service Headquarters, 475 L'Enfant Plaza, S.W., Washington, D.C. 20260. Except as indicated in the following paragraphs, the meetings are open to the public. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, Louis A. Cox, at (202) 245–4632.

On April 20, 1980, the Board of Governors voted to close to public observation its next meeting, scheduled for 4 p.m. on May 5, 1980. Each of the members of the Board except Mr. Allen, who was absent when the vote was taken, voted in favor of closing this meeting, which is expected to be attended by the following persons: Governors Wright, Hardesty, Allen, Camp, Ching, and Sullivan; Postmaster General Bolger; Deputy Postmaster General Conway; Senior Assistant Postmaster General Finch; and Secretary of the Board Cox.

The meeting which is to be closed will consist of a continuation of the discussion by the Governors of the

Opinion and Recommended Decision upon Reconsideration of the Postal Rate Commission re Electronic Mail Classification Proposal, 1978 (Commission Docket No. MC78–3), which was commenced at the Board meeting of April 20, 1980.

Since the last Board meeting, the Governors have received two Recommended Decisions from the Postal Rate Commission on proposed changes in the Domestic Mail Classification Schedule: the Commission's Opinion and Recommended Decision dated April 17, 1980, regarding the Express Mail Metro Service proposal, 1978 (Commission Docket No. MC79–2) and the Commission's Opinion and Recommended Decision dated April 21, 1980, regarding Merchandise Return Service, 1979, (Commission Docket No. MC 79–4). The Governors are expected to review these matters during their meeting of May 6, 1980. They may elect to close the portion or portions of the meeting at which these agenda items are discussed to public observation, since the discussion is likely to specifically concern the participation of the Postal Service in a civil action or proceeding.

Agenda

Monday Afternoon Session

Recommended Decision upon Reconsideration of the Electronic Mail Classification Proposal, 1978 (Commission Docket No. MC78–3)

(The Governors will consider the above Recommended Decision of the Postal Rate Commission. As stated above in the Notice of Meeting, the part of the meeting that will be devoted to this matter will be closed to the public.)

Tuesday Session

1. Minutes of the previous meetings.
2. Remarks of the Postmaster General.

(In keeping with its consistent practice, the Board's agenda provides this opportunity for the Postmaster General to inform the members of miscellaneous current developments concerning the Postal Service. He might report, for example, the appointment or assignment of a key official, or the effect on postal operations of unusual weather or a major strike in the transportation industry. Nothing that requires a decision by the Board is brought up under this item.)

3. Quarterly Report on Financial Performance.

(Mr. Finch, Senior Assistant Postmaster General, Finance Group, will present the quarterly summary of financial performance.)

4. Quarterly Report on Service Performance.

(Mr. Benson, Senior Assistant Postmaster General, Operations Group, will present the quarterly summary of service performance.)

5. Recommend Decision of the Postal Rate Commission on Merchandise Return Service, 1979 (Commission Docket No. MC 79–4).

(The Governors will consider the Postal Rate Commission's Opinion and Recommended Decision, dated April 21, 1980, on the Merchandise Return Service. As stated above in the Notice of Meeting, the part of the meeting that will be devoted to this matter may be closed to the public.)

6. Recommended Decision of the Postal Rate Commission on Express Mail Metro Service Proposal, 1978 (Commission Docket No. MC79–2).

(The Governors will consider the Postal Rate Commission's Opinion and Recommended Decision, dated April 17, 1980, regarding the Express Mail Metro Service. As stated above in the Notice of Meeting, the part of the meeting will be devoted to this matter may be closed to the public.)

Louis A. Cox,

Secretary.

[S–849–80 Filed 4–28–80; 10:59 am]

BILLING CODE 7710–12–M

15

POSTAL SERVICE.

Board of Governors.

Amendment to Notice of Meeting

The Board of Governors of the United States Postal Service recently published a Notice of Meeting to be held on Tuesday, May 6, 1980, at Postal Service Headquarters, 475 L'Enfant Plaza, S.W., Washington, D.C. 20260. The Agenda of the matters to be discussed by the Board is hereby amended to add the following item, which will be discussed following the discussion of the first four agenda items.

4a. Capital Investment Project:

Procurement of Subcompact Delivery Vehicles.

(At its meeting of March 4, 1980, the Board authorized the Postal Service to initiate the procurement of 4994 vehicles, with the understanding that competitive bids would be solicited and that management would return to the Board for authorization of a specific amount of dollars after competitive bids had been received. Since competitive bids will be opened on April 30, 1980, management is expected to be able to request the Board to authorize a specific dollar investment at the May 6 meeting.)

Louis A. Cox,

Secretary.

[S–858–80 Filed 4–28–80; 3:18 pm]

BILLING CODE 7710–12–M

16

SECURITIES AND EXCHANGE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: (To be published.)

STATUS: Closed meeting.

PLACE: Room 825, 500 North Capitol Street, Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Wednesday, April 23, 1980.

CHANGES IN THE MEETING: Additional/ deletion items.

The following additional item will be considered at a closed meeting scheduled for Tuesday, April 29, 1980, at 2:30 p.m.

Legislative matter bearing enforcement implications.

The following item will not considered at a closed meeting scheduled for Wednesday, April 30, 1980, following the 10 a.m. open meeting:

Institution of injunctive action and administrative proceeding.

The following additional item will be considered at a closed meeting scheduled for Wednesday, April 30, 1980, following the 10 a.m. open meeting:

Freedom of Information Act appeal and confidential treatment.

Commissioners Loomis, Evans, Pollack, and Friedman determined that Commission business required the above changes and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: George Yearsich at (202) 272–2178.

April 28, 1980.

[S–859–80 Filed 4–28–80; 3:18 pm]

BILLING CODE 8010–01–M

17

CHRYSLER CORPORATION LOAN GUARANTEE BOARD.

TIME AND DATE: April 29, 1980 at 4:30 p.m.

PLACE: Board Room, Federal Reserve System, Second Floor, 20th and C Streets, N.W., Washington, D.C. 20551.

MATTERS TO BE DISCUSSED: The Board has received an application from the Chrysler Corporation for commitments to guarantee and guarantees under the Chrysler Corporation Loan Guarantee Act (Pub. L. 96–185) ("Act"). The Board will consider whether the Chrysler Corporation has satisfied the requirements necessary for such Federal Assistance, as set forth in the Act.

CONTACT PERSON FOR MORE INFORMATION: Brian M. Freeman, Secretary of the Board (202) 566–5888.

This notice is given as a result of Court Order. The position of the Board is that it is not subject to the Government in the Sunshine Act.

Dated: April 21, 1980.

Brian M. Freeman,

Secretary of the Board.

[S–862–80 Filed 4–29–80; 8:45 am]

BILLING CODE: 4810–27–M

federal register

Wednesday
April 30, 1980

Part II

Department of Health, Education, and Welfare

National Institutes of Health

Recombinant DNA Research; Announcement of Meeting of Advisory Committee and Notice of Proposed Actions Under Guidelines

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

National Institutes of Health

Recombinant DNA Advisory Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the Recombinant DNA Advisory Committee at the National Institutes of Health, Conference Room 6, Building 31C, Bethesda, Maryland 20205, on June 5, 1980, from 9:00 a.m. to recess at approximately 6:00 p.m., and on June 6, 1980, from 8:30 a.m. to 5:00 p.m. This meeting will be open to the public on June 5 from 9:00 a.m. to recess at approximately 6:00 p.m., and on June 6 from 8:30 a.m. to approximately 3:00 p.m. to discuss:

Amendment of Guidelines
Containment practices appropriate for large-scale production
Voluntary compliance with Guidelines
Institutional Biosafety Committees
Exceptions to prohibitions
Exemptions for organisms that exchange genetic information
Procedures for lowering containment for characterized clones and purified DNA
Review of large-scale proposals
E. coli K–12 host-vector systems
Host-vector systems other than *E. coli* K–12
NIH risk-assessment plan
Review of protocols for required containment levels
Other matters requiring necessary action by the Committee.

Attendance by the public will be limited to space available.

In accordance with provisions set forth in section 552b(c)(4), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public for approximately two hours for the review, discussion and evaluation of proposal(s) from a commercial concern(s) for scale-up of recombinant DNA experiments. It is anticipated that this will occur on June 6, from approximately 3:00 p.m. until adjournment. The proposal(s) and the discussion could reveal confidential trade secrets or commercial property such as patentable material.

Dr. William J. Gartland, Jr., Executive Secretary, Recombinant DNA Advisory Committee, National Institutes of Health, Building 31, Room 4A52, telephone 301–496–6051, will provide materials to be discussed at the meeting, rosters of committee members and substantive program information. A summary of the meeting will be available at a later date.

Dated: April 22, 1980.

Suzanne L. Fremeau,

Committee Management Officer, National Institutes of Health.

[FR Doc. 80–13046 Filed 4–29–80; 8:45 am]

BILLING CODE 4110–08–M

Recombinant DNA Research; Proposed Actions Under Guidelines

AGENCY: National Institutes of Health, PHS, DHEW.

ACTION: Notice of proposed actions under NIH Guidelines for Research Involving Recombinant DNA Molecules.

SUMMARY: This notice sets forth proposals for actions to be taken under the 1980 NIH Guidelines for Research Involving Recombinant DNA Molecules [**Federal Register** of January 29, 1980 (45 FR 6724)]. Interested parties are invited to submit comments concerning these proposals. After consideration of these proposals and comments by the NIH Recombinant DNA Advisory Committee (RAC) at its June 5–6, 1980, meeting, the Director of the National Institutes of Health will issue decisions on these proposals in accord with the Guidelines.

DATE: Comments must be received by May 30, 1980.

ADDRESS: Written comments and recommendations should be submitted to the Director, office of Recombinant DNA Activities, Building 31, Room 4A52, National Institutes of Health, Bethesda, Maryland 20205. All comments received in timely response to this notice will be considered and will be available for public inspection in the above office on weekdays between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Background documentation and additional information can be obtained from Drs. Stanley Barban or Elizabeth Milewski, Office of Recombinant DNA Activities, National Institutes of Health, Bethesda, Maryland 20205, (301) 496–6051.

SUPPLEMENTARY INFORMATION: The National Institutes of Health will consider the following changes and amendments under the Guidelines for Research Involving Recombinant DNA Molecules (45 FR 6724), as well as actions under these Guidelines.

1. *Proposal to Amend Section III–O of the Guidelines to Permit Use of Ff Phages.* The National Institutes of Health (NIH) promulgated revised Guidelines in January 1980 (45 FR 6724). The revised Guidelines include a new Section, III–O, "Classification of Experiments Using the *E. coli* K–12 Host-Vector Systems," which, in part, reads as follows:

"* * * experiments using *E. coli* K–12 shall use P1 physical containment and * * * an EK1 host-vector system [i.e. (a) the host shall not contain conjugation-proficient plasmids or generalized transducing phages and (b) lambda or lambdoid bacteriophages or nonconjugative plasmids shall be used as vectors].* * *"

Section III–O, which was promulgated on the recommendation of the RAC, did not include reference to use of Ff bacteriophages (filamentous single-strand male-specific bacteriophages such as M13 and fd). Consequently, when the revised Guidelines were promulgated in January 1980, investigators were informed that Ff bacteriophages may continue to be used as a component of EK1 systems at the containment levels specified by the 1978 Guidelines. (A complete discussion of this issue appears in the Decision Document that accompanied the November 30, 1979 proposed revised Guidelines (44 FR 69244–69245) and the Decision Document that accompanied the final revised Guiidelines (45 FR 6721)).

In December 1979, the RAC was asked to consider how *E. coli* K–12 host-vector systems employing Ff phages should be treated under the 1980 Guidelines. In response to this NIH request, the Host-Phage Subcommittee drafted a recommendation which was presented to the full RAC at the March 6–7, 1980 meeting.

The RAC agreed that the following proposed amendment to Section III–O should be published in the **Federal Register** for a thirty-day comment period (amended text in italics):

"* * * experiments using *E. coli* K–12 shall use P1 physical containment and, * * * an EK1 host-vector system [i.e. (a) the host shall not contain conjugation-proficient plasmids or generalized transducing phages and (b) lambda or lambdoid *or Ff* bacteriophages or non-conjugative plasmids shall be used as vectors].* * *"

Background documentation is available from ORDA.

2. *Proposed Changes to Allow Recombinant DNA Experiments with Class 3 Organisms and Certain Plant Pathogens.* The National Institute of Allergy and Infectious Diseases (NIAID) requested that the NIH consider whether, and under what conditions, recombinant DNA technology might be used to study CDC Class 3 etiological agents. Experiments employing these agents are currently prohibited by Section I–D–1 of the Guidelines which states as not to be initiated:

"I–D–1. Formation of recombinant DNMAs derived from the pathogenic organisms classified [1] as Class 3, 4 or 5]2] or the cells

known [2A] to be infected with such agents, regardless of the host-vector system used."

This question was presented to the RAC at its December 6–7, 1979 meeting and a working group was appointed to study the issue. A draft proposal of a revision of the Guidelines to remove Class 3 agents from Section I–D–1 of the Guidelines was presented to the RAC at its March 6–7, 1980 meeting.

Prior to the March 6–7, 1980 meeting, Dr. Clarence Kado of the University of California, Davis, requested the RAC to consider the elimination of Section I–D–3 of the Guidelines, which states as not to be initiated:

"I–D–3. Deliberate creation by the use of recombinant DNA of a plant pathogen with increased virulence and host range beyond that which occurs by natural genetic exchange. [2A]"

This issue was also discussed by the RAC at the March 6–7, 1980 meeting. During the discussion, it was suggested that the mechanism used to remove CDC Class 3 agents from Section I–D–1 of the Guidelines might be appropriate for removing recombinant DNA experiments involving certain plant pathogens from Section I–D–3. Accordingly the proposals have been combined.

The purpose of the proposed changes is to remove recombinant DNA experiments with CDC Class 3 organisms and certain recombinant DNA experiments with plant pathogens from the prohibited classes of experiments. The proposal would allow experiments with CDC Class 3 organisms to be conducted at P3 containment in *E. coli* K–12 EK1 host-vector systems. The containment levels for other recombinant DNA experiments would be assigned by the director, NIH after review by the RAC.

It is felt that reducing administrative procedures will increase flexibility and encourage the use of these techniques in elucidating the pathogenic process. P3 containment, which is considered adequate for work with the pathogenic organisms themselves, should be adequate, or more than adequate, for work with *E. coli* K–12 containing recombinant DNA from these organisms.

Changes are proposed in the Guidelines as follows:

A. Section I–D–1 is to be amended to read:

"I–D–1. formation of recombinant DNAs derived from pathogenic organisms classified [1] as Class 4 or 5 or from cells known [2A] to be infected with such agents, regardless of the host-vector system used."

B. Section I–D–3 is to be deleted.

C. Section I–E is to be amended to read:

"I–E. *Exemptions.* It must be emphasized that the following exemptions [4] are not meant to apply to experiments described in Sections I–D–1 to I–D–5 as being prohibited. In addition, any recombinant DNA molecules involving DNA from Class 3 organisms [1] or cells known to be infected with these agents, or any recombinant DNA molecules which increase the virulence and host range of a plant pathogen beyond that which occurs by natural genetic exchange, are not exempt unless specifically so designated by NIH under Section I–E–5."

D. Section III. After the last sentence, "The use of higher levels of biological containment * * * for the purposes of the experiment," the following new paragraph is to be added:

"Experiments involving recombinant DNA from Class 3 organisms (1) or from cells known to be infected with these agents may be conducted at P3 containment in *E. coli* K–12 EK1 hosts (see Section III–O). Containment levels for all other experiments with Class 3 organisms or with recombinant DNA which increases the virulence and host range of a plant pathogen will be determined by NIH (See Section IV–E–1–b–2–e)."

E. Section III–O. After the third paragraph, "Some experiments * * * are exempt from the Guidelines (see Section I–E)," the following new paragraph is to be added:

"Experiments using *E. coli* K–12 EK1 host-vector systems and DNA from Class 3 organisms [1] or from cells known to be infected with these agents will be conducted at P3 containment or at a lower level as specified by NIH (See Section IV–3–1–b–2–e)."

F. A new Section IV–E–1–b–2–e is to be added as follows:

"IV–E–1–b–2–e. Assigning containment levels for experiments with recombinant DNA from Class 3 organisms [1] and for experiments which increase the host-range and virulence of plant pathogens."

G. Section V, footnote 2, is to be amended to read:

"2. For experiments using Vesicular Stomatitis virus (VSV), contact the NIH Office of recombinant DNA Activities."

H. Section V, footnote 36. The second sentence is to be amended to read:

"(As noted in the Prohibition Section, the use of viruses classified [1] as Class 4 or 5 is prohibited.)"

3. *Proposal to Amend Portions of Section III–A–2–a, Viruses of Eukaryotes.* In the 1980 Guidelines a level of biological containment requiring the use of an "HV1 host and a vector certified for use in an HV2 system" has been substituted for "an EK1 host and a vector certified for use in an EK2 system." This level of biological containment is abbreviated as "HV1CV" in Table III and Footnote 40 of the 1980 Guidelines. At the December 6–7, 1979 meeting of the RAC, a working group was appointed to review the appropriateness of this level of biological containment. The working group proposed that HV2 biological containment be required for these experiments. Accordingly, a proposal to amend portions of Section III–A–2–a, *Viruses of Eukaryotes,* was published in the **Federal Register** of January 31, 1980 [45 FR 7182].

The RAC discussed this proposal at the March 6–7, 1980 meeting. During the discussion, the RAC agreed that the "CV" nomenclature was developed for EK host-vector systems. However the RAC felt that requiring the use of HV2 systems instead of HV1CV imposed an unnecessarily stringent level of containment.

The RAC voted to publish for comment in the **Federal Register** a proposal to substitute HV1 for HV1CV in all places in the Guidelines. The proposal is as follows: Substitute the term "an HV1 host-vector" for "an HV1 host and a vector certified for use in an HV2 system" in Section III–A–2–a–(1)–(a)–(*3*)–(*b*) and substitute the term "an HV1 host-vector" for "an HV1 host and a vector certified for use in an HV2 system, or P3 + HV1," in Sections III–A–2–a–(1)–(a)–(*2*)–(*c*), III–A–2–a–(1)–(b)–(*1*)–(*b*), III–A–2–a–(1)–(b)–(*2*)–(*b*), III–A–2–a–(2)–(a)–(*1*)–(*b*), III–A–2–a–(2)–(a)–(*2*)–(*b*), and III–A–2–a–(2)–(c)–(*2*)–(*b*). In Table III, whenever any one of the following three terms appears, ("HV1CV [40]"; HV1CV[40] or P3 + HV1"; or "HV1CV[40] or P3 + HV1[38]") it would be changed to "HV1."

4. *Proposal To Include Saccharomyces cerevisiae Host-Vector Systems under Section III–O of the Guidelines.* Dr. Jane Setlow of the Brookhaven National Laboratory, proposed at the March 6–7, 1980 meeting, that the RAC consider classifying under Section III–O of the Guidelines experiments involving laboratory strains of *Saccharomyces cerevisiae* as host-vector systems. Dr. Setlow advanced the following arguments to support this proposal: (1) *S. cerevisiae* is nonpathogenic; (2) it does not implant in the intestine; (3) the dilute conditions in which it is found in nature are extremely unfavorable for mating; and (4) it does not efficiently compete with wild type strains of *S. cerevisiae.* She noted in addition that *S. cerevisiae* does not have a biological association with man. Material supporting this proposal has been provided to ORDA by Dr. Setlow and is available upon request. The RAC discussed this question at the March 6–

7, 1980 meeting, and agreed that the proposal should be published in the Federal Register for comment.

The proposal consists of two parts as follows:

A. The following language would be substituted for Section III–O:

III–O *Classification of Experiments Using E. coli K–12 and Saccharomyces cerevisiae Host-Vector Systems.* Most recombinant DNA experiments currently being done employ *E. coli* K–12 host-vector systems; others employ the *S. cerevisiae* host-vector systems.

These are the systems for which we have the most experience and knowledge.

Some experiments using *E. coli* K–12 and *S. cerevisiae* host-vector systems are prohibited (see Section I–D).

Some experiments using *E. coli* K–12 and *S. cerevisiae* host-vector systems are exempt from the Guidelines (see Section I–E).

Other experiments using *E. coli* K–12 or laboratory strains of *S. cerevisiae* shall use P1 physical containment and, except as specified in the last paragraph of this section, and HV1 host-vector system [i.e. for experiments using *E. coli* K–12 (a) the *E. coli* host shall not contain conjugation-proficient plasmids or generalized transducing phages, and (b) lambda or lambdoid bacteriophages or non-conjugative plasmids [49] shall be used as vectors. For experiments in *S. cerevisiae*, laboratory strains shall be used.] For these experiments no Memorandum of Understanding and Agreement (MUA) as described in Section IV–D–1–c need be submitted, nor is any registration with NIH necessary. However, for these experiments, prior to their intiation, investigators must submit to their Instutitional Biosafety Committee (IBC) a registration document that contains a description of (a) the source(s) of DNA, (b) the nature of the inserted DNA sequences, and (c) the hosts and vectors to be used. This registration document must be dated and signed by the investigator and filed only with the local IBC. The IBC shall review all such proposals but such review is not required prior to intiation of experiments. An exception, however, which does require prior review and approval by the IBC is any experiment in which there is a deliberate attempt to have the *E. coli* K–12 or *S. cerevisiae* efficiently express as a protein product the information carried in any gene derive from a eukaryotic organism or from any virus or viroid which infects a eukaryotic organism.

Experiments involving the insertion into *E. coli* K–12 of DNA from prokaryotes that exchange genetic information with *E. coli* by known physiological processes will be exempted from these Guidelines if they appear on the "list of exchangers" set forth in Appendix A (see Section I–E–4).

For those not on the Appendix A list but which exchange genetic information (35) with *E. coli*, experiments may be performed with any *E. coli* K–12 vector (e.g. conjugative plasmid). When a nonconjugative vector is used, the *E. coli* K–12 host may contain conjugation-proficient plasmids, either autonomous or integrated, or generalized transducing phages.

B. The language "*HV1—Unmodified laboratory strains of *Saccharomyces cerevisiae*" would be deleted from Appendix D.

5. *Request for Permission to Transform Sacchromycopsis lipolytica with E. coli/S. cerevisiae Hybrid Plasmids.* Dr. David M. Ogrydziak of the University of California, Davis, requests permission to attemt to transform the yeast *Sacchromycopsis lipolytica* with defined *Escherichia coli/Saccharomyces cerevisiae* hybrid plasmids and to use the hybrid plasmids for shotgunning *S. lipolytica* DNA in *E. coli* and returning the DNA to *S. lipolytica.*

6. *Proposal to Amend Section III–B–3 of the Guidelines.* Dr. Allan Campbell of Stanford University has proposed that the RAC consider amending Section III–B–3 of the Guidelines, which currently reads as follows:

III–B–3. Non-HV1 systems. Containment levels for other classes of experiments involving non-HV1 systems may be approved by the Director, NIH. (See Sections IV–E–1–b–(1)–(b), IV–E–1–b–(2)–(c), and IV–E–1–b–(3)–(b).

In those cases where genetic exchange has not been demonstrated between two bacterial species A and B, neither of which is known to be pathogenic for man, animals or plants, recombinant DNA experiments involving only A and B can be conducted under P3 containment. (2A)

Dr. Campbell writes that the P3 containment level was assigned because of apprehensions that the category might contain some experiments for which that level was appropriate rather than that all experiments in this category were perceived as requiring P3 containment. His proposed amendments are "intended to assert RAC's intention to review individual proposals in an open-minded manner with respect to realistic evaluation of possible hazard, and to discourage the inference that the P3 level, as it applies to a specific experiment, has been set on the basis of information about the organisms involved."

Dr Campbell proposes changes in the Guidelines as follows:

A. Section III–B–3, paragraph 2, would be amended to read:

"In those cases when genetic exchange has not been demonstrated between two bacterial species A and B, neither of which is known to be pathogenic for man, animals or plants, recombinant DNA experiments involving only A and B can be conducted under P3 containment [2A]. Lower levels of physical containment may be assigned by NIH for specific donor-recipient combinations. (See Section IV–E–1–b–2–f)."

B. A new section IV–E–1–b–2–(f) would be added to the Guidelines as follows:

"IV–E–1–b–2–(f). Assigning containment levels for experiments in which both donor and recipient are non-pathogenic prokaryotes. (See Section III–B–3)."

An alternate amendment of the second paragraph of Section III–B–3 of the Guidelines has been proposed by Dr. Irving Johnson of Lilly Research Laboratories, as follows (amended language in italics):

"In those cases where genetic exchange has not been demonstrated between two bacterial species A and B neither of which is known to be pathogenic for man, animals or plants, recombinant DNA experiments involving only A and B can be conducted under *physical containment and conditions specified by the local IBC based on its consideration of the biological properties of the organisms."*

7. *Request to Delete Language Requiring the use of Cauliflower Mosaic Virus (CaMV) mutants lacking the Aphid Transmission Factor from Section III–C–3. Request for Permission to Transfer DNA fragments from Aphid Transmissible to Aphid Nontransmissible CaMV.* Dr. Robert J. Shepherd of the University of California at Davis has requested that the following paragraph be deleted from section III–C–3 of the Guidelines:

"The CaMV strain used as a cloning vector shall be a mutant that lacks the aphid transmission factor."

In addition, Dr. Shepherd requests that he be permitted to transfer DNA segments from aphid transmissible to non-aphid transmissible strains of cauliflower mosaic virus in order to study the factors determining aphid transmissibility. This experiment could be considered as being prohibited under Section I–D–3 of the Guidelines. Dr. Shepherd suggests that it is inconsistent to restrict studies with cauliflower mosaic virus to non-insect transmissible strains when no such restriction is imposed on studies with bean golden mosaic and related viruses, the only other known group of DNA plant viruses. Dr. Shepherd suggests that under the Pl containment conditions specified in the Guidelines, cauliflower mosaic virus is easily confined to a growth chamber or greenhouse. In addition, the virus has a very restricted host range and is neither seed nor pollen transmitted, providing even further containment.

8. *Proposal to Amend Section III–C–4 of the Guidelines.* Dr. Milton Zaitlin of Cornell University proposed that Section III–C–4 of the Guidelines be amended to redefine a Pl greenhouse or growth chamber when certain infectious agents other than viruses are used as vectors. He proposes that the following

language should be added at the end of III–C–4:

"and (iii) negative air pressure should be employed in the greenhouse or growth chamber when infectious agents are used which generate airborne propagules."

Dr. Zaitlin notes that a Pl greenhouse or growth chamber is described in Section III–C–3, Plant Viral Host-Vector Systems, in which there is a recommendation for positive air pressure in order to exclude insects which might transmit viruses. However, in the conditions considered in Section III–C–4, i.e. Plant Host-Vector Systems other than Viruses, the propagules themselves (spores, mycelia, etc.) should be contained, and a negative air pressure would be more appropriate.

9. *Cloning of Foot and Mouth Disease Virus—Stage II.* At the December 6–7, 1979 meeting, the RAC considered a proposal submitted by investigators at the Plum Island Animal Disease Center to permit the cloning of foot and and mouth disease virus (FMDV) in an *E. coli* K–12 host-vector system. Since FMDV virus is classified as a Class 5 agent, an exception to a prohibition of the Guidelines (I–D–1) was requested for cloning segments of the virus. Stage I of the proposal involves the cloning of double-stranded cDNA from RNA isolated from the virus. Subgenomic fragments of the viral genome are to be propagated in an *E. coli* K–12 host employing plasmid pBR322 as a vector. Clones containing FMDV sequences of interest would be analyzed and collected. The Director, NIH on recommendation of the RAC, approved on January 17, 1980 the formation of recombinants between fragments of FMDV and plasmid pBR322 as outlined in Stage I of the proposal. This stage is being carried out at the Plum Island Animal Disease Center.

The second stage of the scientific plan is proposed to be carried out in a joint effort at the laboratories of Genentech, Inc., South San Francisco, California. After clones containing viral sequences of interest have been assayed for lack of infectivity, they would be transferred to Genentech, Inc. for detailed molecular characterization. An attempt would be made to modify clones to produce polypeptides of interests, specifically the VP_3 polypeptide.

The RAC at its December 6–7, 1979 meeting recommended that a Working Group of the RAC be formed to report back to the full RAC after examination of the testing data on the infectivity of the clones produced at Plum Island under Stage I, prior to their removal from Plum Island. The Director, NIH accepted this recommendation on January 17, 1980. As Stage I of the project is nearing completion, the investigators now propose to submit testing data on the infectivity of the clones to the RAC Working Group and the RAC at its June 5–6 meeting in order to seek approval for further stages of the project. The RAC will consider whether they recommend that the clones may be removed from Plum Island, and what they judge to be the appropriate containment level for work with the clones at Genentech, Inc.

10. *Request for an Exception to a Prohibition: Field Testing of Corn Genes Put into Corn (Zea mays) with an E. coli or S. cerevisiae Vector.* Dr. Ronald Davis of Stanford University Medical Center has requested permission from the RAC to field test corn plants (Zea mays) which have been transformed by corn DNA or modified corn sequences cloned in *Escherichia coli* or *Saccharomyces cerevisiae* host-vector systems. Approval of this request requires an exception to Prohibition I–D–4, which prohibits deliberate release into the environment of any organism containing recombinant DNA.

11. *Request for Certification of a Bacillus subtilis Strain as the Host Component of an HV2 Host-Vector System.* Dr. William F. Burke, Jr. of Arizona State University requests the RAC to certify *Bacillus subtilis* strain ASB298 as the host component of an HV2 host-vector system. Dr. Burke has supplied ORDA with a report outlining the construction and characteristics of this strain.

12. *Proposed Revision of Section III–C–1–e.* A notice appeared in the **Federal Register** of January 31, 1980 concerning proposed revision of Section III–C–1–e, and its subsections. It was recommended that Sections III–C–1–e, III–C–1–e–(1), III–C–1–e–(1)–(a), and III–C–1–e(1)–(b) of the Guidelines be changed and that a new Section III–C–1–e–(1)–(c) be added. Section III–C–1–e–(2) would remain unchanged. The RAC, at its March 6–7, 1980 meeting, recommended adoption of Sections III–C–1–e, III–C–1–e–(1), and III–C–1–e–(1)–(a) as published in the **Federal Register** of January 31, 1980, with certain modifications in Section III–C–1–e–(1)–(a).

The Director, NIH, accepted this recommendation and promulgated the following sections in the **Federal Register** of April 11, 1980:

"III–C–1–e. All Viral Vectors.

III–C–1–e–(1). Other experiments involving eukaryotic virus vectors can be done as follows:

III–C–1–e–(1)–(a). Recombinant DNA molecules containing no more than two-thirds of the genome of any eukaryotic virus [all viruses from a single Family (36) being considered identical (50)] may be propagated and maintained in cells in tissue culture using P1 containment. For such experiments, it must be shown that the cells lack helper virus for the specific Families of defective viruses being used. The DNA may contain fragments of the genomes of viruses from more than one Family but each fragment must be less than two-thirds of a genome."

At its March 6–7, 1980 meeting, the RAC voted to defer consideration until the June 5–6, 1980 meeting of the new Sections III–C–1–e–(1)–(b) and III–C–1–e–(1)–(c) as proposed in the **Federal Register** of January 31, 1980, and requested that a working group develop additional information. An *ad hoc* working group will meet on May 13, 1980 during the meeting of the American Society for Microbiology. The report of the working group will be considered at the June 5–6, 1980 RAC meeting. Accordingly, the proposed revised Sections III–C–1–e–(1)–(b) and III–C–1–e–(1)–(c) are again published for public comment prior to consideration at the June 5–6, 1980 meeting:

"III–C–1–e–(1)–(b). Recombinants with less than two-thirds of the genome of any eukaryotic virus may be rescued with helper virus using P2 containment if wild type strains of the helper virus are not able to grow in human cells.

III–C–1–e–(1)–(c). Recombinants with less than two-thirds of the genome of any eukaryotic virus may be rescued with helper virus using P3 containment if wild type strains of the helper virus are able to grow in human cells."

13. *Lowering of Containment Levels for Characterized Clones or Purified DNAs by ICBs.* The December 1978 NIH Guidelines specified in Sections III–A–3–a, III–A–3–b, and IV–D–3–b, conditions under which the local Institutional Biosafety Committee could, without NIH prior approval, give approval for a single step reduction in physical or biological containment. When the Guidelines were revised in January 1980 and Section III–A was changed from covering experiments with the *E. coli* K–12 host-vector system to covering experiments with certain HV1 and HV2 systems, the ability of the IBC to grant such single step reductions without NIH approval was withdrawn. (This is discussed on page 69246 of the November 30, 1979 **Federal Register**). The RAC at its March 6–7, 1980 meeting voted 9 to 1 with 3 abstentions that there be published in the **Federal Register** for comment, and brought back to the RAC at its June 5–6, 1980 meeting, proposed revisions of the Guidelines to permit a single step reduction in physical or biological containment for characterized clones or purified DNA, to be approved by the local IBC, without prior NIH

approval. Accordingly the following changes in the Guidelines are proposed:

A. Section III–A–3–a is to be amended as follows:

"III–A–3–a. *Purified DNA Other than Plasmids, Bacetriophages, and Other Viruses.* The formation of DNA recombinants from cellular DNAs that have been purified [41] and in which the absence of harmful sequences has been established [3] can be carried out under lower containment conditions than used for the corresponding shotgun experiment [42]. The containment may be decreased one step in physical containment (P4→P3; P3→P2; P2→P1) while maintaining the biological containment specified for the shotgun experiment, or one step in biological containment (HV3→HV2; HV2→HV1) while maintaining the specified physical containment. The institutional biosafety committee (IBC) must review such a reduction and the approval of the IBC must be secured before such a reduction may be put into effect. IBC approval is sufficient for such a reduction except for any lowering of containment under Section III–A–3–a to levels below P1+HV1, which requires prior NIH approval. (See Sections IV–D–1–c and IV–E–1–b–(3)–(e).)"

B. Section III–A–3–b is to be amended as follows:

"III–A–3–b. *Characterized Clones of DNA Recombinants.* When a cloned DNA recombinant has been rigorously characterized and the absence of harmful sequences has been established (3) experiments involving this recombinant DNA may be carried out under lower containment conditions.

Institutional biosafety committees (IBCs) may give approval for a single-step reduction in physical or biological containment on receipt of evidence of characterization of a clone derived from a shotgun experiment and its probable freedom from harmful genes. IBC approval is sufficient for such a reduction except for any lowering of containment under Section III–A–3–b to levels below P1+HV1, or reduction of containment levels by more than step, which also require prior NIH approval. (See Sections IV–D–1–c and IV–E–1–b–3–(e).)"

C. Section IV–D–1–c–(3) is to be amended as follows:

"IV–D–1–c–(3). Certain reductions of containment levels for characterized or purified DNA preparations or clones (see Section III–A–3)."

D. The Note in Section IV–D–3–b is to be amended as follows: (Additional language in Italics).

"Note.—Some examples of work that might ordinarily proceed without prior funding-agency approval are the initiation of a project at the P1 or P2 level (other than the first project at the institution). Other examples are significant changes in hosts or vectors, in the donor species or the nature of the DNA segment selected, or in the physical location of the experiments. *Still others are single-step reductions in containment level for (i) experiments with DNA recombinants from cellular DNAs that have been purified and are judged to be free of harmful sequences (See Section III–A–3–a) and for (ii) clones that have been characterized and judged to be free of harmful sequences (see Section III–A–3–b).* It should be clear, however, that the funding agency must be notified of IBC approvals even when prior agency approval is not required. See the Administrative Practices Supplement for further discussion."

E. Section IV–E–1–b–(3)–(e) is to be amended as follows:

"IV–E–1–b–(3)–(e). Lowering containment levels in certain cases for characterized clones or purified DNA (see Sections III–A–3–a and –b, and Footnotes 3 and 41);"

14. *Transfer of DNA Segments Cloned in Saccharomyces cerevisiae Host-Vector Systems to Higher Plants.* Dr. Jane Setlow of Brookhaven National Laboratory, has suggested that the Guidelines include a general provision for cloning plant DNA in *Saccharomyces cerevisiae* and subsequently returning the cloned DNA to the plant. She proposes that the first sentence of Section III–c–7–b be amended to read as follows:

"III–C–7–b. *Transfer to Higher Plants.* DNA from any nonprohibited source [Section I–D] which has been cloned and propagated in *E. coli* or *S. cerevisiae* under appropriate containment conditions, may be transferred with the *E. coli* or *S. cerevisiae* vector used for cloning to any higher plant organisms (Angiosperms and Gymnosperms) and propagated under conditions of physical containment comparable to Pl and appropriate to the organism under study [2A]."

15. *Status of Variola and Whitepox Viruses.* It was suggested at the RAC March 6–7, 1980 meeting that any mention of the variola viruses in the Guidelines be marked with a symbol so that reference could be made to world organization policy regarding these viruses and worldwide efforts at eradication.

Accordingly, it is proposed that Appendix B, Classification of Microorganisms on the Basis of Hazard, be amended so that each mention of Alastrim, Smallpox and Whitepox will be marked with a symbol. A footnote at the bottom of the page bearing this symbol will read:

"All activities, including storage of variola and whitepox are restricted to the single national facility (World Health Organization (WHO) Collaborating Center for Smallpox Research, Center for Disease Control, in Atlanta)."

16. *Request for Consideration of Appropriate Containment Conditions.* Dr. Paul S. Sypherd of the University of California, Irvine has requested consideration of the containment levels appropriate to the return of *Mucor racemosus* DNA cloned in *Saccharomyces cerevisiae* host-vector systems to *Mucor racemosus.* In addition, Dr. Sypherd requests permission to transform *Mucor racemosus* with *S. cerevisiae* vectors with or without cloned yeast sequences.

17. *Proposal to Amend Section I–D–6 of the Guidelines.* Dr. Irving Johnson of Lilly Research Laboratories, proposes that Section I–D–6 of the Guidelines be amended, as follows:

A. Delete the second paragraph of Section I–D–6 which currently reads as follows:

"We differentiate between small- and large-scale experiments with organisms containing recombinant DNAs because the probability of escape from containment barriers normally increases with increasing scale."

B. Amend the third paragraph of Section I–D–6 to read as follows (amended language in italics):

"Experiments in Categories I–D–1 to I–D–6 may be excepted (4) from the prohibitions (and will at that time be assigned appropriate levels of physical and biological containment) provided that these experiments are expressly approved by the Director, NIH, with advice of the Recombinant DNA Advisory Committee after appropriate notice and opportunity for public comment. (See Section IV–E–1–b–(1)–(e).) *Those experiments utilizing an E. coli K–12 host-vector system and meeting the containment requirements of Section III–O are excluded from these prohibitions."*

18. *Proposals to Amend Several Sections of Part IV, Roles and Responsibilities.* Dr. Irving Johnson of Lilly Research Laboratories, has proposed several amendments of Part IV of the Guidelines, "Roles and Responsibilities," as follows:

A. Amend Section IV–E–1–b–(3)–(d) under Section IV–E–1–b, *"Specific Responsibilities of the Director, NIH,"* to read as follows (new language in italics):

"IV–E–1–b–(3)–(d). Authorizing, under procedures specified by the RAC, large-scale experiments (i.e., involving more than 10 liters of culture) for recombinant DNAs that are rigorously characterized and free of harmful sequences (see Footnote 3 and Section I–D–6).

Further volume increases at the approved containment level, e.g., for industrial development and production purposes, of previously approved (by the Director of NIH) large-scale experiments may be subsequently approved by the local IBC in accordance with Section IV–D–3–a. The IBC will notify ORDA of such volume increases."

B. Amend the second paragraph of Section IV–E–2, *Recombinant Advisory Committee,* to read as follows (amended language in italics):

"The members of the committee shall be chosen to provide, collectively, expertise in scienctific fields relevant to recombinant DNA technology and biological safety—e.g., microbiology, molecular biology, virology, genetics, epidemiology, infectious diseases, the biology of enteric organisms, botany, plant pathology, ecology, and tissue culture. *Appropriate representatives of industry shall also be chosen to provide expertise in fermentation technology, engineering, and other aspects of large-scale production.* At least 20 percent of the members shall be persons knowledgeable in an applicable law, standards of professional conduct and practice, public attitudes, the environment, public health, occupational health, or related fields. Representatives from Federal agencies shall serve as non-voting members. Nominations for the RAC may be submitted to the NIH Office of Recombinant DNA Activities."

The first and third paragraphs of Section IV–E–2 would remain unchanged.

C. Amend Section IV–E–2, *Recombinant Advisory Committee,* to add a new section IV–E–2–b, as follows:

"IV–E–2–b. A permanent subcommittee of the RAC shall be responsible for advising the Director of NIH, on the actions, listed in Section IV–E–1–b–(3)–(d) pertaining to large-scale applications. Submissions that are in compliance with the Guidelines may be recommended by the subcommittee to the Director of NIH for approval. The subcommittee shall also be authorized to consider preliminary plans for large-scale operations and to recommend approval contingent upon completion of the large-scale facility according to those plans. The subcommittee will be responsible for expeditiously processing applications."

19. *Request for Use of Conjugative Plasmids and Transducing Phages in an Escherichia coli K–12 Host.* Dr. A. I. Bukhari of the Cold Spring Harbor Laboratory has requested permission from the RAC to employ conjugative plasmids or transducing phages in recombinant DNA experiments involving *Escherichia coli* DNA when a small fragment of heterologous DNA is used as a linker. In the specific request, Dr. Bukhari requests approval to use a fragment of Ad_2 DNA as linker DNA.

20. *Request for Exception to a Prohibition to Clone DNA from a Class 3 CDC Agent.* Dr. Sebastiao Baeta Henriques of the Instituto de Ciencias Biologicas, Belo Horizonte, Brazil, requests the RAC to approve an exception to a prohibition to clone genes from *Schistosoma mansoni,* a Class 3 CDC agent, in *E. coli* K–12. This request was considered briefly at the March 6–7, 1980 RAC meeting. Dr. Henriques was requested to provide information as to why he is requesting NIH approval for a non-NIH project to be conducted in Brazil. Dr. Henriques has provided NIH with an additional letter of explanation.

Additional Announcements of the Director, NIH

Section IV–E–1–b–(3)–(d) of the Guidelines gives responsibility to the Director, NIH, for "authorizing, under procedures specified by the RAC, large-scale experiments (i.e., involving more than 10 liters of culture) for recombinant DNAs that are rigorously characterized and free of harmful sequences." Accordingly, several requests for authorization to culture, on a large scale, recombinant DNA host-vestor systems have been received and reviewed by the NIH.

I. Genentech, Inc.

On the recommendation of the RAC, the following requests from Genentech, Inc. have been approved by the Director, NIH:

A. On April 1, 1980, the Director, NIH approved a request from Genentech, Inc. for the large-scale culture up to 750 liters of EK1 host-vector systems containing a plasmid into which has been ligated a combination of chemically synthesized DNA and cloned cDNA coding for human growth hormone.

B. On April 9, 1980, the Director, NIH approved a request from Genentech, Inc., for the large-scale culture up to 750 liters of EK1 host-vector systems constructed to produce various chimeric fusion proteins containing either somatostatin, human insulin A chain, human insulin B chain, human proinsulin, and thymosin alphal.

Both requests were approved with the understanding that Genetech, Inc., has agreed to permit an observer, designated by NIH, to visit the facilities if NIH should choose to inspect the site, and to certain additional stipulations.

The principal investigators are Drs. Michael Ross and Norm S. C. Lin. The work is to be done, as stipulated by the Genentech, Inc. submission, in a "P2 laboratory housing fermentors modified and tested to totally contain the recombinant organisms until they are chemically or physically killed at the end of each fermentation * * * at the research and development facility at 460 Point San Bruno Boulevard, South San Francisco, California 94080."

II. Eli Lilly & Co.

A. On April 7, 1980, the Director, NIH, approved a request from Eli Lilly and Company for large scale culture of an EK1 host-vector system containing a plasmid coding for human proinsulin covalently joined to *E. coli* β-galactosidase, at the P2 and P1–LS levels of containment.

B. On April 7, 1980, the Director, NIH, approved a request to amend a previous submission of Eli Lilly and Company. In the previous submission, which was approved on October 5, 1979 by the Director, NIH, Eli Lilly and Company requested permission to culture on a large-scale EK1 host-vector systems separately carrying the chemically synthesized insulin A chain and B chain. The February 1980 submission requested permission to amend this protocol to permit culture of the same host-vector systems in larger volumes at the P1–LS level of containment.

C. On April 9, 1980, the Director, NIH approved a joint request from Eli Lilly and Company and Genentech, Inc., for large scale culture of EK1 host-vector systems producing human proinsulin, insulin A chain, and insulin B chain as chimeric fusion proteins in RAC-approved fermentors of Eli Lilly and Company at the P2 and P1–LS levels of containment.

These requests were approved with the understanding that Lilly Research Laboratories have agreed to permit an observer, designated by NIH, to visit the facilities if NIH should choose to inspect the site.

The principal investigator for these projects is Dr. Lawrence E. Day. The large scale growth of the organisms is to be carried out at plant facilities located at 1200 South Kentucky Avenue, Indianapolis, Indiana 46206.

Dated: April 23, 1980.

Donald S. Fredrickson,

Director, National Institutes of Health.

[FR Doc. 80–12995 Filed 4–29–80; 8:45 am]

BILLING CODE 4110–08–M

federal register

Wednesday
April 30, 1980

Part III

Environmental Protection Agency

Proposed Policy on Public Participation

ENVIRONMENTAL PROTECTION AGENCY

[FRL 1360-4]

Office of the Administrator

Proposed Policy on Public Participation

AGENCY: Environmental Protection Agency.

ACTION: Notice of Proposed Policy on Public Participation.

SUMMARY: In order to enhance the ability of the Environmental Protection Agency to manage programs and make decisions in the public interest, the Agency is proposing a formal policy for public participation. Advice and comment from the public is sought at this stage so that when the Agency writes a final policy, it can have the benefit of the public's experience and judgment. An Agency policy will strengthen the hand of the public and make clear to all concerned that public involvement in Agency decision-making is welcome and needed. A degree of standardization in procedures will make it easier for citizens to know what they can expect when they deal with the Agency. The policy will also clarify the responsibility of Agency officials by giving them the mandate to develop public participation measures in the context of program decision-making.

DATES: Public comments are invited and should be submitted by June 30, 1980.

ADDRESSES: Please submit comments to, or for further information call:

Sharon F. Francis, Special Assistant for Public Participation, Office of the Administrator (A-100), U.S. Environmental Protection Agency, Washington, D.C. 20460, Telephone: (202) 245-3066

Public Meetings:

A meeting to discuss and receive comment on the proposed policy will be held in Washington, D.C. on May 28, 1980, 9:00 am—12 noon; 1:00 pm—4:00 pm, at E.P.A. Headquarters, Room 3906, 401 "M" Street, S.W. Those who plan on submitting comments at the meeting should, if possible, inform the Office of the Special Assistant to the Administrator for Public Participation, (202) 245-3066, so that presentations and discussion can be scheduled for everyone's convenience.

Regions will be conducting meetings and/or other activities to promote discussion and receive comment on the policy. For information about meetings and other activities, contact your regional coordinator:

Region I

David Pickman, (617) 223-0967, Office of Public Awareness, Room 2203, U.S. Environmental Protection Agency, John F. Kennedy Federal Building, Boston, Massachusetts 02203

Region II

Ray Pfortner (212) 264-4536, Director, Public Affairs Division, U.S. Environmental Protection Agency, 26 Federal Plaza, New York, New York 10007

Region III

George Bochansky, Jr. (215) 597-9370, Chief, Office of Public Awareness, U.S. Environmental Protection Agency, Curtis Building, 6th & Walnut Streets, Philadelphia, Pennsylvania 19106

Region IV

Gordon Kenna (404) 881-2013, Office of Public Awareness, U.S. Environmental Protection Agency, 345 Courtland Street, N.E., Atlanta, Georgia 30308

Region V

Jane Kennealy (312) 353-2072, External Affairs, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604

Region VI

Rick Gentry (214) 767-2630, Public Participation Coordinator, 6-AP, U.S. Environmental Protection Agency, First International Building, 1201 Elm Street, Dallas, Texas 75270

Region VII

Betty Harris (816) 374-5894, U.S. Environmental Protection Agency, 1735 Baltimore Street, Kansas City, Missouri 64108

Region VIII

Stuart McDonald (303) 327-5927, Public Awareness & Intergovernmental Relations, U.S. Environmental Protection Agency, 1860 Lincoln Street, Denver, Colorado 80295

Region IX

Ida Lawson (415) 556-2320, Office of the Regional Administrator, U.S. Environmental Protection Agency, 215 Fremont Street, San Francisco, California 94105

Region X

Don Bliss (206) 442-1203, Director, Office of External Affairs, U.S. Environmental Protection Agency, 1200 6th Avenue, Seattle, Washington 98101

SUPPLEMENTARY INFORMATION: Public participation is not a new concept at EPA. Indeed the Agency confers extensively with a wide range of members of the public in almost all of its programs. The diversity of this experience, however, has brought the Agency to its current position of recognizing the need to build on the best of what has been learned and to institute common objectives and procedures to aid the entire Agency.

EPA recognizes that all Federal programs are intended to serve the public interest, and all government agencies are, by definition, public servants. EPA's programs directly and indirectly affect the lives of all citizens. These citizens have the right to share in program decisions, and public servants who implement Federal environmental statutes have the responsibility to seek out and be responsive to the concerns of the public in their decisions.

Congress and the President have increasingly directed EPA and other federal agencies to reform traditional governmental practices by providing a greater degree of participation by the public. Through its efforts to improve public participation, EPA is seeking an earlier and potentially more constructive dialogue with the public so that Agency decisions can better reflect the experience and preferences of those who are more affected and thereby improve the Agency's ability to carry out its mandates.

BACKGROUND

In April 1978, the Administrator and Deputy Administrator appointed a Special Assistant for Public Participation and asked that person to chair a Task Force whose aim was to recommend ways to strengthen public participation throughout the Agency. One of the first steps by the Task Force was an assessment of EPA's experience to date and an analysis of the Agency's public participation accomplishments. This assessment pinpointed a lack of clear-cut objectives and resources identified for public participation in most programs. It also found that the Agency does a much better job of reaching out to the public, informing it of Agency activities, and creating opportunities

to participate, than it does of assimilating and meaningfully using the results of public involvement.

During the period when the Task Force was completing its assessment, two other significant public participation efforts were underway. First, in response to President Carter's Executive Order 12044 on regulatory reform, the Agency refined and expanded its opportunities for citizen consultation in the regulatory development process. Secondly, a working group within the Office of Water and Waste Management (OWWM) had been developing revised regulations to improve public participation for its areas of responsibility. This group worked closely with interested sectors of the public and received extensive comment from groups including State and local government officials, economic interests, public interest groups, and private citizens.

When regulations for public participation in OWWM programs were proposed in the **Federal Register**, August 7, 1978, one of the questions on which EPA invited comment was whether the proposed OWWM regulations should be limited to OWWM or apply to all EPA activities. There was extensive comment from all sectors of the public in favor of an agencywide public participation measure.

The Public Participation Task Force analysed the alternatives of developing a policy or a regulation. It decided that development of a policy would be administratively simpler, and thus, the Task Force recommended to the Administrator that the Agency undertake the development of this proposed policy.

The draft policy has been under development for the last several months. In addition to consultation within the Agency, an early version was circulated to a sampling of active participants from various sectors of the pubic and their comments were incorporated in the current draft. Additionally, a meeting was held between the Public Participation Task Force and representatives of various public group and public officials so that their comments could also be added at the earliest stages.

POLICY INTENT

Several considerations have guided the drafting of this proposed policy. We are seeking a public participation policy that will be viewed as legitimate and meaningful. The public, when it participates, wants to see the effects of its involvement in final decisions. Yet program administrators who need citizen advice also work in a context of tight timetables, and cannot allow public discussion to drift. This, this policy emphasizes "participation by the public in decisions where options are available and alternatives must be weighed or where substantial agreement is needed from the public if a program is to be carried out." By taking this selective approach, the public has the best opportunity to be effective, and contribute positively to program management.

The policy provides an overall framework of purpose, objectives, procedures, and responsibilities, and outlines the general scope of activities to which it will be applied. It leaves considerable discretion to Assistant Administrators, Regional Administrators, and Deputy Assistant Administrators to develop more specific program guidance and to determine the extent of the decisions which will be covered by the policy. This flexibility provides room for the unique differences between programs and assures that the programs themselves will have a key role in decisions about public participation.

The policy is designed to set a basic "floor" for public participation activities, but certainly not a "ceiling." In developing their own guidance or implementing regulations, programs will be able to go farther than the basic provisions of the policy. OWWM has already promulgated public participation regulations (40 CFR Parts 25 and 35) which conform with this policy. In some areas, the OWWM regulations are more specific than is the proposed policy.

MAJOR ISSUES

As Task Force members have worked to draft this proposed policy in consultation with colleagues in the various programs and offices, several significant issues have arisen which merit wider discussion. In several cases there are optional approaches that might be taken to carry out aspects of the policy, and the experience and viewpoints of participants themselves are necessary to assure that the Agency reaches the fairest and most feasible course of action.

These issues are summarized in the paragraphs below. Public comment is especially invited on these issues since they are the most difficult and potentially controversial aspects of the policy. In addition, public comment on any other aspects of the policy is welcomed and encouraged.

1. Scope of Applicability.

This policy, as proposed, applies to programs carried out by EPA; however, since 80% of the Agency's total budget is spent by State, regional, and local levels of government, the policy also directs Assistant and Regional Administrators to assure that provisions of the policy are incorporated in program regulations and guidance that cover grants to State and local governments, or delegations of authority to other governmental entities.

A major question concerning the implementation of a public participation policy is whether it should apply solely to EPA or also include State and substate agencies when they are carrying out EPA programs. In some instances, States and localities may have established public participation policies and may not welcome the contradiction or confusion that might result from a new federal policy. State and substate entities may also believe that their practices are better than EPA's. It is also true, however, that some State and substate entities have very poor public participation or none at all. Some believe none is necessary. A national policy that reaches to the State and local levels will enable EPA's public participation efforts to be consistent throughout the country. This will promote wider public understanding of when, where, and how citizens can participate in environmental programs.

There are several approaches that might be taken on the scope of activity to which the policy is applied: one option would be to confine the policy only to activities directly carried out by EPA. A second option would be to require that state, regional and local governments carrying out EPA programs achieve substantially equivalent results, but without specifying any procedural requirements which they must follow. The third option is the one we propose, which is to specify that the policy be incorporated in guidance, program grant regulations and delegations of authority to other governmental entities.

In asking for advice on preferences among these options, we hope that commentors will refer to specific experiences or examples wherever possible. Those who prefer the option of substantially equivalent results on the part of state, regional and local governments are especially requested to offer specific suggestions for wording and evaluation criteria. We make this request because substantially equivalent provisions have a history of being easy to espouse but difficult to demonstrate.

2. Flexibility.

This draft policy provides for flexibility in two ways. First, Assistant Administrators, Regional Administrators, and Deputy Assistant Administrators are given considerable discretion in identifying major policy actions to which this policy will apply. Second, many parts of the policy are phrased with verbs that imply latitude such as "may," "should," "can," as contrasted with the firm requirements of "must," "shall," and "will."

Those who favor strong requirements believe that managers who want to avoid public participation will do so unless they are given specific guidelines to follow. Public participation is a sufficiently new enterprise in government that many program managers will not know how to carry it out unless given clear and firm direction. On the other side, advocates of more general requirements believe that strict guidelines will inhibit innovation and stifle the spirit of what EPA is trying to accomplish.

The Agency is asking reviewers of the policy whether the qualifying language that is proposed includes sufficient flexibility for program managers, whether effective participation will be too readily compromised, whether any of the mandatory procedures should be made optional, or any of the flexible provisions made requisite.

3. Adequacy of Hearings.

Hearings are legally required in a large number of programs. In many instances they have been one of the few, if not the only, public participation activities undertaken. All too often the public has complained that hearings were unsatisfactory because they did not have the time or resources to prepare for them, or because the agency apparently had already "made up its mind." These deficiencies have led to poor participation, with agency officials criticizing hearings because only a handful of people came, or testimony was too general.

Several aspects of this proposed policy will address questions about the adequacy of hearings: contact lists of the interested and affected public will be used on projects; background information will address issues and will be designed to facilitate better publaic understanding; participation will be sought when options and alternatives exist, not after a decision is made; Responsiveness Summaries will document how public preferences were incorporated in a decision.

In addition to these general requirements of the policy, there are a number of specific provisions to strengthen the usefulness of hearings themselves; notice of forthcoming hearings will be given 45 days in advance, except under certain circumstances when 30 days will be permissible; background information will be available to the public as early as possible; hearing notices will specify the information that is sought from the public, officials who conduct hearings will outline issues to be addressed; and finally hearing records will be conveniently available.

There are several questions about hearing adequacy which we would like to emphasize for comment:

a. Timing of Notice.

Is 45 days advance notice necessary, or is it adequate, to allow for mail delays and still give the public sufficient time to prepare for a hearing? Are the exceptions to this requirement we have cited in the draft policy sufficient? Have established 30 day requirements been adequate?

b. Availability of Information.

Does the proposed policy give the public understandable background information and access to documents sufficiently in advance to be useful in developing hearing testimony? Or will this requirement lead to time consuming delays and unnecessary paperwork?

c. Responsiveness.

Are the measures proposed in the policy for conducting hearings and providing a record of hearings adequate to assure that the agency holding the hearing is responsive to public testimony? We have not specifically required that Responsiveness Summaries be prepared after every hearing, because they are to be done at key decision points, and a decision may not be made immediately after a hearing but rather a number of months later. Would there be benefit in having Responsiveness Summaries done after each hearing anyway? Or should a summary of the hearing testimony be prepared and forwarded to the appropriate decisionmaking official? Should decision-making officials be required to certify that they have reviewed hearing testimony, and been responsive to it in making their decision? Should any specific feedback be provided to those who testified at a hearing?

It will be especially helpful to EPA if commentors can provide examples or experience to augment their views on these questions aboaut adequacy of hearings.

4. Advisory Group Membership.

In a number of instances, EPA program regulations call upon state or substate agencies to form advisory groups to assist in program planning or implementation. These groups assist elected and appointed decision-making officials by becoming familiar with plans and programs funded by Federal grants, making recommendations to decision-making officials, and encouraging interchange and mutual education among the interests represented on the group.

Substantial experience with advisory groups on the part of this Agency demonstrates that the kinds of people selected for advisory committee membership determines the kinds of advice given, and therefore, that a conscious effort to achieve balanced membership among interests is necessary to achieve balanced advice. Too often advisory committees are dominated by only one of the varied interests. Therefore, EPA is proposing in this policy that any advisory group required by EPA of State or substate grantees be comprised of "substantially equivalent proportions of four groups: private citizens, representatives of public interest groups, citizens or representatives of organizations with substantial economic interest in the matter under study, and public officials. This requirement has been the center of a great deal of discussion and debate. Some see the requirement as unnecessary or overly complex, while others see it as completely necessary to achieve a fair balance among interests.

In addition to this proposed option, the Agency would like to invite comment on several alternative approaches to the question of advisory committee membership. Should officials responsible for selecting advisory groups demonstrate "proof of effort" in finding a balanced group? Should membership be required to be equal among the four categories, rather than "substantially equivalent?" Should we delete specific descriptions of the four major groups and only specify that advisory committees be "equitably representative?" Should each program be directed to develop its own advisory committee requirements as OWWM has already done? If the policy specifies that public officials be included, should it specify elected public officials, or should it be flexible about both elected and administrative members?

The experience of commentors will be helpful to EPA in the final development of policy on this issue.

5. Compliance.

This policy proposes that Assistant Administrators, Office Directors and Regional Administrators are responsible for assuring compliance with the its provisions. They are not directed to report on their results because of the paperwork burdens that would occur.

We are asking reviewers of this policy to consider the most effective means for ensuring its enforcement.

Some believe that little can be accomplished unless specified action can be taken against those who do not comply with the policy. Others feel results in public participation can only be realized through "good faith" effort and the results of training and experience. They argue that imposing sanctions would cause resentment in program managers, who as a result would follow the letter of the policy, but perhaps ignore its intent.

6. Resource Implications.

By itself the policy is not going to impose significant new expenses on the Agency or its state and substate grantees. It will, instead, guide the planning for expenses and give this planning a purpose and a clear relationship to improved decision-making. Already EPA programs are allocating resources to public outreach and involvement activities, and it can be expected that these policy requirements will serve to refocus some existing allocations. The extent to which reallocations or new budgeting will be required to carry out the policy will be determined by the individual programs.

Some increase in resource requirements can be forseen in the staff time that will be needed to prepare Responsiveness Summaries. The policy also will result in increased expenditures for mailings, preparation of fact sheets, and other informational materials, and for the expenses of advisory committees. The pilot projects for providing compensation to citizens for participation in rulemaking will also entail new expenditures.

The increased expenditures that may be needed to carry out this policy cannot properly be identified until the program and regional offices have identified the actions and decisions to which the policy will apply and developed the appropriate public participation work plans. Any new resource requirements will become part of the budget development process of the Agency. Implicit in the policy is the assumption that priorities must be selected and scarce funds allocated prudently. The public should not develop unreasonably high hopes that there will be new funds available.

The increased sums that may be to be necessary to strengthen public participation in EPA programs need to be weighed, in part, against the savings to the Agency that greater public involvement may buy. Citizens are good watchdogs of the public purse, and will speak up against wasteful practices, if they are aware of them. Further, their involvement may save the public the high costs of litigation, and the wasted expense of plans that cannot be implemented or projects that cannot be completed for lack of public support. One of the principal reasons why EPA is expanding its public participation efforts by proposing this policy at this time is the belief that greater citizen involvement will lead to real savings and better programs for the Agency.

Dated April 9, 1980.

Douglas M. Costle,

Administrator.

PROPOSED E.P.A. POLICY ON PUBLIC PARTICIPATION

This policy addresses participation by the public in decision-making and rulemaking by the Environmental Protection Agency. The term, "the public" as it is used here, means the people as a whole, the general populace. There are a number of identifiable "segment of the public" who may have a particular interest or who may be affected one way or another by a given program or decision. In addition to private citizens, "the public" includes, among others, representatives of consumer, environmental and minority groups, trade, industrial, agricultural, and labor organizations; public health, scientific, and professional societies; civic associations; universities, educational and governmental associations; and public officials.

"Public participation" is that part of the Agency's decision-making process which provides opportunity and encouragement for the public to express their views to the Agency, and assures that the Agency will give due consideration to public concerns, values and preferences when decisions are made.

The requirements and procedures contained in this policy apply to the Environmental Protection Agency. The activities covered by this policy are:

—EPA rulemaking, when regulations are classified as significant;

—The administration of permit programs as delineated in applicable permit program regulations;

—Program activities supported by EPA financial assistance (grants and cooperative agreements) to State and substate governments;

—The process leading to a determination of approval of State administration of a program in lieu of Federal administration;

—Major policy decisions, as determined by the Administrator, appropriate Assistant Administrator, Regional Administrator, or Deputy Assistant Administrator, in view of the Agency's responsibility to involve the public in important decisions.

When covered activities are governed by EPA regulations or program guidance, the provisions of the policy shall be included at appropriate points in these documents.

A. PURPOSE

The purpose of this policy is to strengthen EPA's commitment to public participation and establish uniform procedures for participation by the public in EPA's decision-making process. A strong policy and consistent procedures will make it easier for the public to become involved and affect the outcome of the Agency's decisions. This in turn will assist EPA in carrying out its mission, by giving a better understanding of the public's viewpoints, concerns, and preferences. It should also make the Agency's decisions more acceptable to those who are most concerned and affected by them.

Agency officials will provide for, encourage, and assist participation by the public. Officials should strive to communicate with and listen to all sectors of the public. This will require them to give extra envouragement and assistance to some sectors, such as minorities, that may have fewer opportunities or resources.

Public participation must begin early in the decision-making process and continue throughout the process as necessary. The Agency must set forth options and alternatives before-hand, and seek the public's opinion on them. Merely conferring with the public after a decision is made does not achieve this purpose.

The policy identifies those requirements which are mandatory and others which are discretionary on the part of

Agency administrators. The policy assumes, however, that agency employees will strive to do more than the minimum required. The policy recognizes the Agency's need to set priorities for its use of resources, and emphasizes participation by the public in decisions where options are available and alternatives must be weighed or where substantial agreement is needed from the public if a program is to be carried out.

B. OBJECTIVES

In establishing a policy on public participation, EPA has the following objectives:

—To promote the public's involvement in implementing environmental laws;

—To make sure that the public understands official programs and proposed actions;

—To keep the public informed about significant issues and changes in proposed programs or projects, as they arise;

—To make sure that the government understands public concerns and is responsive to them;

—To demonstrate that the agency consults with interested or affected segments of the public and takes public viewpoints into consideration when decisions are made;

—To foster a spirit of mutual trust and openness between public agencies and the public.

C. GENERAL PROCEDURES FOR ALL PROGRAMS

Each Assistant Administrator, Office Director or Regional Administrator shall determine those forthcoming decisions or activities to which this policy should be applied, and take the steps needed to assure that adequate public participation measures are developed and implemented.

To ensure effective public participation, the Agency must carry out these five basic functions: Identification, Outreach, Dialogue, Assimilation and Feedback.

1. Identification.

It is important to identify those groups or members of the public who may be interested in, or affected by, a forthcoming action. This may be done by developing mailing lists, requesting names of individuals to include from others in the Agency or from key public groups, using questionnaires or surveys to find out levels of awareness, or by other means.

The responsible official(s) shall develop a contact list for each program or project, and add to the list whenever members of the public request it.

2. Outreach.

The public and contribute effectively to agency programs only if they are provided with accurate, understandable, pertinent and timely information on issues and decisions. The Agency must make sure that the information concerning a forthcoming action or decision reaches the public. This can be accomplished through mailings, personal communication by telephone, public service announcements, media ads, depositories, and other means. The key aspects of an outreach program are:

a. Content.

This must include background information, a timetable of proposed action, summaries of lengthy documents or technical material where relevant, a delineation of issues, and specific encouragement to stimulate active participation by the public.

Whenever possible, the social, economic and environmental consequences of proposed decisions should be clearly stated in outreach material. Fact sheets, news releases, newsletters and similar publications may be used to provide notice of availability of materials and to facilitate public understanding of more complex documents, but should not be a substitute for public access to the complete documents.

b. Notification.

The Agency must notify all parties on the contact list of opportunities to participate and provide appropriate information. The media must also be notified.

c. Timing.

Notification (above) must take place will enough in advance of the Agency's action to permit the public to respond. Generally, it should take place not less than 30 days before the proposed action, or 45 days in the case of public hearings (Exceptions in the case of public hearings are discussed under *Dialogue*, below.)

d. Fees for copying.

Whenever possible, the Agency should provide copies of relevant documents, free of charge. Free copies may be reserved for private citizens and public interest organizations with limited funds. Any charges must be consistent with requirements under the Freedom of Information Act as set forth in 40 CFR Part 2.

e. Depositories.

The Agency shall provide one or more central collections of documents, reports, studies, plans, etc. relating to controversial issues or significant decisions in a location or locations convenient to the public.

3. Dialogue.

There must be dialogue between officials responsible for the forthcoming action or decision and the interested and affected members of the public. This involves exchange of views and open exploration of issues, alternatives, and consequences. Dialogue may take several forms such as meetings, workshops, hearings, personal correspondence, and may include establishment of special groups such as advisory committees or task forces.

Public consultation must be preceded by timely distribution of information and must occur sufficiently in advance of decision-making to make sure that the public's options are not foreclosed, and to permit response to public views prior to agency action. Opportunities for dialogue shall be provided at times and places which, to the maximum feasible, facilitate attendance or participation by the public. Whenever possible, public meetings should be held during non-work hours, such as evenings or weekends, and at locations accessible to public transportation.

a. Requirements for Public Hearings.

(1) *Timing of Notice.* Notices must be well publicized and mailed to all interested and affected parties on the contact list (see 1. above) and to the media at least 45 days prior to the date of the hearing. However, when the Assistant Administrator or Regional Administrator finds that no reviews of substantial documents is necessary for effective participation and there are no complex or controversial matters to be addressed, the notice requirement may be reduced to no less than 30 days in advance of the hearing. Additionally, in permit programs, notice requirements will be

governed by permit regulations and will be no less than 30 days. Assistant Administrators or Regional Administrators may further reduce or waive the requirement for advance notice of a hearing in emergency situations where there is imminent danger to public health and safety, or in situations where there is a legally-mandated timetable.

(2) *Content of Notice.* The notice must identify the matters to be discussed at the hearing and must include or be accompanied by a discussion of the agency's tentative conclusions on major issues (if any), information on the availability of a bibliography of relevant materials (if appropriate), procedures for obtaining further information, and information which the Agency particularly solicits from the public.

(3) *Provision of Information.* All reports, documents and data relevant to the discussions at public hearings must be available to the public on request as soon as available to agency staff. Background information should be provided no later than 30 days prior to the hearing.

(4) *Conduct of Hearing.* The Agency conducting the hearing must inform the audience of the issues involved in the decision to be made, the considerations the Agency will take into account under law and regulations, the Agency's tentative conclusions (if any), and the information which the Agency particularly solicits from the public. The hearing officer should consider holding a question and answer period to clarify information. Procedures must not unduly inhibit free expression of views.

(5) *Record of Hearing.* The hearing record must be left open for at least ten days to receive additional comment, and may be kept open longer, at the discretion of the hearing officer. The Agency must prepare a transcript or other complete record of the proceeding and it must be available at an adequate number of locations. Copies should be provided at cost. If tapes are used, they should be available for use and copying on conventional equipment. When a Responsiveness Summary (see Assimilation below) is prepared after a hearing, it must be provided to those who testified at or attended the hearing as well as anyone who requests it.

b. Requirements for Advisory Groups.

When EPA establishes an advisory group, provisions of the Federal Advisory Committee Act (Pub. L. 92–463) and OMB Circular A–63 must be followed.

The primary function of an advisory group is to assist elected or appointed officials by making recommendations to them on relevant issues. These issues may include policy development, project alternatives, grant applications, work plans, major contracts, interagency agreements, budget submissions, among others. Advisory groups can provide a forum for addressing issues, promote constructive dialogue among the various interests represented on the group, and enhance community undestanding of the agency's action.

In instances where advisory committees are called for in program guidance, regulations, or the public participation work plans of State, substate, or local agencies, the following special requirements will apply:

(1) *Composition of Advisory Groups.* Agencies must try to constitute advisory groups so that the membership reflects a balance of interests, and consists of substantially equivalent proportions of the following groups:

• Private citizens. This portion of the advisory group should not include anyone who is likely to incur a financial gain or loss greater than that of an average homeowner, taxpayer or consumer as a result of any action that is likely to be taken by the managing agency.

• Representatives of public interest groups. A "public interest group" is an organization which has a general civic, social, recreational, environmental or public health perspective in the area and which does not directly reflect the economic interests of its membership.

• Federal, State and local officials.

• Citizens or representatives of organizations that have substantial economic interests in the plan or project.

Generally, where an activity has a particular geographic focus, the advisory group should be composed of persons from that geographic area unless issues involved are of national application.

(2) *Resources for Advisory Groups.* To the extent possible, agencies shall identify professional and clerical staff time which the advisory group may depend upon for assistance, and provide the advisory group with an operating budget which may be used for mailing, duplicating, technical assistance, and other purposes the advisory group and the agency have agreed upon. The agency should establish a system for reimbursing advisory group members for reasonable out-of-pocket expenses that relate to their participation on the advisory group.

4. Assimilation.

Assimilating public viewpoints and preferences into final conclusions involves putting together the results of "Outreach" and "Dialogue." The agency must then demonstrate, in its decisions and actions, that it has understood and fully considered public concerns. Assimilation of public views must include the following three elements:

a. Documentation.

The agency must briefly and clearly document consideration of the public's views in Responsiveness Summaries, regulatory preambles, or other appropriate forms. This should be done at decision points that have been specified in program guidance or in work plans for public participation.

b. Content.

Each Responsiveness Summary (or similar document) must:

—explain briefly the type of public participation activity that was conducted;

—identify those who participated;

—describe the matters on which the public was consulted;

—summarize the public's views, important comments, criticisms and suggestions; and

—set forth the agency's specific responses, in terms of modifying the proposed action, or explaining why the agency rejected proposals made by the public.

c. Use.

The Agency must use Responsiveness Summaries in its decision-making.

In addition, final Responsiveness Summaries that are prepared by an agency receiving financial assistance from EPA must also include that agency's (and where applicable, its advisory group's) evaluation of its public participation program.

5. Feedback.

The Agency must provide feedback to participants and interested parties concerning the outcome of the public's involvement. Feedback may be in the form of personal letters or phone calls, if the number of participants is small. Alternatively, the Agency may mail a Responsiveness Summary to those on the contact list, or may publish it. Feedback must contain the following elements:

a. Content.

The feedback that the agency gives must include a statement of the action that was taken, and must indicate the effect the public's comments had on that action.

b. Availability.

Agency officials must take the initiative in giving appropriate feedback and must assure that all public participants in a particular activity have access to that feedback. As Responsiveness Summaries are prepared their availability should be announced to the public. When regulations are developed, reprints of preambles and final regulations must be provided to all who commented.

D. ASSISTANCE TO THE PUBLIC

Assistant Administrators, Office Directors, and Regional Administrators will provide funds to outside organizations and individuals for public participation activities which EPA managers deem appropriate and essential for achieving program goals and which do not involve rulemaking activities. These activities may be funded through contracts, grants and cooperative agreements, or direct compensation for expenses.

Assistant Administrators, Office Directors and Regional Administrators will encourage and provide whenever possible, small grants to state, regional and local organizations to facilitate informed participation in forthcoming decisions and activities. Projects having national impact as well as those promoting coordination and integration across program lines may also be supported. Notices of the availability of funds will indicate the criteria by which EPA will evaluate the proposals. A panel is to be established for evaluation of proposals where funding is expected to exceed $50,000.

In the area of funding participation in regulatory activities, the Agency will conduct a small number of pilot projects involving compensation for rulemaking during Fiscal Year 1980. EPA will evaluate these pilot projects to determine what changes in the requirements, if any, are necessary to enhance the effectiveness of this activity.

Business Opportunities.

The policy of EPA is to encourage increased business opportunities for both minorities and women. This policy is currently applied to three programs under the Clean Water Act. It is the intention of the Agency to expand the scope of its MBE (Minority Business Enterprise) and WBE (Women's Business Enterprise) goals to include other areas of Agency activities. Funds devoted to public participation will be included in this process.

Participation Funding.

Any financial assistance awarded by the Agency should be based on the criteria: (1) is the potential recipient of funds an interested or affected party who is likely to contribute to a better process or a better decision; and (2) would that party be unlikely to participate effectively in the absence of funding? These are the primary tests for public participation financial assistance. From the pool of those who meet these two tests, the Agency will make special efforts to provide assistance to groups—particularly the disadvantaged, minorities and women—who may have had fewer opportunities or insufficient resources to participate.

E. AUTHORITY AND RESPONSIBILITY

1. *EPA Assistant Administrators, Office Directors and Regional Administrators* will be responsible for determining the need for public involvement in activities under their jurisdiction, and for meeting that need. The responsible Agency official must address those activities where application of this policy is required, and identify forthcoming major policy decisions where it should also be applied. They must set priorities, amend regulations as necessary, develop appropriate guidance, and undertake development of work plans for public participation. The Assistant Administrator, Regional Administrator, or Director must allocate resources—including qualified personnel and the necessary funds—to public information and participation activities, and must see to it that there are assistance and incentive programs to support grant regulations or delegations of authority to other governmental entities. They must ensure that public participation is included by grantees in the development of program funding applications to EPA and at other significant decision points.

Assistant Administrators and Regional Administrators will develop initial public participation work plans within 30 days after this policy becomes effective and do so annually thereafter. They must also evaluate public participation activities as necessary.

2. *At Headquarters* Assistant Administrators and Office Directors shall provide guidance and resources for carrying out this policy in program areas under their jurisdictions, conduct public awareness activities to facilitate participation in agency decisions, conduct public participation in national policy development, fund pilot or demonstration projects, provide advice and assistance to support regional office activities, and coordinate and evaluate regional office activities.

3. *Regional Administrators* shall support and assist the public participation activities of Headquarters. They must also assist State, regional and local agencies conducting public participation activities with EPA grant money, and evaluate those activities. They should encourage consolidation of public participation acitivities when appropriate. Where EPA programs are delegated to a State, regional, or local entity, Regional Administrators will review the public pariticipation activities conducted by that entity.

F. WORK PLANS

Public participation work plans, undertaken by EPA or by applicants for EPA financial assistance shall set forth, at a minimum:

1. Staff contacts and budget resources to be allocated to public participation;
2. Segments of the public targeted for involvement;
3. Proposed schedule for public participation activities to impact program decisions;
4. Identification of mechanisms to apply the five basic functions—Identification, Outreach, Dialogue, Assimilation and Feedback—outlined in Section C of this Policy.

All reasonable costs of public participation incurred by assisted agencies and identified in an approved public participation work plan will be eligible for financial assistance.

EPA program offices and regions will also develop work plans that will match public participation resources to program priorities and major decisions, as appropriate, to carry out this policy. Work plans will be reviewed by the Special Assistant for Public Participation and by the Public Participation Task Force and the results of this analysis will be forwarded to the Administrator for appropriate action.

G. COMPLIANCE

Assistant Administrators, Office Directors and Regional Administrators are responsible for making certain that, for

the activities under their jurisdiction, all those concerned comply with the public participation requirements set forth in this policy.

EPA will evaluate compliance with public participation requirements in approved State programs. This will be done during the annual review of the State's program(s) which is required by grant provisions, and during any other program audit or review of the State's program(s).

The Administrator of EPA has final authority and responsibility for ensuring compliance. Citizens with information concerning apparent failures to comply with these public participation requirements should first notify the appropriate Regional Administrator or Assistant Administrator, and then if necessary, the Administrator. The Regional Administrator, Assistant Administrator or Administrator will make certain that instances of alleged non-compliance are promptly investigated and that corrective action is taken where necessary.

APPENDIX—LIST OF CITATIONS COVERING PROGRAM GRANTS OR DELEGATIONS TO STATE AND SUBSTATE GOVERNMENTS

The Public Participation Policy will be applied to program regulations that cover grants or delegations of authority to State or substate governments or approval of State programs. Where consolidated grants exist under these provisions, they also will be covered. Programs under CWA, SDWA, and RCRA are already covered by this policy insofar as they have been amended or will be amended to incorporate 40 CFR, Part 25. Consolidated permit programs are covered by 40 CFR, Parts 122, 123 and 124. We are citing the statutes because some of the programs are not yet in place, and therefore have not generated regulations. Regulations that refer to existing programs covered by the Policy will have to be amended to reflect the Policy upon its implementation.

Clean Air Act (Pub. L. 95–95)

Sec. 105—Grants to State and local air pollution control agencies for support of air pollution planning and control programs.
Sec. 106—Grants to interstate air quality agencies and commissions to develop implementation plans for interstate air quality control regions. [When funded].
Sec. 175—Grants to organizations of local elected officials with transportation or air quality maintenance responsibilities for air quality maintenance planning.
Sec. 210—Grants to State agencies for developing and maintaining effective vehicle emission devices and systems inspection and emission testing and control programs. [When funded].

Quiet Communities Act (Pub. L. 95–609)

Sec. 14(c)—Grants to State and substate governments and regional planning agencies for planning, developing, evaluating, and demonstrating techniques for quiet communities.

Toxic Substances Control Act (Pub. L. 94–469)

Sec. 28—Grants to State for establishing and operating programs to complete EPA efforts in preventing or eliminating risks to health or environment from chemicals.

Federal Insecticide, Fungicide and Rodenticide Act (Pub. L. 95–396)

Sec. 23(a)—Funding to States/Indian tribes through cooperative agreements for enforcement and applicator training and certification.

Resource Conservation and Recovery Act (Pub. L. 94–580)

Sec. 3005(a)—Issuance of permits for treatment, storage and disposal of hazardous waste.
Sec. 3006—Delegation of authority to administer and enforce hazardous waste program.
Sec. 4002—State Planning Guidelines.
Sec. 4007—Approval for State, local, and regional authorities to implement State or Regional Solid Waste Plans and be eligible for Federal assistance.
Sec. 4008—Grants to State and substate agencies for solid waste management, resource recovery and conservation, and hazardous waste management.
Sec. 4009—Grants to States for rural areas' solid waste management facilities.
Sec. 7007—Grants or contracts for States, interstate agency, municipality and other organizations for training personnel in occupations related to solid waste management and resource recovery.
Sec. 8006—Grants to State, municipal, interstate or intermunicipal agency for resource recovery systems or improved solid waste disposal facilities.

Safe Drinking Water Act (Pub. L. 95–190)

Sec. 1421(b)—Issuance of permits for underground injection control programs.
Sec. 1443(a)—Grants to States for public water system supervision
Sec. 1443(b)—Grants to States for underground water source protection programs.

Clean Water Act (P.L. 95–217)

Sec. 106—Grants to State and interstate agencies for water pollution control administration.
Sec. 201—Grants to State, municipality, or intermunicipal agencies for construction of wastewater treatment works.
Sec. 208—Delegation of management of construction grants programs to State designated agency(ies), grants for areawide waste treatment management planning.
Sec. 314—Clean Lakes Program.
Sec. 402(a)—Issuance of permits under National Pollution Discharge Elimination System.
Sec. 404—Issuance of permits for disposal of dredge and fill materials.
Pub. L. 94–580, Sections 3005 & 3006;
Pub. L. 95–190, Sections 1421–1423;
Pub. L. 95–217, Section 402;
Pub. L. 95–217, Section 404;
Pub. L. 95–95, Section 165;
Proposed consolidated permit regulations, covering: Hazardous Waste Program under RCRA; UIC Program under SDWA, NPDES and section 404 of the Clean Water Act, and the PSD Program under the Clean Air Act.

[FR Doc. 80–13095 Filed 4–29–80; 8:45 am]
BILLING CODE 6560–01–M

federal register

Wednesday
April 30, 1980

Part IV

Environmental Protection Agency

Evaporative Emission Regulation and Test Procedure for Gasoline-Fueled Heavy-Duty Vehicles; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[FRL 1442-2]

Evaporative Emission Regulation and Test Procedure for Gasoline-Fueled Heavy-Duty Vehicles

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed regulation establishes an emission standard, implementation date, certification procedure and test procedure for the control of evaporative emissions of hydrocarbons from gasoline-fueled heavy-duty vehicles (i.e., vehicles having a Gross Vehicle Weight Rating (GVWR) greater than 8,500 pounds). The emission standard proposed here is 3.0 grams/test (g/t) to be effective for 1983 and later model years.

DATES: *Public Hearing:* There will be a public hearing on the provisions of the proposed regulations at least 30 days after publication in the **Federal Register.** EPA will announce the time and place of the public hearing later. Pursuant to Section 307 of the Clean Air Act, the record of the public hearing will be kept open for 30 days following the close of the hearing to provide an opportunity for submission of rebuttal and other information.

PUBLIC COMMENT: During final rulemaking EPA will consider comments received on or before July 7, 1980. We request that, to the extent possible, comments be submitted prior to the hearing. It is EPA's intention to assure all interested parties an opportunity to study all information which may become the basis for EPA's final action in this proceeding. Accordingly, the Agency will not consider in this rulemaking any material which cannot be made available to the public. Parties who wish to submit information in response to this Notice of Proposed Rulemaking are cautioned that EPA will not consider, but will return to the commentor, any comments which are claimed, in whole or in part, to be confidential.

ADDRESSES: Interested persons may submit written comments on this rulemaking (in duplicate if possible) to: Central Docket Section (A-130), Environmental Protection Agency, Attn.: Docket No. OMSAPC-79-1, 401 M Street, SW., Washington, D.C. 20460.

Docket No. OMSAPC-79-1, containing material relevent to this rulemaking, is located in the U.S. Environmental Protection Agency, Central Docket Section, Room 2903B, 401 M Street, SW., Washington, D.C. The docket may be inspected between 8 a.m. and 4 p.m. on weekdays, and a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Timothy D. Mott, Emission Control Technology Division, Mobile Source Air Pollution Control, Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan 48105, Phone: (313) 668-4462.

SUPPLEMENTARY INFORMATION: In spite of significant gains made in the control of non-methane hydrocarbon (NMHC) emissions, there are many Air Quality Control Regions (AQCRs) which currently do not meet the National Ambient Air Quality Standard (NAAQS) for ozone. (Ozone is created during photo-chemical reactions involving NMHCs and is, therefore, controlled by controlling NMHCs.) Air quality analyses show that attainment of the NAAQS for ozone will be difficult in many of these AQCRs, even if current and planned regulations for NMHC control are implemented.

The Clean Air Act as amended in August 1977 requires that the NAAQS for ozone be met in all regions of the nation by 1982. It is apparent that this goal will probably not be achieved by a number of urban areas of the country. Therefore the Act permits States, if a showing can be made that the standard cannot be achieved by 1982, to include in their implementation plans provisions which will provide for attainment of the NAAQS as expeditiously as practicable, but not later than 1987. A substantial reduction in NMHC emissions, in addition to currently planned control strategies, will be necessary to meet this goal in many regions. For this reason, EPA expects that all reasonable and cost-effective NMHC emission control strategies will be implemented.

EPA analysis (see "Evaluating the Air Quality Impact of Alternative Evaporative Emissions Control Strategies for Heavy-Duty Gasoline Vehicles," EPA, OAQPS, W. Freas, April 1979, in the docket of this rulemaking) estimates that total mobile source NMHC emissions will be 1.1 to 1.3 million tons for 1995. EPA estimates that implementation of this regulation will reduce that by 3.5 to 3.6%. If minimum deterioration is assumed (primarily through Inspection/Maintenance programs) then this regulation could reduce total mobile source NMHC by as much as 12 percent in 1995. Also, EPA estimates that the number of daily violations of the ozone standard from 1980-1995 would be reduced by 2.4-14.0 percent for the 33 worst case AQCRs.

While the above reductions are not large compared to reductions obtained from some other mobile source regulations, the cost of this regulation is expected to be quite small ($34.20 per vehicle). EPA estimates the cost effectiveness of the 3.0 g/test standard at $168 per ton of NMHC controlled. Further, in the case of vehicles equipped with closed-loop fuel metering, the cost effectiveness would be reduced to $-33 per ton NMHC due to an *increase* in vehicle fuel economy. EPA expected virtually all gasoline-fueled heavy-duty vehicles (HDGs) to be equipped with closed-loop fuel metering systems when the mandatory heavy-duty vehicle (HDV) NOx standards are implemented in 1985. Thus, 1985 and later model year HDG owners will enjoy a lifetime fuel savings *greater* than the initial price increase, which is estimated to be $34.20 per vehicle, as a result of this proposed regulation. For HDGs without closed-loop fuel metering the cost effectiveness ($168) is still significantly less than most other recently promulgated NMHC mobile source control strategies.

Pursuant to the requirements of Executive Order 12044, EPA is not required to prepare a "Regulatory Analysis" of this proposed regulation. We have, however, voluntarily prepared a "Regulatory Analysis" in order to thoroughly assess the environmental and economic impacts of the proposed action. This analysis, which has been placed in Docket No. OMSAPC-79-1 also fulfills the requirements of section 317 of the Clean Air Act. The Agency will evaluate additional economic data submitted in response to this proposal, and will revise this analysis as appropriate. We will continue to consider the economic effect of the proposed regulation during all further stages of this rulemaking action.

Proposed Standard: The proposed evaporative emission standard for gasoline-fueled heavy-duty vehicles beginning with the 1983 model year is 3.0 g/t, as tested by the proposed EPA evaporative emission test procedure for gasoline-fueled heavy-duty vehicles (Subpart M of this NPRM). Section 202(a)(1), as amended, 42 U.S.C. 7521(a)(1), provides that the Administrator shall prescribe standards for motor vehicle emissions if such emissions cause or contribute to air pollution which endangers the public health or welfare. The Administrator can require testing of new motor vehicles to determine compliance with applicable standards under section 206, 42 U.S.C. 7525. Section 202(b)(1)(C), 42

U.S.C. 7521(b)(1)(C), requires the Administrator to promulgate a test procedure for measuring "evaporative emissions of hydrocarbons" from heavy-duty vehicles. The general power to promulgate regulations is granted in section 301(a), 42 U.S.C. 7601(a).

Major Regulatory Issues

A Technically Feasible Level of Control

Except as otherwise specified in the Act, emission standards established under section 202(a)(1) must take into account the technical feasibility of compliance. The technically feasible level of control is highly dependent, of course, on the testing procedure. The test procedure which EPA is proposing is basically the procedure which is currently being used for evaporative emission certification of light-duty vehicles and light-duty trucks (trucks with a Gross Vehicle Weight Rating of 8,500 pounds or less). This procedure is known as the enclosure or SHED (Sealed Housing for Evaporative Determination) method.

Most manufacturers of HDGs also manufacture light-duty vehicles (LDVs) and/or light-duty trucks (LDTs), and consequently have participated in the recent rulemakings on the SHED-based 6.0 and 2.0 g/t standards. The general public has also had the opportunity to comment on the SHED test method during these rulemakings. In addition, in March of 1978, EPA distributed a "Draft Recommended Practice for Determination of Evaporative Emissions from Gasoline-Fueled Heavy-Duty Vehicles" to potentially interested parties. Several manufacturers of HDGs responded with comments, and EPA has considered these comments in the development of the test procedure being proposed here.

When determining a feasible standard using the SHED procedure, it is appropriate to consider the parameters which affect the generation of evaporative emissions and, on the basis of these parameters, compare HDG to LDV and LDT. To make this kind of comparison, it is helpful to identify the sources of evaporative emissions. For both light-duty and heavy-duty vehicles, the sources of measured evaporative emissions can be grouped into two main types. These are gasoline emissions from the fuel system and NMHC emissions from non-fuel sources. Each of these emission types contribute to air pollution and to the evaporative emission level measured during both the diurnal and hot soak portions of the test procedure.

Evaporative Emissions From the Fuel System

Fuel system evaporative emissions consist mainly of evaporation from the fuel tank and the carburetor fuel bowl. The fuel tank evaporative emissions result primarily from daily cyclic temperature variations experienced by the vehicle. Consequently, these are described as the diurnal evaporative losses, and are determined by the "diurnal" test sequence. The carburetor fuel bowl evaporative emissions occur when engine heat causes the fuel in the carburetor bowl to evaporate. This is most pronounced shortly after the engine is stopped, since any such losses occurring when the vehicle is operating are burned as part of the fuel-air charge. These evaporative emissions are measured by the portion of the test sequence designated as the "hot soak."

Fuel system emissions during the diurnal part of the test are the result of gasoline vapor generation in the vehicle's fuel tank(s); and the quantity of this generated vapor is approximately proportional to the total fuel tank capacity. The larger the fuel tank capacity, and the greater the diurnal temperature excursion, the more vapor is generated. Fuel system emissions during the hot soak test are mainly the result of gasoline vapor generation in the engine's carburetor; and the quantity of hot soak vapor is approximately proportional to the volume of fuel in the carburetor (for the same gasoline temperature). The larger the volume of fuel in the carburetor and the higher the peak temperature of this fuel, the more vapor is generated. The level to which a system can control evaporative emissions depends on the quantity of generated vapor and on the design of the control system.

The majority of HDGs sold have fuel tank volumes which are within the range covered by LDTs (up to 151 liters, i.e., 40 gallons). This is especially true for HDGs at the lower end of the GVWR range, and for HDGs equipped with standard fuel tanks. Consequently, for such vehicles (i.e., HDGs which have a fuel tank volume within the range covered by LDTs) the quantity of vapor generated in the fuel tank is within the range of LDTs, and the technical feasibility of controlling the emission of this vapor is essentially the same as for LDTs. A substantial amount of evaporative emission data on LDTs has been generated in EPA's 1979 model year vehicle emission certification program. In this program (as of October 20, 1978), EPA conducted 137 valid evaporative emission tests on LDTs. Of these tests, the average result was 2.80 grams/test; and 54 of the tests (39%) were 2.0 g/test or less. Of the 137 tests, 15 were on trucks having fuel tank capacities ranging from 114 liters (30 gallons) to 151 liters (40 gallons). The average result of these 15 tests was 2.2. grams/test, and 47% of these tests were 2.0 g/test or less. These data demonstrate the technical feasibility of controlling fuel system evaporative emissions from vehicles with fuel tank capacities up to 151 liters (40 gallons) to a level of 2.0 g/test.

In addition to the 1979 results, preliminary data from the 1980 model year vehicle emission certification program included 22 valid evaporative emission tests for LDTs (as of June 20, 1979). Of these tests, the average result was 2.13 grams/test; 12 of the tests (55%) were 2.0 g/test or less. Of particular interest were two trucks with fuel tank capacities of 151 liters (40 gallons). The average result for these two was 1.47 g/test. These data reinforce our opinion that technology is available to comply with a 3.0 g/test standard.

Although the majority of HDGs have fuel tank(s) not exceeding 151 liters (40 gallons), there is a substantial percentage of vehicles with larger tanks. EPA has analyzed the 1979 model year LDT certification data for any effect of fuel tank capacity on total evaporative emissions. Although there was not a strong correlation between tank volume and emission level, this analysis (a least squares linear regression) predicts that a 37.9-liter (10 gallon) increase in fuel capacity results in an increase in total evaporative emissions of .05 g/t. This predicts that a 379 liter (100 gallon) fuel system would have 0.3 gram higher evaporative emissions than a 151-liter (40-gallon) system.

The technical feasibility of controlling fuel tank gasoline vapor emission has also been shown in a vehicle refueling emissions test program conducted by the American Petroleum Institute (API). In that program, vehicles were equipped with control systems for the purpose of reducing the amount of gasoline vapor which is emitted to the atmosphere during vehicle refueling. The total quantity of non-controlled HC refueling vapors being emitted from the fuel tank of one vehicle was 88 grams, and a vapor control system was successful in preventing all but 0.4 gram from escaping into the atmosphere. In order to relate 88 grams of vapors to the amount which is generated in evaporative emission testing, tests by both industry and EPA have shown that a 379-liter (100-gallon) fuel system generates about 50 grams of vapor during the diurnal part of the test.

Consequently, the API project has demonstrated the ability to control the amount of diurnal evaporative emissions generated in at least 397-liter (100-gallon) fuel tanks to a level of 0.4 grams.

In addition to fuel tank volume, the other parameters which directly affect the quantity of generated gasoline vapors are the volume of gasoline in the carburetor fuel bowl and the peak temperature of this fuel during the hot soak part of the test. The 1979 model year heavy-duty engines use carburetors which have fuel bowl volumes ranging from about 70 to 268 cc. of gasoline. Carburetors on LDTs have gasoline volumes which typically range from about 70 cc to 150cc; although, one 1979 LDT family does have a carburetor fuel bowl volume of 268 cc. The 1980 LDTs tested have volumes of 69 to 135 cc. With regard to temperature, data submitted to EPA by Ford Motor Company indicate that higher engine output, as required in the HDG driving schedule as compared to the LDT driving schedule, does not result in high carburetor gasoline temperatures during the hot-soak test. Therefore, HDGs do not generate more hot-soak carburetor vapors than do LDTs equipped with the same size carburetors.

Three LDTs with the 268-cc gasoline volume carburetor were evaporative emission tested by EPA in the 1979 certification program (6.0 g/test standard). The total evaporative emission levels from these three tests were 2.2, 2.7, and 4.5 grams. These data demonstrate the feasibility of controlling total evaporative emissions from vehicles with carburetor gasoline volumes representative of the largest HDGs carburetors to the 3.0 gram level.

Evaporative Emissions From Sources Other Than the Fuel System

Some specific sources of non-fuel emissions are vehicle paint, sealers, and sound deadeners. The level of stabilized non-fuel emissions from vehicles is largely dependent on the amount and composition of these materials. Therefore, assuming consistent composition, the amount of non-fuel losses is approximately proportional to the physical size of the vehicles.

EPA has conducted tests (see the docket for this rulemaking) to determine the amount of non-fuel evaporative emissions from one new large gasoline-fueled heavy-duty vehicle (a 1977 Ford Model 800 having a GVWR of 50,000 pounds). These tests were first started on the vehicle when it was 4 days old and testing continued until the vehicle reached an age of about 70 days. Ford commented (see the Appendix to the Regulatory Analysis in the docket) that background emissions might be as high as 1 or 2 g/test based on this same test data. However, Ford's analysis included only the first 30 days' data. It is true that at 30 days total, non-fuel emissions were 1.16 g/t but these emissions continued to drop and at the end of the test period (i.e., 70 days) non-fuel emissions were down to a level of 0.6 gram and continuing to decrease.

No attempt was made to increase the rate at which the non-fuel emission declined. (Non-fuel emission test programs conducted with LDVs have revealed that non-fuel emissions can be substantially reduced from a new vehicle by operating the vehicle for several hours a day or by increasing the temperature of its environment.) Ford Motor Company data on a LDT used in the 1978 model year certification program shows that the non-fuel emissions level for this vehicle was 0.31 grams. This limited data indicates that non-fuel emissions from large HDGs are 0.3 gram higher than these emissions from LDTs.

Ford Motor Company data on LDVs show that a substantial reduction in non-fuel emissions can be achieved by eliminating some of the sealer and sound deadener used in new vehicles. Manufacturers are allowed to use this as well as other techniques (e.g., heating of the vehicle in an oven) in order to reduce background emissions from certification vehicles. Consequently, even though EPA expects that average non-fuel emissions will be higher for heavy-duty certification vehicles than for light-duty certification vehicles, the difference is unlikely to be as large as the 0.3 gram difference indentified above.

Summary

In consideration of (1) the parameters which affect vehicle evaporative emission levels and (2) evaporative emission test results from both HDGs and LDTs, EPA believes that technology is currently available which will allow HDGs which have a fuel tank capacity up to 40 gallons, a carburetor float-bowl volume of up to 150 cc, and a physical size approximatelv equal to LDTs to meet a 2.0 g/test evaporative emission standard.

For vehicles which exceed the parameter sizes listed above, containment of evaporative emissions to achieve a 2.0 g/t level of control has not been demonstrated. The lowest certification evaporative emission level achieved for a LDTs equipped with the largest carburetor gasoline volume currently available on HDGs (268 cc) is 2.2 grams. LDT certification data also indicates that 100-gallon fuel tank(s) may result in 0.3 gram higher evaporative emissions than 40-gallon fuel system. In addition, data indicate that large HDGs may have up to 0.3 gram higher non-fuel emission than LDTs. Consequently, with the use of current technology, a 3.0 g/test standard appears to be lowest feasible level of evaporative emission control applicable to the complete class of HDGs.

Cost and Cost Effectiveness

EPA expects the retail price of HDGs to increase by approximately $34.20 because of the vehicle modifications required to comply with the evaporative emission regulations. All of this cost may be returned in the form of fuel savings if the vehicle manufacturer adopts an advanced, closed-loop fuel metering system. In this case, the evaporative emissions will be captured and returned to the engine to be burned in place of some of the incoming fuel. Closed-loop fuel metering improves the efficiency with which fuel is burned. This fuel savings would be realized regardless of this regulation. However, an additional fuel savings would be realized if this regulation were implemented. This second fuel savings occurs because gasoline normally lost to the atmosphere due to evaporation will be captured and used efficiently.

Some manufacturers may adopt advanced fuel metering systems for improved fuel economy, or other reasons; however, the main incentive would be to reduce engine exhaust emissions. If the 1985 heavy-duty gasoline engine standards are promulgated at the statutory standards (i.e., 75% reduction in NOx), closed-loop systems will probably be widely used by the 1985 model year. Assuming a useful life of 8 years and 114,000 miles (see "Average Lifetime Periods for LDTs and HDVs" in the public docket), a 1985 HDG equipped with an evaporative emission control system and advanced fuel metering should obtain sufficient fuel economy benefits to reduce the lifetime vehicle fuel costs by $41 per vehicle. This calculation is for 1980 dollars, assuming a $1.00/gallon fuel cost, and a discount rate of 10%. This cost savings estimate does not reflect that fuel costs have recently been increasing much more rapidly than the general rate of inflation. If fuel costs rise 5 percentage points per year faster than the general price index, then a discount rate of 5% would be more appropriate in determining the future value of fuel. Using this 5% discount rate results in an estimated lifetime fuel savings of $49 per vehicle. So that any error tends toward overestimation of the costs, we have

used the 10 percent discount rate for fuel in our analysis.

For vehicles which are not equipped with closed-loop fuel metering, the expected $34.20 per vehicle retail price increase will result in a cost-effectiveness for this proposed regulation of $168 per ton of NMHC emission controlled. For vehicles which are equipped with a closed-loop fuel system, the $34.20 retail price increase in combination with the $41 vehicle lifetime fuel savings will result in a cost effectiveness of $–33 per ton of NMHC emission controlled.

To aid in determining costs as accurately as possible, we are requesting all interested parties to submit detailed estimates of any cost increases to the ultimate purchaser (i.e., retail price equivalent) of vehicle modifications required as a result of this regulation. These estimates should be itemized to show the costs of any additional components added to the vehicle or any vehicle modifications required; the savings from components no longer necesssry due to the above component additions; the cost savings of changes in maintenance requirements and fuel consumption; the cost of new testing equipment; and the cost of certification over and above that already requird by applicable gaseous emission regulations.

Appropriate Model Year for Implementation

Vehicle modifications and control system components which will be necessary to meet the requirments of this proposed regulation are essentially the same as those necessary for complying with the LDV and LDT standard of 2.0 g/test for the 1981 model year. The above discussion of technical feasibility has shown that such technolgy is already being used on a substantial percentage of production cars and LDTs. EPA expects that the only substantial difference between light-duty and heavy-duty control systems will be that HDGs with very large fuel capacities will require a larger amount of vapor storage material than will vehicles with light-duty control system. Additional vapor storage material, however, is not a long leadtime item.

EPA has determined, in accordance, with sections 202(a) and 202(b)(1)(C) of the Clean Air Act, that 1983 is the earliest feasbile model year for implementation of this regulation. EPA believes that the modifications requiring the longest leadtime will be careburetor modifications to those carburetor models which have not been used in LDV or LDT applications. The major modification required for these carburetors is venting of the fuel bowl to the vapor storage device(s). This tooling change is expected to take about 10 months. Tooling changes can take as long as 12 months if they are complex and backlogs are high (see International Harvestor Company's (IHC) comments) in the Appendix to the "Regulatory Analysis" in the docket). The tooling change necessary for carburetor venting is relatively simple and well known. Also, backlogs in the tool and die industry are expected to be reduced by 1981 if a slowdown in the economy occurs. For these reasons EPA estimates that after design drawings are released 10 months will be needed to effect this tooling change.

Prior to preparation of the production drawings, the production design must be finalized. The amount of design and development time required in order to determine a final design is dependent on many factors, including the level of the standard, past experience of the manufacturers, level of effort by the manufacturer, and availability of testing facilities. In consideration of manufacturers' past and continuing experience with control of evaporative emissions from LDVs and LDTs (and assuming that test facilities are available for conducting the certification test procedure), EPA believes that design and development time required to finalize the carburetor design will be approximately six months. Since engine production for a 1983 model year begins about September, 1982, the 16 months necessary for production design and tooling changes would require that the necessary control hardware be determined by May, 1981.

IHC commented that 12 months would be necessary for research and development (R&D) to identify effective control systems. EPA expects R&D to be minimal and to a large extent already complete by the time this regulation is finalized since manufacturers have been familiar with the test procedure since March of 1978. As discussed in the technical feasibility issue, the control of evaporative emissions from HDGs which have carburetor and fuel tank capacities similar to LDTs will not be more difficult than control of evaporative emissions from LDTs. In view of the fact that (1) the majority of current HDGs have carburetor and fuel tank capacities within the range covered by LDTs, and (2) most LDTs have certified to an evaporative emission level of under 3.0 g/t, the hardware required for compliance with this proposed standard has already been defined for the majority of HDGs. Those vehicles which have fuel tank capacities greater than LDTs will need a proportionately larger amount of vapor storage capacity; however, tests have shown that control to a 3.0 g/t level is feasible for these vehicles. Consequently, the process of defining the required hardware is to a large extent already completed.

In conclusion, if the vehicle manufacturers have determined the necessary control hardware by May of 1981, EPA believes that the proposed standard of 3.0 g/t can be implemented with 1983 model year vehicles. EPA expects that all manufacturers will be able to determine the necessary control hardware by May of 1981 because the technology required is the same as that used in LDV and LDT evaporative emission control. The equipment which is currently being used for LDT certification is generally adequate for testing of 8,500–14,000 pound GVWR vehicles, which include the majority of HDGs. For vehicles greater than 14,000 pounds GVWR the use of bench testing is expected to give results which are in good agreement with the full test procedure. Ford has already developed a component testing procedure which appears to correlate quite well with the full SHED procedure (see the docket). In fact, the major reason EPA is proposing the full test procedure is to ensure that the manufacturers' bench tests are designed to accurately assess evaporative emission control systems. EPA expects that the bench tests will correlate well with the full test procedure and that the full test procedure will only be necessary to establish and confirm that correlation. Although it is likely that manufacturers will have full test procedure capacity by May 1981, since in March 1978 EPA provided industry with a draft test procedure, full test procedure capacity is not a prerequisite to determining the necessary control hardware. Thus, the necessary control hardware, if not already defined, should easily be defined by May 1981.

Major Vehicle Classification and Compliance Issues

Vehicle Classification

All vehicles will be classified according to evaporative emission family and evaporative emission control system. The proposed regulations define the evaporative emission family by vehicle parameters which contribute to the evaporative emissions of the vehicle. The parameters include the nominal fuel tank capacity (within 20 gallons, or within 25 percent, whichever is greater), the method of fuel/air metering (i.e.,

carburetor vs. fuel injection), and the carburetor fuel bowl volume (within a 10cc range). An evaporative emission control system is defined in the proposed regulations by those vehicle parameters which control evaporative emissions. To be classed in the same evaporative emission control system, vehicles must be identical with respect to the method of vapor storage, the vapor storage material, the vapor storage working capacity (within 20g), the method of purging stored vapors, and the method of carburetor fuel bowl venting during both engine operation and engine off.

Vehicles grouped within the same evaporative emission family-system combination are expected to exhibit similar evaporative emission levels, and this will facilitate the selection by EPA of vehicles within a family-system combination which are expected to produce the highest emissions within that family-system combination (worst cases).

This organization of evaporative emission families and evaporative emission control systems does not imply and presumption on the part of EPA of a unique deterioration factor (deterioration factor, d.f., is discussed as the next issue) for each family-system combination. The manufacturer is therefore required to determine the appropriateness of single or multiple evaporative emission deterioration factors which are necessary to adequately cover the evaporative emission family-system combinations within his product line. It may be possible for a particular d.f. to apply to one evaporative emission family or to several, or to apply to portions of several evaporative emission families. The primary consideration in the organization of evaporative emission families and control systems is to segment a manufacturer's product line to allow for the selection of worst case emission-data vehicles which would most appropriately represent other untested, less severe calibrations within an evaporative emission family.

Determination of Durability and Evaporative Emission Control System Deterioration

EPA is currently unable to specify a single test procedure for the evaluation of vehicle evaporative emission control system deterioration during the useful life of the vehicle. EPA has, however, identified environmental and usage parameters which affect the durability of evaporative emission control systems during their useful life. These parameters are: vibration, the vapor load-purge cycling of the vapor control system, and the aging effect of heat and ozone. Thus, for the purpose of satisfying the requirement of the Clean Air Act, that EPA evaluate the durability of evaporative emission control systems for their useful lives, the proposed regulations require each manufacturer to specify in his Part I application for certification the test procedures he will use to evaluate the durability of his evaporative emission control systems and to develop a deterioration factor for such systems. The data from these test programs and the derived d.f. are required to be submitted with the manufacturer's Part II application for certification.

Simulation of the parameters identified in the preceding paragraph is not adequately accomplished by use of the Durability Driving Schedules contained in Appendix IV to Subpart A of the regulations. The nearly continuous vehicle operation required by that schedule is not typical of the normal vehicle usage which would be expected to affect evaporative emission control system durability. Likewise, the proposed Heavy-Duty Vehicle Evaporative Emission Service Accumulation Schedule contained in Appendix XII, which is used only to stabilize an evaporative emission-data vehicle's evaporative emission control system prior to compliance testing, is also inappropriate for durability service accumulation.

It should be noted that the definition of "useful life" for gasoline-fueled HDVs has been changed. This change is part of the recently promulgated heavy-duty *gaseous* (HC and CO) emissions package which is to be implemented in 1984. Thus, for the first year (1983 MY) of these heavy-duty *evaporative* emissions regulations the old definition of useful life will apply (i.e., 50,000 miles). Then in 1984 "useful life" will be "the average period of use up to engine retirement or rebuild, whichever occurs first, as determined by the manufacturer under § 86.084–21(b)(4)(ii)(B)" of Title 40 of the Code of Federal Regulations (CFR).

EPA is concerned about the contribution to vehicle evaporative emissions from permeable fuel tanks (e.g., plastic fuel tanks) during the useful life of the vehicle. The different plastics, and the different treatments of the plastics available to the industry, make any position EPA might take on the inclusion of permeable fuel tanks on emission-data vehicles, or in the durability evaluation process, of little value. The EPA, therefore, specifically requests comments on the general permeability and rate at which fuel diffuses through non-metal fuel tanks and the best method for incorporating these permeability considerations in predicting the contribution from this source to evaporative emission control performance deterioration.

Emission-Data Vehicle Selection

The proposed regulations would require the Administrator to select one vehicle to represent each evaporative emission family-system combination. Up to two additional vehicles may be selected from each evaporative emission family.

There are no rigid requirements for the criteria used in selecting these vehicles (e.g., expected high emissions or manufacturer's projected sales). EPA may use whatever criteria appear appropriate for a given manufacturer's product line. For an evaporative emission family made up of several family-system combinations, none of which singly represent a significant portion of the evaporative emission family sales, vehicle selection may be based upon anticipated high emissions. For a family made up of a few family-system combinations, one of which represents a major portion of the evaporative emission family sales and hence has the greatest potential to affect air quality, vehicle selection may be based upon projected sales volume.

For the purposes of selecting evaporative emission-data test vehicles, information other than that pertaining to the evaporative emission family and evaporative emission control system will be supplied by the manufacturer. The information is necessary in the event that EPA chooses to make a worst case vehicle selection within an evaporative emission family-system combination. The information required will include the cylinder block characteristics (e.g., in line or vee), the method of aspiration, rated horsepower, rated torque, compression ratio, catalyst and/or thermal reactor characteristics, inertia weight class, road-load horsepower, and engine compartment type (e.g., cab-over, engine forward). The Administrator may also require additional information such as the total weight of the engine (including carburetor, manifolds and all engine driven accessories), transmission options, axle ratios, N/V ratios and engine coolant thermostat setting.

Treatment of Incomplete Vehicles

The development criteria for the selection of test vehicles to represent a manufacturer's incomplete vehicles included a substantial amount of investigation on EPA's part. Information concerning the configuration and the

degree of incompleteness of vehicles within their product line was requested of Ford, General Motors, Chrysler and International Harvester. Additional information was also requested from the Motor Vehicle Manufacturers Association and the Truck Body and Equipment Association concerning the completion and modification of incomplete vehicles by secondary manufacturers.

EPA's intentions in soliciting information from the manufacturers and the industry associations were fourfold.

1. To identify the basic forms in which incomplete vehicles are manufactured.

2. To determine the extent and type of modifications made to the incomplete vehicle during its completion which could affect the vehicle's evaporative emissions.

3. To determine the representativeness of the various forms of incomplete vehicles for evaporative emission testing of the final completed vehicle.

4. To determine which, if any, of the incomplete vehicle forms are suitable for evaporative emission testing considering such parameters as the completeness of the engine compartment, the presence of an operator's enclosure, and the effect that the cargo carrying device might have on the entrapment of exhaust heat in the vicinity of the fuel tanks and lines.

The manufacturers, in general, stated that the completion or modification of incomplete vehicles is performed either by their dealers or through secondary manufacturers, and that they had no knowledge of the condition of the vehicle in final form. The associations representing the primary and secondary manufacturers stated that they were also unable to supply the requested information since it was not normally supplied by their members. The proposed regulations, therefore, place an emphasis on the incomplete vehicle, as it is originally manufactured, and about which EPA has the greatest information available. The original manufacturer must certify, in a completed vehicle configuration, all incomplete vehicles which it markets.

The manufacturer would determine the limits of a worst case completed vehicle configuration for each incomplete vehicle which he wishes to market. These limits (in addition to those specified by the exhaust emission certificate) would be those defined by the evaporative emission family-system combination and the evaporative vehicle configuration, i.e., fuel tank volume, carburetor bowl fuel volume, method of vapor storage, vapor storage material, vapor storage working capacity, method of carburetor bowl venting, vapor purging technique, fuel system, maximum GVWR, maximum frontal area, body type, and other features as specified by the Administrator. The incomplete vehicle would then be certified to these limits incorporated in the completed vehicle which is actually tested. A secondary manufacturer or dealer who completes a vehicle for sale would only have to remain within the limits of the certified worst case configuration in order to be covered by the original certificate. If, however, a secondary manufacturer exceeds the limits to which the original vehicle was certified, (e.g., by the addition of a fuel tank), then the secondary manufacturer would have to conduct his own certification program.

EPA has estimated the number of evaporative emission-date vehicles which might be required by the proposed evaporative emission family and system classifications and the above vehicle selection criteria. EPA realizes these estimates are crude and, therefore, specifically requests comments on the number of evaporative emission families and systems, and on the number of evaporative emission-data vehicles which would result from the proposed regulations.

Treatment of Small Sales Volume Evaporative Emission Family-System Combinations

As a result of the information submitted by the MVMA and by some manufacturers, it has become apparent that the development and certification of evaporative emission control systems for vehicles with low sales volumes may be difficult and expensive on a per vehicle basis. This would be particularly true if a small sales volume vehicle configuration within an evaporative emission family-system combination was likely to be considered a worst case, and therefore likely to be selected by EPA as an emission-data vehicle. The manufacturer might then have to undertake a vehicle oriented development and certification program to ensure that this worst case vehicle would pass certification testing where the number of development and certification vehicles required might represent a significant portion of the entire yearly production of the vehicle.

Some manufacturers have suggested that a reduced testing requirement, or a testing exemption, be allowed for small sales volume evaporative emission family-system combinations. EPA does not believe that sufficient information is available at this time to justify proposing such an exemption. Also, we are unable to specify a compliance procedure which would be compatible with a reduced or eliminated testing requirement. EPA, therefore, specifically requests comments on any need or desirability for allowing a reduced testing requirement. Any such comments should also include specific recommendations by which the compliance of an evaporative emission family-system combination could be demonstrated within the context of a reduced testing requirement.

Reduction in Evaporative Emission-Data Vehicle Testing

The proposed regulations contain a provision which would allow for a reduction in the number of evaporative emission-data vehicles required. Upon request by the manufacturer, and with the presentation of acceptable data to support his request, the Administrator may allow the certification of an evaporative emission-data vehicle or evaporative emission control system based on successful testing of another vehicle or system within the same evaporative emission family. The Administrator's approval would be based upon actual data from previous model years' certification testing, manufacturer's vehicle testing, or component testing data which demonstrate that the vehicle or system which was selected for testing would exhibit lower evaporative emission levels than another vehicle to be tested.

EPA requests comments from the manufacturers on the feasibility and effectiveness of their demonstrating, with data, the relative evaporative emission levels to prove worst cases. With regard to EPA's request for comments concerning the number of evaporative emission-data vehicles that these regulations would require, EPA also requests comments on the effect of allowing worst case demonstrations on reducing those estimates.

Issuance of Certificates of Conformity

The current exhaust emissions test procedure for gasoline-fueled heavy-duty engines requires the use of an engine and an engine dynamometer. The proposed EPA evaporative emission test procedure for gasoline-fueled heavy-duty vehicles requires the testing of vehicles on chassis dynamometers since the size and configuration (e.g., thermal output and fuel/air metering) of the engine installed in a vehicle will have an effect on the evaporative emission levels of the vehicle. Therefore, exhaust and evaporative emission certification testing will be conducted separately from each other. The emission data derived from these two different test procedures represent two distinct populations; one for engines as an entity

separate from the vehicles, and one for the completed vehicle.

The proposed regulations would result in the issuing of two separate certificates; one in recognition of exhaust emission compliance, and one in recognition of evaporative emissions compliance. The certificate of conformity with exhaust emissions will be issued for each engine family with no change in the current procedure. The certificate of conformity with the evaporative emission standards will be issued for each evaporative emission family and will include a list of those engines certified for exhaust emissions which may be installed in the vehicle in conjunction with the evaporative emission family-system combination. The provision requiring prior exhaust emission certification is made in recognition of the engine's influence on evaporative emissions. Furthermore, EPA recognizes that a heavy-duty engine may be sold separately from a vehicle, and therefore separate from such major components of the evaporative emission control system as the charcoal canister. The issuance of two certificates would prevent any delay in the certification of an engine family due to differences in evaporative vs. exhaust emission test scheduling.

Nonconformance Penalties

Section 206(g) of the Clean Air Act states that "In the case of any class or category of heavy-duty vehicles (HDVs) or engines to which a standard promulgated under section 202(a) of this Act applies * * *", a manufacturer shall be issued a certificate of conformity for such vehicles or engines even if they fail to comply with that standard, if the manufacturer pays a nonconformance penalty (NCP) and the degree by which the vehicles or engines fail to meet the standard does not exceed the percentage determined to be practicable.

The Agency recognizes that newly assembled heavy-duty vehicles may have background emissions of hydrocarbons that are unrepresentative of typical in-use background levels. It is likely that manufacturers would want to minimize these emissions, by artificial aging or other procedures, before subjecting those vehicles to evaporative hydrocarbon testing. For vehicles which are produced in an incomplete form, it may be necessary to substantially modify the vehicles before evaporative testing may be performed (such as by enclosing the engine to accurately simulate underhood temperatures during the latter part of the evaporative test procedure). We believe that significant delays and costs are associated with these preparations which may be required to perform a Selective Enforcement (SEA) for evaporative emissions. Because of these difficulties, this proposal does not include a SEA provision.

In addition, these regulations do not propose a NCP for manufacturers whose HDVs do not meet the evaporative emission standard during certification. In order for a NCP to be made available in conjunction with the evaporative emission standard, a procedure must be developed to test for evaporative emissions from production HDVs. The legislative history behind section 206(g) states that EPA must assess a NCP based upon results from tests on heavy-duty production vehicles or engines. Thus, the difficulties associated with evaporative testing of assembly line vehicles must be resolved before a NCP can be proposed.

This proposal establishes a HDV evaporative emission standard at a level set according to a technically feasible level of control. However, EPA is willing to provide a NCP for isolated unforeseen circumstances when compliance may not be achieved if the problems associated with performing testing on production heavy-duty vehicles or engines can be over-come. Comments are invited on the need for a NCP for the proposed HDV evaporative emission standard. Commentors should also address suggested means for preparing production HDVs for evaporative testing, in order to implement a Production Compliance Auditing (PCA) system (similar to that proposed in Section 86.1011–83 of Subpart K for light-duty trucks and heavy-duty engines) for quantitative determination of evaporative emissions, to enable manufacturers to take advantage of any NCP.

If manufacturers perceive a need for the NCP and describe, in detail, the procedures they would use to prepare complete or incomplete HDVs for evaporative testing according to the PCA system referenced above, the Agency will establish a NCP in a separate rulemaking (similar to that proposed in § 86.1013–83 of Subpart K for light-duty trucks and heavy-duty engines). Since the availability of such preparatory procedures will make Selective Enforcement Auditing more feasible, commentors should address the application of these procedures to a SEA program (similar to that proposed in section 86.1010–83 of Subpart K for ligfht-duty trucks and heavy-duty engines).

Major Test Procedure Issues

In specifying the HDG test procedure given here, EPA has made an effort to duplicate the LDV/LDT test procedure when ever reasonable and practical. There are, however, a few areas in which changes were necessary because of differences in the physical and operating characteristics of LDVs and LDTs versus HDGs. Those changes which are of major importance and those issues which were of greatest concern to the manufacturers (as evidenced by their comments to the Draft Recommended Practice which was sent to them in March, 1978) are discussed below.

Basic and Alternate Test Procedures

The existing evaporative emission test procedure for light-duty vehicles and light-duty trucks[1] requires vehicle operation on a dynamometer on two occasions during the test sequence. The first occasion is during vehicle preconditioning, which is intended to remove unwanted influences on the test results due to a vehicle's past operating experience. Vehicle preconditioning is also intended to provide a representative amount of purging (air flow) through the vapor storage system prior to the first part (heating of the gasoline in the fuel tank to simulate the diurnal temperature change) of the emission measurement procedure. The second occasion is after this diurnal test. During this second vehicle operating period, (1) running losses (evaporative emission losses which occur during running of the vehicle on a chasis dynamometer) are determined, (2) the storage system is again purged, and (3) the fuel system is warmed in preparation for the last part (the hot soak loss) of the emission measurement procedure. The latter two occurences are the major purposes of the second operating period, since running losses can usually be determined to be zero without the need for a test.

Operation for light-duty vehicles on these two occasions consists of driving over the EPA Urban Dynamometer Driving Schedule for Light-Duty Vehicles and Light-Duty Trucks (Appendix I(a) of Part 86). Because the operating patterns for heavy-duty vehicles are significantly

[1] Light-duty vehicles and light-duty trucks (i.e., trucks with a Gross Vehicle Weight Rating not more than 8,500 pounds) are distinct classes of motor vehicles under EPA regulations, but have similar operating characteristics and are tested using basically similar test procedures. Further, references to the operating characteristics of light-duty vehicles imply the operating characteristics of both classes. References to the light-duty vehicle test procedure imply the test procedure common to both classes.

different than those represented in this cycle, a new driving schedule representative of heavy-duty vehicle urban operation was needed.

From the data gathered in a survey of in-use heavy-duty vehicle urban operation,[2] EPA has developed a representative transient chasis dynamometer driving schedule (speed vs. time relationship) for heavy-duty vehicles. Such a transient driving cycle, with representative dynamometer loading, is appropriate for vehicle operation in the evaporative emission test procedure. This driving cycle has been included in the test procedure being proposed today, as the reference dynamometer driving schedule.

EPA will use the reference dynamometer driving cycle for all confirmatory certification testing. However, EPA does not wish to impose the higher cost that may result if manufacturers were required to test complete vehicles using the reference driving schedule for all their certification testing, given that a steady-state cycle may satisfactorily test the performance of evaporative emission control systems and given that it may also be possible to develop other test methods which give equivalent results to the EPA test procedure. EPA, therefore, proposes to allow manufacturers to use simpler, alternate test methods. However, this proposal can be implemented only so far as it will not reduce the effectiveness of EPA's emission control program.

It is probable that a control system could be designed which would produce low evaporative emissions when tested using a simpler test method, e.g., with a steady-state driving cycle, but which would produce higher emissions under in-use urban conditions or when tested using the transient driving cycle. This may result by designing, either intentionally or unintentionally, to the specific requirements of the simpler test method. If EPA were to establish certification and test procedures that required it to certify a heavy-duty vehicle as being in compliance with an evaporative emission standard based only on the results of a simple test method, the intent of the standard would likely be defeated.

In order to assure the regulation's effectiveness while retaining for manufacturers and purchasers of new heavy-duty vehicles the cost advantages of simple test methods, EPA proposes the following policy. When certification procedures require a manufacturer to submit test data for the evaporative emissions of a vehicle, the manufacturer may collect the data using either test method: The test procedure being published here with the reference driving cycle, or a test method (component or vehicle test) devised by the manufacturer. Advance approval by the Administrator will be required for the latter method, but not for the first method. In order to get this approval the manufacturer must show that its devised method gives results which correlate with in-use emissions. This correlation can be shown by demonstrating equivalence of results with the EPA test procedure being published here.

After the manufacturer submits its test data, EPA will have two options:

(1) EPA may decide to test the vehicle, in which case the manufacturer shall build the vehicle if it has not already done so as part of its own testing. The results of the EPA test will be the official test data. EPA will use the reference test procedure being published here.

(2) EPA may decline to test the vehicle itself. The manufacturer's test data will then be accepted as the official data: *Provided,* That if the Administrator makes a determination that there is a lack of equivalency between the manufacturer's test procedure and the test procedure used by EPA, the manufacturer's test data will not be accepted for purposes of certification until the reasons for the lack of equivalency are determined and the validity of the data is established by the manufacturer.

These options are similar to those available to EPA under the existing light-duty vehicle and light-duty truck certification procedures.

By giving EPA the option of conducting a confirmatory test using the reference dynamometer driving cycle, this policy provides the necessary protection against control systems which give a typically low evaporative emissions when tested using a steady-state driving cycle or a component test method devised by the manufacturer, while allowing the manufacturer the maximum flexibility with respect to test procedure. By requiring a showing of equivalency between the manufacturer's devised test method and the EPA test procedure, the policy protects against faulty test methods even when EPA decides not to test a vehicle.

Some manufacturers may find it impossible to rely on alternate test methods and still have enough confidence of successful certification in the event EPA performs an official test with the transient driving cycle. For these manufacturers, the most cost-effective approach may be to acquire a new dynamometer to allow the manufacturer to use the transient driving cycle in all its tests. However, Ford has developed a component test procedure (see the docket) which appears to correlate well with the vehicle enclosure technique. Also, EPA's experience with the steady-state dynamometer cycles and component tests (see the docket) suggest that all manufacturers should be able to use alternate test methods that both reduce certification costs and provide adequate confidence of successful certification.

The use of alternate test methods (i.e., a steady-state cycle or other methods devised by the manufacturer) may affect the ability of a manufacturer to obtain certification for one model year based on official test data from a previous model year. Even though EPA may for some reason accept data from an alternate procedure as a basis for certification one year, carry-over to the next model year could be denied (even though no changes may have been made in the system design) should EPA decide it is necessary to conduct a confirmatory test.

Representativeness of the Driving Cycle

In response to the Draft Recommended Practice published in March, 1978, several manufacturers questioned the representativeness of the driving cycle. Many of the comments arose because that document contained no technical explanation of how EPA developed the driving cycle from data collected in the operational survey of in-use heavy-duty vehicles. These comments have not led EPA to substantially modify the cycle. Minor changes have been made. A clerical error in the cycle has been corrected by deleting one second of operation at each of three points, and the length of the initial idle has been reduced.

EPA maintains that the transient cycle specified in this test procedure is representative of the urban operation of gasoline-fueled heavy-duty vehicles. Reports supporting this conclusion have been placed in the public docket for this rulemaking and are available for inspection and copying as described at the end of this document.

Representativeness of the Diurnal Test

The existing test procedure for light-duty vehicles requires a diurnal breathing loss test segment in which the fuel tank is heated from 60°F to 84°F in a period of one hour. This segment simulates the fuel heating which occurs

[2] A series of reports describing this survey (CAPE-21 Project) and its results, and their use in developing the chassis dynamometer driving schedules specified in this test procedure has been placed in the public docket for this rulemaking. These reports are available for inspection and copying as described below.

during a summer day. Two manufacturers commented that differences in the physical and operating characteristics of LDVs and LDTs versus HDVs make the diurnal portion of the LDV test procedure unrepresentative of HDVs. Two claims were made:

(1) Since fuel tanks on some heavy-duty vehicles are larger than those on light-duty vehicles and trucks they tend to have a smaller temperature fluctuation during a typical summer day;

(2) Heavy-duty vehicles tend to be used for commercial rather than personal transportation and as a result are operated more frequently during the day than are light-duty vehicles. This periodically purges the vapor storage system, which then does not have to store the full diurnal vapor load at once.

One manufacturer suggested that the HDV procedure use a temperature increase of less than 24°F, over the same one-hour period. The other manufacturer suggested both a temperature increase of less than 24°F and a period of less than one hour.

Neither suggested specific values for a different temperature increase or test duration.

EPA recognizes that if two fuel tanks are similarly located on a vehicle and exposed to similar ambient temperatures and solar radiation, the temperature of the fuel in the larger tank will rise more slowly. However, the larger fuel tanks on heavy-duty vehicles tend not to be located like those on light-duty vehicles and trucks. Instead, they are often attached to the exterior of the vehicle and are more exposed to both ambient air and solar radiation. It is thus not evident from theoretical considerations alone whether their diurnal fuel temperature variations are larger or smaller than those for light-duty vehicles. EPA has measured the summertime fuel temperatures in a 189-liter (50-gallon) fuel tank on a heavy-duty vehicle and concluded that the 24°F temperature rise used for light-duty vehicles is also appropriate for heavy-duty vehicles.

Regarding the more frequent operation, and consequent purging, claimed for heavy-duty vehicles, it is true that many LDVs are driven only twice a day, once in the morning and again in the late afternoon, whereas many HDVs are operated more often during the day. However, these are opposite extremes in the different spectrums of operating patterns for the two classes and are not strictly representative for either class of vehicle. The twice-a-day operation would be typical of vehicles used as transportation to and from work on weekdays. Not all LDVs are operated like this, however, since LDVs in commercial fleets and some "second cars" are used more frequently. Similarly, many of the HDVs that are operated frequently on weekdays are not operated at all on weekends.

For an evaporative emission test procedure to be truly representative of the operating patterns of a class of vehicles, the SHED segments of the test would have to be interrupted by periods of vehicles operation on a dynamometer. There would be no distinct diurnal and hot soak tests. In addition, since the mass of hydrocarbon vapors given off during a diurnal period depends on the duration of the period as well as the change in fuel temperature, the SHED segments would have to be several hours long. The exact sequence of SHED and dynamometer segments would have to be determined from the operating characteristics of the particular class of vehicles to be tested. The sequence would be somewhat different for LDVs than for HDVs, but not as different as would appear from the opposite extremes described above.

A truly representative test for evaporative emissions from light-duty vehicles would not resemble the existing light-duty test procedure. It would be longer, require more operations and transfers of the vehicle from one test area to another, be more costly, and produce a different value for the mass of evaporative emissions. EPA's policy for light-duty vehicles has been to compromise the strict representativeness of the evaporative emissions test procedure in order to make it manageable for both the manufacturers and EPA to conduct. The existing LDV test procedure does retain enough realism to ensure that vehicles which are successfully certified will also have reduced in-use evaporative emissions, and that the technology used to achieve these reductions will be reasonably cost effective.

EPA's policy for heavy-duty vehicles is similar. It is EPA's judgment that, given the extent of other, unavoidable compromises from a strictly representative test procedure, the difference in the frequency of operation of light-duty vehicles and heavy-duty vehicles is not so great as to require a compensating change in the temperature rise during, or the duration of, the diurnal segment of the procedure for heavy-duty vehicles, the HDV test procedure being proposed today retains enough realism to achieve its purpose.

Representativeness of the Hot Soak Test

The representativeness of the hot soak test, in particular of the one-hour test duration specified in the test procedure being published today, is an issue similar to the representativeness of the diurnal test. In principle, the duration of the hot soak test should be representative of the period a vehicle is parked with the engine warm enough to cause evaporative losses. This can occur betwen trips and after the last trip of the day. There is a distribution in the length of these periods for any one class of vehicles. Surveys of in-use vehicles have shown that the distributions differ for light-duty vehicles and heavy-duty vehicles.

Most hot soak periods of in-use light-duty vehicles are over one hour in length. In order to reduce the time required for an emission test, EPA adopted a one-hour hot soak for testing purposes. A one-hour test measures most, but not all, of the evaporative emissions that would be measured if the test lasted several hours. Experience with the LDV procedure has established a need to lengthen the hot soak period. Manufacturers design their carbon canisters to hold the emissions from the one hour period. However, intances where the canister becomes over-loaded have occurred. Apparently, these canisters did not have sufficient capacity to hold the extra evaporative emissions that are given off after the 1 hour soak period has ended.

In contrast to LDVs, most hot soak periods of in-use HDVs are under one hour in length. In the sample surveyed in the study of the urban operation of in-use gasoline-fueled HDVs, about 84% of all hot soak periods were less than one hour in length. Because a long soak produces more emissions than a short soak, the longer soaks are more significant than their frequency indicates. Counting all hot soaks, only about 48% of the evaporative emissions occurred during the first 15 minutes. This means that if the observed median time (approximately 15 minutes) were chosen as the hot soak time in the test procedure 52% of the presently uncontrolled evaporative emissions from gasoline-fueled heavy-duty vehicles would potentially remain uncontrolled after a standard is in effect. Even with a one-hour soak test time, about 12% remains potentially uncontrolled.

In consideration of the above, EPA has decided to specify a one-hour hot soak in the test procedure being promulgated here. This should not be considered a departure from the regulatory philosophy of the existing light-duty test procedure, in which the specified soak period is shorter than the median in-use soak period. Rather, it is a case in which it has not been

necessary to compromise with the demands of limited testing resources.

Inertia Test Weight and Road Load

In order to operate a vehicle through a transient driving cycle on a dynamometer, the inertia test weight and road load settings must be specified and the dynamometer adjusted accordingly. These should be chosen to be characteristic of the loaded vehicle weight (curb weight plus payload) and road load (aerodynamic losses plus tire losses) of in-use vehicles in urban operation.

EPA considered two approaches to defining loaded vehicle weight. One was to define the loaded vehicle weight as vehicle curb weight plus some fraction of payload capacity. The second approach was to define the loaded vehicle weight simply as some fraction of GVWR. After analyzing available in-use truck weight data, particularly 1977 data from the Federal Highway Administration, EPA had determined that the average in-use weight of gasoline-fueled HDV in urban areas is 70 percent of the vehicle's GVWR. Therefore, loaded vehicle weight has been defined as 70 percent of the GVWR. (In the special case for which a test vehicle's actual weight is greater than 70 percent of the GVWR, the loaded vehicle weight will be defined as the actual weight of the test vehicle.)

As for road load, the test procedure being published here specifies an equation adapted from a recommended practice of the Society of Automotive Engineers (SAE Recommended Practice j688). The adaption involved a correction for the power dissipated in the tires in contact with the dynamometer rolls, which need not be duplicated by the dynamometer power absorption unit Manufacturers that had an opportunity to comment on EPA's decision to use this equation questioned its validity in general, and its validity for heavy-duty vehicles which are aerodynamically like light-duty trucks (i.e., for pickup trucks and vans with gross vehicle weight ratings above 8500 pounds) in particular.

EPA recognizes that the accuracy of the specified equation has not been demonstrated to the extent that similar equations for light-duty vehicles have been. Nevertheless, the equation is the best known method for predicting the road load power losses for HDVs as a class, and is adequate for the purposes of this test procedure. (EPA plans to initiate a procurement action for the conduct of a study of road load characteristics of HDVs. The results of this study will not be available for more than a year. When these results are available, EPA will review them and consider any need for revising the road load equation).

Some manufacturers suggested that separate equations be developed for different subcategories of the HDV class in order to more accurately predict the road load for each. The scarcity of existing data and the large diversity of HDVs make this an impractical task for EPA. Further, EPA does not consider this additional complication to be necessary since the test procedure does allow a manufacturer to use an alternate road load setting for vehicles which qualify to be certified by the light-duty truck (LDT) test procedures (optional certification provision, § 86.079–1(b)).

One method which will be approved routinely for vehicles that qualify for certification by the LDT procedures is the "coastdown method" presently available for light-duty vehicles. For pickup trucks and vans which meet this same requirement, a second method will also be approved. This method consists of using a road load horsepower determined by replacing the aerodynamic loss term (i.e., the first term) of the road load equation in § 86.1229–82(a)(2)(ii) of this HDV test procedure with the road load horsepower which would have applied if the pickup truck or van had been certified as a light-duty truck (given in § 86.129–80(b)), and retaining the tire loss term (i.e., the second term) of the equation. EPA will approve this second method for heavy-duty vehicles that are about the same size and shape as light-duty trucks (i.e., frontal area not exceeding 46 square feet), because it is expected that the light-duty estimate is more accurate for these vehicles than the estimate contained in the HDV equation being specified here. It is necessary to retain the tire loss term in the HDV equation because the actual tire losses for a loaded HDV on the road are not fully duplicated by the tire losses for the unloaded HDV on the dynamometer. For these vehicles, the administrator may also approve other methods for determining vehicle road load in addition to those identified above.

For vehicles which are too large to qualify for optional LDT certification procedures, EPA will not allow alternatives to the dynamometer load specified in these regulations. The reason for this is that vehicle categorization criteria for test vehicle selection purposes will result in vehicle groups which contain a large diversity of vehicles. Vehicles within groups will vary widely in their weight, frontal area, shape, number and size of tires, and other factors that affect road load. Because of this wide diversity of vehicles which a particular test vehicle will be chosen to represent, there is little reason to be very regorous in the road load determination of that one particular vehicle. Consequently, EPA will use the road load equation specified here for all test vehicles which do not qualify for certification by the LDT test procedure.

The specified equation for the road load setting requires that the height and width of the vehicle be known. Many heavy-duty vehicles are produced as incomplete vehicles by one manufacturer and completed by another manufacturer or by the ultimate purchaser. Under present marketing arrangements, the original manufacturer may not know the ultimate dimensions of a vehicle at the time it sells it. EPA proposes that this situation be handled similarly to what is currently done for incomplete LDTs, i.e., the original manufacturer certify the incomplete vehicle to a maximum height and width. A special frontal area problem arises in the case of tractors. For such vehicles, the frontal area will be specified by either one of two methods: Using (1) the actual height and width of the tractor, or (2) using a height of 13.5 feet and a width of 8.0 feet.

Equitable Treatment of Light-Duty and Heavy-Duty Vehicles

Several Manufacturers commented that the proposed test procedure for heavy-duty vehicles is more stringent than the existing test procedure for light-duty vehicles. The reason given was that the HDV driving schedules contain less time during which engine operating conditions allow purging of the storage system to take place. The manufacturers went on to claim that this would cause inequitable treatment of the two vehicle classes.

The HDV driving schedules to give less time for purging than the LDV schedule, for two reasons. EPA's operational survey of HDVs showed that the trip durations for HDVs in urban areas are shorter than for LDVs; this is reflected in the HDV driving schedules being shorter than the LDV schedule. Also, the survey showed that a larger fraction of each trip consists of idle operation; this is reflected in the HDV schedules as well. However, the higher power output of engines in HDVs means that more purging can be done in a fixed period of time without any greater effect on air-fuel ratio. The comparative stringency of the two test procedures is thus not as certain as the manufacturers claim.

In any case, equitable treatment of the two vehicle classes depends on the

levels of the two emission standards, not on the test procedures alone. The criterion for judging a test procedure should be the correlation between emissions as measured with the procedure and in-use emissions. EPA believes this correlation for the test procedure being proposed today to be adequate. The Agency considered the stringency of this HDV test procedure when proposing the level of the emission standard. While we have not agreed that the heavy-duty test is more stringent, we considered this uncertainty in proposing the 3.0 g standard instead of a 2.0 g standard.

The section numbering of the test procedure being published here parallels that of the light-duty test procedure, both for ease of reference and in case future regulations require exhaust emission testing of heavy-duty vehicles.

Minor and Technical Differences Between LDV and HDV Procedures

There are several minor and technical differences between the test procedures for light-duty vehicles and heavy-duty vehicles which are not discussed above. Most of these differences are due to corresponding differences in the physical or operating characteristics of the two vehicle classes.

In § 86.1215–83, the basic tolerance with which the driving schedule must be followed is specified as 4 miles per hour (mph) versus 2 mph for the light-duty procedure. Because of their larger size and more complicated transmissions it may be more difficult for HDVs to follow the driving schedule as closely as is required for LDVs. EPA believes the wider tolerance will not have a substantial effect on measured evaporative emissions, and will reduce the number of tests which must be voided. The Agency may reduce the 4 mph tolerance in the future if experience shows that a smaller tolerance is reasonably achievable. Also, when EPA tests vehicles it will follow the driving schedule as closely as possible. Manufacturers may find it necessary to do likewise to achieve correlation with EPA test results.

In § 86.1218–83, the tolerance on the dynamometer coast down time during performance checks is specified as one second or 5 percent of the target time, whichever is greater, versus one second in the light-duty procedure. For large inertia test weights a one second tolerance may not be feasible, whereas a 5 percent tolerance should be. The one second tolerance will continue to be used for inertia test weights that are close to those used for light-duty vehicles.

In § 86.1228–83, downshifting during deceleration modes is not prohibited. Downshifting is prohibited in the light-duty test procedure. The primary rule for the operation of transmissions for both be vehicle classes is that it be representative of in-use operation. EPA does not consider downshifting during decelerations to be typical of the in-use operation of light-duty vehicles. It may be representative for some gasoline-fueled heavy-duty vehicles. In any case, EPA will require that the manufacturer specify the shift points which he is using for decertification testing. These shift points will be included with the manufacturer's Part I application. EPA specifically requests manufacturer's comments on how to determine representative shift speeds for vehicles operating on the driving cycle.

In § 86.131–83, the manufacturer may choose or the Administrator may require the manufacturer to fasten a load to the test vehicle such at the vertical load on the drive axle is equal to or less than the load it would carry if the vehicle were completed and loaded to its specified loaded vehicle weight, if needed to prevent excessive slip between the drive wheel tires and dynamometer roll(s). There is no similar provision in the light-duty vehicle test procedure, although EPA does impose some weight restrictions administratively. Such loading may be required when testing heavy-duty vehicles because of the large inertia test weights of some of these vehicles. Fastening a load to a test vehicle will not result in an unrepresentative road load horsepower, because the road load equation accounts for the actual load on the drive axle during the test.

In § 86.1232–83, the wording has been changed to allow more than 5 minutes between the time vehicle preconditioning on the dynamometer ends and the time the vehicle is parked for the coal soak. Additional time may be needed because of the large size of some heavy-duty vehicles. The maximum time the engine may be operated during the transfer from dynamometer to coal soak parking remains 5 minutes, as in the light-duty test procedure. If transfer takes more than 5 minutes it must be completed by pushing the vehicle. Some manufacturers requested that the maximum engine-on time be extended to 10 minutes. EPA has not granted these requests, since to do so could affect the condition of the vehicle at the start of the test sequence and this could introduce additional variability in the test results.

In the same section, a provision in the light-duty test procedure allowing additional preconditioning with the approval of the Administrator has not been included in the test procedure for heavy-duty vehicles. It is current EPA policy not to approve additional preconditioning of light-duty vehicles except when a vehicle has not been operated for several days prior to the start of the normal preconditioning sequence. Manufacturers should be able to avoid this situation at their own facilities. When the situation occurs at the EPA facility, it is EPA's policy to conduct additional preconditioning as appropriate, under its discretionary authority to do so. Thus, the provision in question is presently not necessary. EPA has chosen to omit it from the procedure being published here.

In § 86.1235–83, the vehicle must be operated on the dynamometer with the engine compartment cover closed. Light-duty vehicles must be operated with the cover open. EPA believes that testing with the cover closed will give more representative engine cooling for heavy-duty vehicles. The Administrator will allow the cover to be open if the manufacturer can show it is needed to provide a representative test.

In the same section, two additional changes have been made to accommodate HDV features not found on LDVs. Drive wheel tires shall be inflated to the maximum gauge pressure recommended to the ultimate purchaser. This will require an inflation pressure greater than 45 psi (the maximum used for LDV testing) on HDVs with high pressure tires. Also, all but one drive axle on vehicles with multiple drive axles will be disengaged whenever needed for safe dynamometer operation.

In § 86.1238–83, three more minutes are allowed between the end of the running loss test and the start of the hot soak test than are allowed in the light-duty procedure. Several manufacturers commented that additional time may be needed to maneuver some vehicles into the SHED because of their large size. Based on tests of light-duty vehicles and trucks, some of whose engines were similar to those of gasoline-fueled heavy-duty vehicles, EPA has concluded that the additional time will not substantially influence the result of the hot soak test. The number of additional minutes is that suggested by the only manufacturer that made a specific request.

One manufacturer requested that some special provision be made in § 86.1233–83 for plastic fuel tanks. The manufacturer was concerned that with the larger volume of fuel which must be heated in a heavy-duty fuel tank, the

specified heating rate might result in damage to a plastic fuel tank. EPA recognizes that this may be possible but has no confirming experience, and the manufacturer did not submit any technical evidence or argument that the problem in fact is a real one. EPA does not wish to discourage the use of plastic fuel tanks merely because they are less convenient to test. Therefore, for HDVs with plastic fuel tanks, EPA will accept the use of heating methods that would not normally be accepted or encouraged for steel or aluminum tanks. This may involve heating via submersible heating elements, for example. The test procedure does not specify a required heating method, so no special provision is necessary for alternate heating methods. When alternate heating methods are not feasible, EPA may approve a slower heating rate and correspondingly longer diurnal test period. A change in the test procedure is not needed to provide for such situations, since the certification procedures will contain a general provision for special test procedures if approved by the Administrator.

Other Comments by Manufacturers

Manufacturers that commented on the Draft Recommended Practice made many suggestions for modifications to it. These have been considered in the development of the test procedure being promulgated today. All suggestions of major importance are covered in the above discussion. Some other suggestions recommended that the test procedure for heavy-duty vehicles resemble that for light-duty vehicles in areas where EPA, deliberately or by oversight, had introduced deviations in the Draft Recommended Practice. Where these suggestions had merit they were adopted. Manufacturers also suggested some deviations from the light-duty procedures. Where these suggestions had merit, they were accepted and the important deviations are discussed above. There were some suggested deviations that EPA believes may have merit, but which have not yet been accepted. All of these are cases where both the light-duty and heavy-duty test procedures may benefit from amendment, but where amendment is not essential. In the interest of promulgating a test procedure for heavy-duty vehicles that is as much like the existing procedure for light-duty vehicles, regarding which the public has had multiple opportunities to comment, we have decided to postpone action on this last group of suggestions. EPA may in the future adopt them for both test procedures at once. Manufacturers' comments that have not been addressed in the above discussion have been addressed in the summary and analysis of comments, which is part of the public docket that is available for inspection and copying as described below.

Comments and the Public Docket

Copies of materials relevant to this rulemaking action are contained in Public Docket No. OMSAPC–79–1 at the U.S. Environmental Protection Agency, Public Information Reference Unit, Waterside Mall, Room 2922 (EPA Library), 401 M Street, SW., Washington, D.C. 20460. (As provided in 40 CFR Part 2, the Agency may charge a reasonable fee for copying services.)

Evaluation Plan

EPA intends to review the effectiveness and need for continuation of the provisions contained in this action no more than five years after initial implementation of the final regulation. In particular, EPA will solicit comments from affected parties with regard to cost and other burdens associated with compliance and will also review data on the evaporative emissions from gasoline-fueled heavy-duty vehicles built before and after implementation of the regulations to determine how effective this measure has been.

Reporting and Recordkeeping Requirements

While the EPA is not aware that this proposed regulation would impose any significant new or additional recording or recordkeeping requirements on affected parties, the Agency specifically invites comments on ways that any such burdens might be reduced.

Under the EPA's new "sunset" policy for reporting requirements in regulations, the reporting requirements in this regulation will automatically expire five years from the date of promulgation, unless EPA takes affirmative action to extend them. To accomplish this, a provision automatically terminating the reporting requirements at that time will be included in the text of the final regulation.

EPA intends to promulgate a final regulation, modified as the Administrator deems appropriate, after considering comments, and in time to apply to the 1983 model year.

Note.—The Administrator has determined that this action is a "Significant" regulation; but, in consideration of the requirements of Executive Order 12044, this action does not *require* preparation of a "Regulatory Analysis". We have, however, voluntarily prepared a document entitled "Gasoline-Fueled Heavy-Duty Vehicles Evaporative Emission Regulations: Regulatory Analysis," which assesses the environmental and economic impacts of this action. Anyone may review and reproduce this document in the EPA Central Docket Section. Copies are also available upon request from the Office of Mobile Source Air Pollution Control (see the address given at the beginning of this document).

Dated: April 17, 1980.

Douglas M. Costle,

Administrator.

EPA proposes to amend 40 CFR Part 86 as follows:

1. The title of Subpart A is proposed to be revised as follows:

Subpart A—General Provisions for Emission Regulations for 1977 and Later Model Year New Light-Duty Vehicles, 1977 and Later Model Year New Light-Duty Trucks, 1977 and Later Model Year New Heavy-Duty Engines, and for 1983 and Later Model Year New Gasoline-Fueled Heavy-Duty Vehicles

2. A new § 86.083–2 is proposed and reads as follows:

§ 86.083–2 Definitions.

(a) The definitions of § 86.079–2 remain effective for the 1983 model year.

(b) The following definitions also apply beginning with the 1983 model year.

"Evaporative emission cycle" means one hydrocarbon loading-purging sequence of the evaporative emission storage device(s) as defined by one of the three methods specified in Appendix XII to this subpart.

"Heavy-duty evaporative vehicle configuration" means a unique combination of basic engine, fuel system, body type, inertia weight class and other features as specified by the Administrator.

"Incomplete heavy-duty vehicle" means any heavy-duty vehicle which does not have either the primary load-carrying device, or passenger compartment attached.

3. A new § 86.083–4 is proposed and reads as follows:

§ 86.083–4 Section numbering; construction.

(a) *Section numbering.* (1) The model year of initial applicability is indicated by the last two digits of the 5-digit group. A section remains in effect for subsequent model years until it is superseded. The number following the hyphen designates what previous section is replaced by a future regulation.

Examples: Section 86.077–6 applies to the 1977 and subsequent model years until superseded. If a § 86.080–6 is promulgated it would take effect with the 1980 model year;

§ 86.077–6 would not apply after the 1979 model year. Section 86.077–10 would be replaced by § 86.078–10 beginning with the 1978 model year.

(2) Where a section still in effect references a section that has been superseded, the reference shall be interpreted to mean the superseding section.

(b) *Construction.* Except where indicated, the language in this subpart applies to both vehicles and engines. In many instances language referring to engines is enclosed in parentheses and immediately follows the language discussing vehicles.

4. A new § 86.083–10 is proposed and reads as follows:

§ 86.083–10 Emission standards for 1983 gasoline-fueled heavy-duty engines and vehicles.

(a)(1) Exhaust emissions from new 1980 model year gasoline-fueled heavy-duty engines shall not exceed one of the two following standards, to be selected at the manufacturer's option:

(i)(A) *Hydrocarbons.* 1.5 grams per brake horsepower hour.

(B) *Carbon monoxide.* 25 grams per brake horsepower hour.

(C) *Hydrocarbons plus oxides of nitrogen.* 10 grams per brake horsepower hour.

(ii)(A) *Hydrocarbons plus oxides of nitrogen.* 5.0 grams per brake horsepower hour.

(B) *Carbon monoxide.* 25 grams per brake horsepower hour.

(2) The standards set forth in paragraph (a)(1) of this section refer to exhaust gaseous emissions generated under the conditions set forth in Subpart D of this part and measured in accordance with those procedures. For low-volume manufacturers, as defined in § 86.083–24(e), the test procedure in either Subpart D or Subpart H of this part may be used; however the standards in paragraphs (a)(1)(i)(A) and (a)(1)(i)(C) of this section shall be reduced by 0.5 gram per brake horsepower hour if Subpart H of this part is used.

(b)(1) Evaporative emissions from 1983 and later model year gasoline-fueled heavy-duty vehicles shall not exceed—

(i) Hydrocarbons 3.0 grams per test.

(2) The standard set forth in paragraph (b)(1) of this section refers to a composite sample of fuel evaporative emissions collected under the conditions set forth in Subpart M and measured in accordance with those procedures.

(c) No crankcase emissions shall be discharged into the ambient atmosphere from any new 1980 and later model year gasoline-fueled heavy-duty engine.

(d) Every manufacturer of new motor vehicle engines or vehicles subject to the standards prescribed in this section shall, prior to taking any of the actions specified in section 203(a)(1) of the Act, test or cause to be tested motor vehicle engines or vehicles in accordance with applicable procedures in Subparts D, H, or M of this part to ascertain that such test engines or vehicles meet the requirements of paragraphs of (a), (b), and (c) of this section.

5. A new § 86.083–20 is proposed and reads as follows:

§ 86.083–20 Incomplete vehicles, classification.

An incomplete truck less than 8,500 pounds gross vehicle weight rating shall be classified by the manufacturer as a light-duty truck or as a heavy-duty vehicle. Incomplete light-duty trucks shall be described in the manufacturer's application for certification. The frontal area and curb weight used for certification purposes shall be specified on the label required in § 86.083–35(d). Incomplete heavy-duty trucks must be labeled as required in § 86.083–35(e) and § 86.083–35(f).

6. A new § 86.083–21 is proposed and reads as follows:

§ 86.083–21 Application for certification.

(a) A separate application for a certificate of conformity shall be made for each set of standards and each class of new motor vehicles or new motor vehicle engines. Such application shall be made to the Administrator by the manufacturer and shall be updated and corrected by amendment.

(b) The application shall be in writing, signed by an authorized representative of the manufacturer, and shall include the following:

(1)(i) *All Vehicles and engines.* Identification and description of the vehicles (or engines) covered by the application and a description of their engine (vehicles only), emission control system and fuel system components. This shall include a detailed description of each auxiliary emission control device (AECD) to be installed in or on any certification test vehicle (or certification test engine).

(ii) *Light-duty vehicles and light-duty trucks only.* (A) The manufacturer shall provide to the Administrator in the preliminary application for certification:

(1) A list of those parameters which are physically capable of being adjusted (including those adjustable parameters for which access is difficult) and that, if adjusted to settings other than the manufacturer's recommended setting, may affect emissions;

(2) A specification of the manufacturer's intended physically adjustable range of each such parameter, and the production tolerances of the limits or stops used to establish the physically adjustable range;

(3) A description of the limits or stops used to establish the manufacturer's intended physically adjustable range of each adjustable parameter, or any other means used to inhibit adjustment;

(4) The nominal or recommended setting, and the associated production tolerances, for each such parameter.

(B) The manufacturer may provide, in the preliminary application for certification, information relating to why certain parameters are not expected to be adjusted in actual use and to why the physical limits or stops used to establish the physically adjustable range of each parameter, or any other means used to inhibit adjustment, are expected to be effective in preventing adjustment of parameters on in-use vehicles to settings outside the manufacturer's intended physically adjustable ranges. This may include results of any tests to determine the difficulty of gaining access to an adjustment or exceeding a limit as intended or recommended by the manufacturer.

(C) The Administrator may require to be provided detailed drawings and descriptions of the various emission related components, and/or hardware samples of such components, for the purpose of making his determination of which vehicle or engine parameters will be subject to adjustment for new certification and Selective Enforcement Audit testing and of the physically adjustable range for each such vehicle or engine parameter.

(2) Projected U.S. sales data sufficient to enable the Administrator to select a test fleet representative of the vehicles (or engines) for which certification is requested.

(3) A description of the test equipment and fuel proposed to be used.

(4)(i) A description of the proposed mileage (or service) accumulation procedure for durability testing.

(ii) For light-duty vehicles and light-duty trucks, a description of the test procedures to be used to establish the evaporative emission deterioration factors required to be determined and supplied in § 86.083–23(b)(2).

(iii) For heavy-duty vehicles, a description of the test procedures to be used to establish the evaporative emission deterioration factors required to be determined and supplied in § 86.083–23(b)(3).

(5) For gasoline-fueled heavy-duty vehicles, the Administrator does not

assume that each evaporative emission family-evaporative emission control system combination will deteriorate in a unique manner during the useful life of the vehicle. The manufacturer shall therefore identify those evaporative emission deterioration factors which shall be applied to the various evaporative emission family-evaporative emission control system combinations which are expected to exhibit similar deterioration characteristics during the useful life of the vehicle.

(6) A statement of recommended maintenance and procedures necessary to assure that the vehicles (or engines) covered by a certificate of conformity in operation conform to the regulations, and a description of the program for training of personnel for such maintenance, and the equipment required.

(7) At the option of the manufacturer, the proposed composition of the emission-data and durability-data test fleet.

(c) Complete copies of the application and of any amendments thereto, and all notifications under §§ 86.083–32, 86.083–33, and 86.083–34 shall be submitted in such multiple copies as the Administrator may require.

(d) Incomplete light-duty trucks shall have a maximum completed curb weight and maximum completed frontal area specified by the manufacturer.

(e) Incomplete heavy-duty vehicles shall have a maximum completed gross vehicle weight and a maximum completed frontal area specified by the manufacturers.

7. A new § 86.083–22 is proposed and reads as follows:

§ 86.083–22 Approval of application for certification; test fleet selections; determinations of parameters subject to adjustment for certification and selective enforcement audit testing, adequacy of limits, and physically adjustable ranges.

(a) After a review of the application for certification and any other information which the Administrator may require, the Administrator may approve the application and select a test fleet in accordance with § 86.083–24.

(b) The Administrator may disapprove in whole or in part an application for certification for reasons including incompleteness, inaccuracy, inappropriate proposed mileage (or service) accumulation procedures, test equipment, or fuel, and incorporation of defeat devices in vehicles (or on engines) described by the application.

(c) Where any part of an application is rejected, the Administrator shall notify the manufacturer in writing and set forth the reasons for such rejection. Within 30 days following receipt of such notification, the manufacturer may request a hearing on the Administrator's determination. The request shall be in writing, signed by an authorized representative of the manufacturer and shall include a statement specifying the manufacturer's objections to the Administrator's determinations, and data in support of such objections. If, after the review of the request and supporting data, the Administrator finds that the request raises a substantial factual issue, he shall provide the manufacturer a hearing in accordance with § 86.078–6 with respect to such issue.

(d) The Administrator does not approve the test procedures for establishing the evaporative emission deterioration factors for light-duty vehicles and light-duty trucks. The manufacturer shall submit the procedures as required in § 86.083–21(b)(4)(ii) prior to the Administrator's selection of the test fleet under § 86.083–24(b)(1) and if such procedures will involve testing of durability-data vehicles selected by the Administrator or elected by the manufacturer under § 86.083–24(c)(1) prior to initiation of such testing.

(e) The Aministrator does not approve the test procedures for establishing the evaporative emission deterioration factors for heavy-duty vehicles. The manufacturer will submit the procedures as required in § 86.083–21(b)(4)(iii) prior to the Administrator's selection of the test fleet under § 86.083–24(b)(3).

(f) *Light-duty vehicles and light-duty trucks only.* When the Administrator selects emission data vehicles for the test fleet, he will at the same time determine those vehicle or engine parameters which will be subject to adjustment during certification and Selective Enforcement Audit testing; the adequacy of the limits, stops, seals, or other means used to inhibit adjustment; and the resulting physically adjustable ranges for each such parameter and notify the manufacturer of his determinations.

(1)(i) The Administrator may determine to be subject to adjustment the idle fuel-air mixture on gasoline-fueled vehicles (carbureted or fuel injected); the choke valve action parameter(s) on carbureted, gasoline-fueled vehicles; or any parameter on any vehicle (Diesel or gasoline-fueled) which is physically capable of being adjusted, may significantly affect emissions, and was not present on vehicles of the same engine family in the previous model year.

(ii) The Administrator may, in addition, determine to be subject to adjustment any other parameter on any vehicle which is physically capable of being adjusted and which may significantly affect emissions. However, the Administrator may do so only if he has previously notified the manufacturer that he might do so and has found, at the time he gave this notice, that the intervening period would be adequate to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance with such period. In no event will this notification be given later than September 1 of the calendar year two years prior to the model year.

(iii) In determining the parameters subject to adjustment the Administrator will consider the likelihood that, for each of the parameters listed in paragraphs (f)(1)(i) and (f)(1)(ii) of this section, settings other than the manufacturer's recommended setting will occur on in-use vehicles. In determining likelihood, the Administrator will consider such factors as, but not limited to, information contained in the preliminary application, surveilance information from similar in-use vehicles, the difficulty and cost of gaining access to an adjustment, damage to the vehicle if an attempt is made to gain such access and the need to replace parts following such attempt, and the effect of settings other than the manufacturer's recommended setting on vehicle performance characteristics including emission characteristics.

(2)(i) The Administrator will determine a parameter to be adequately inaccessible or sealed if:

(A) In the case of an idle mixture screw, the screw is recessed within the carburetor casting and sealed with lead, thermosetting plastic, or an inverted elliptical spacer or sheared off after adjustment at the factory, and the inaccessibility is such that the screw cannot be accessed and/or adjusted with simple tools in one-half or for $20 (1978 dollars) or less.

(B) In the case of a choke bimetal spring, the plate covering the bimetal spring is riveted or welded in place, or held in place with non-reversible screws.

(C) In the case of a parameter which may be adjusted by elongating or bending adjustable members (e.g., the choke vacuum break), any elongation of the adjustable member is limited by design, or in the case of a bendable member, the member is constructed of a material which when bent would return to its original shape after the force is removed (plastic or spring steel materials).

(D) In the case of any parameter, the manufacturer demonstrates that adjusting the parameter to settings other than the manufacturer's recommended setting takes more than one-half hour or costs more than $20 (1978 dollars).

(ii) The Administrator will determine a physical limit or stop to be an adequate restraint on adjustability if:

(A) In the case of a threaded adjustment, the threads are terminated, pinned or crimped so as to prevent additional travel without breakage or need for reparis which take more than one-half hour or cost more than $20 (1978 dollars).

(B) The adjustment is ineffective at the end of the limits of travel regardless of additional forces or torques applied to the adjustment.

(C) The manufacturer demonstrates that travel or rotation limits cannot be exceeded with the use of simple and inexpensive tools (e.g., screwdriver, pliers, open-end or box wrenches) without incurring significant and costly damage to the vehicle or control system or without taking more than one-half hour or costing more than $20 (1978 dollars).

(iii) If manufacturer service manuals or bulletins describe routing procedures for gaining access to a parameter or for removing or exceeding a physical limit, stop, seal or other means used to inhibit adjustment, or if surveillance data indicate that gaining access, removing, or exceeding is likely, paragraphs (f)(2)(i) and (f)(2)(ii) of this section, the Administrator will consider the likelihood that it will be circumvented, removed, or exceeded on in-use vehicles. In determining likelihood the Administrator will consider such factors as, but not limited to, information contained in the preliminary application; surveillance information from similar in-use vehicles; the difficulty and cost of circumventing, removing, or exceeding the limit, stop, seal, or other means; damage to the vehicle if an attempt is made to circumvent, remove, or exceed it and the need to replace parts following such attempt; and the effect of settings beyond the limit, stop, seal, or other means on vehicle performance characteristics other than emission characteristics.

(3) The Administrator shall determine two physical adjustable ranges for each parameter subject to adjustment.

(i)(A) In the case of a parameter determined to be adequately inaccessible or sealed, the Administrator may include within the physically adjustable range applicable to testing under §§ 86.083–23 and 86.083–29 (certification testing) all settings within the production tolerance associated with the nominal setting for that parameter, as specified by the manufacturer in the preliminary application for certification.

(B) In the case of parameters, the Administrator shall include within this range all settings within physical limits or stops determined to be adequate restraints on adjustability. The Administrator may also include the production tolerances on the location of these limits or stops when determining the physically adjustable range.

(ii)(A) In the case of a parameter determined to be adequately inaccessible or sealed, the Administrator shall include within the physically adjustable range applicable to testing under § 86.608 (Selective Enforcement Audit testing) only the actual setting to which the parameter is adjusted during production.

(B) In the case of other parameters, the Administrator shall include within this range all settings within physical limits or stops determined to be adequate restraints on adjustability, as they are actually located and effective on the test vehicle.

(g) If the manufacturer submits the information specified in $86.083–21(b)(1)(ii) in advance of its full preliminary application for certification, the Administrator shall review the information and make the determinations required in paragraph (f) of this section.

(h) Within 30 days following receipt of notification of the Administrator's determinations made under paragraph (f) of this section, the manufacturer may request a hearing on the Administrator's determinations. The request shall be in writing, signed by an authorized representative of the manufacturer, and shall include a statement specifying the manufacturer's objections to the Administrator's determinations, and data in support of such objections. If, after review of the request and supporting data, the Administrator finds that the request raises a substantial factual issue, he shall provide the manufacturer a hearing in accordance with $86.078–6 with respect to such issue.

8. A new § 86.083–23 is proposed and reads as follows:

§ 86.083–23 Required data.

(a) The manufacturer shall perform the tests required by the applicable test procedures, and submit to the Administrator the following information: *Provided, however,* That:

(1) If requested by the manufacturer, the Administrator may waive any requirement of this section for testing of vehicles (or engines) for which emission data are available, or will be made available, under the provisions of § 86.083–29, or

(2) If requested by the manufacturer, the Administrator may waive any requirement of this section for testing of vehicles at zero kilometers of operation.

(b)(1) Exhaust emission durability data on such vehicles (or engines) tested in accordance with applicable test procedures and in such numbers as specified, which will show the performance of the systems installed on or incorporated in the vehicle (or engine) for extended mileage (or extended operation), as well as a record of all pertinent maintenance (all maintenance and servicing for heavy-duty engines) performed on the test vehicles (or test engines). Records of maintenance and servicing of heavy-duty engines performed prior to the zero-hour point do not need to be submitted but must be maintained.

(2) Evaporative emission deterioration factors for each evaporative emission family-evaporative emission control system combination and all test data that are derived from testing described under § 86.083–21(b)(4)(ii) designed and conducted in accordance with good engineering practice to assure that the vehicles covered by a certificate issued under § 86.083–30 will meet the evaporative emission standards in § 86.082–8 or § 86.082–9 as appropriate, for the useful life of the vehicle.

(3) Evaporative emission deterioration factors for each gasoline-fueled heavy-duty vehicle evaporative emission family-evaporative emission control system combination identified in accordance with § 86.083–21(b)(5) and all test data that are derived from testing described under § 86.083–21(b)(4)(iii) designed and conducted in accordance with good engineering practice to assure that the vehicles covered by a certificate issued under § 86.083–30 will meet the evaporative emission standards in § 86.083–10 for the useful life of the vehicle. The test procedures shall include, but need not be limited to, a consideration of the ambient effects of ozone and temperature fluctuations, and the service accumulation effects of vibration, time, and vapor saturation and purge cycling.

(c) Emission data.

(1) *Certification vehicles.* (i) Emission data on such vehicles tested in accordance with the applicable test procedures and in such numbers as specified, which will show their emissions after zero kilometers (zero miles) and 6,436 kilometers (4,000 miles) operation.

(ii) Emission data on those vehicles selected under § 86.083–24(b)(1)(v) and § 86.083–24(b)(1)(vii)(D) and tested in accordance with the applicable test procedures of this subpart and in such numbers as therein specified, which shall be tested at zero kilometers (zero miles) at any altitude, and under high-altitude conditions after 6,436 kilometers (4,000 miles) of operation at any altitude.

(iii) Emission data on those vehicles selected under § 86.083–24(b)(3) and tested in accordance with the applicable procedures of this subpart and in such numbers as therein specified which shall be tested at zero evaporative emission cycles and 100 evaporative emission cycles.

(2) *Certification engines.* Emission data on such engines tested in accordance with applicable emission test procedures and in such numbers as specified, which will show their emissions after 125 hours of operation. A zero-hour test may be performed after the engine has been approved by the Administrator to begin service accumulation.

(d) A statement that the vehicles (or engines) for which certification is requested conform to the requirements in § 86.078–5(b), and that the descriptions of tests performed to ascertain compliance with the general standards in § 86.078–5(b), and the data derived from such tests, are available to the Administrator upon request.

(e)(1) A statement that the test vehicles (or test engines) with respect to which data are submitted to demonstrate compliance with §§ 86.082–8, 86.082–9, 86.083–10, or 86.080–11, as applicable, are in all material respects as described in the manufacturer's application for certification, have been tested in accordance with the applicable test procedures utilizing the fuels and equipment described in the application for certification and that on the basis of such tests the vehicles (or engines) conform to the requirements of this part. If such statements cannot be made with respect to any vehicle (or engine) tested, the vehicle (or engine) shall be identified, and all pertinent data relating thereto shall be supplied to the Administrator. If, on the basis of the data supplied and any additional data as required by the Administrator, the Administrator determines that the test vehicle (or test engine) was not as described in the application for certification or was not tested in accordance with the applicable test procedures utilizing the fuels and equipment as described in the application for certification, the Administrator may make the determination that the vehicle (or engine) does not meet the applicable standards. The provisions of § 86.083–30(b) shall then be followed.

(2) For evaporative emission durability, the statement of compliance with paragraphs (b)(2) or (b)(3) of this section.

9. A new § 86.083–24 is proposed and reads as follows:

§ 86.083–24 Test vehicles and engines.

(a)(1) The vehicles or engines covered by an application for certification will be divided into groupings of engines which are expected to have similar emission characteristics throughout their useful life. Each group of engines with similar emission characteristics shall be defined as a separate engine family.

(2) To be classed in the same engine family, engines must be identical in all the following respects:

(i) The cylinder bore center-to-center dimensions.

(ii) The dimension from the centerline of the crankshaft to the centerline of the camshaft.

(iii) The dimension from the centerline of the crankshaft to the top of the cylinder block head face.

(iv) The cylinder block configuration (air cooled or water cooled; L–6, 90° V–8, etc.).

(v) The location of intake and exhaust valves, (or ports) and the valve (or port) sizes (within a ⅛-inch range on the valve head diameter or within 10 percent on the port area).

(vi) The method of air aspiration.

(vii) The combustion cycle.

(viii) Catalytic converter characteristics; gasoline-fueled vehicles and engines only.

(ix) Thermal reactor characteristics; gasoline-fueled vehicles and engines only.

(3) Engines identical in all the respects listed in paragraph (a)(2) of this section may be further divided into different engine families if the Administrator determines that they may be expected to have different emission characteristics. This determination will be based upon a consideration of the following features of each engine:

(i) The bore and stroke.

(ii) The surface-to-volume ratio of the nominally dimensioned cylinder at the top dead center position.

(iii) The intake manifold induction port size and configuration.

(iv) The exhaust manifold port size and configuration.

(v) The intake and exhaust valve sizes.

(vi) The fuel system.

(vii) The camshaft timing and ignition or injection timing characteristics.

(4) Where engines are of a type which cannot be divided into engine families based upon the criteria listed in paragraphs (a) (2) and (3) of this section, the Administrator will establish families for those engines based upon the features most related to their emission characteristics.

(5) The gasoline-fueled vehicles covered by an application for certification will be divided into groupings which are expected to have similar evaporative emission characteristics throughout their useful life. Each group of vehicles with similar evaporative emission characteristics shall be defined as a separate evaporative emission family.

(6) to be classed in the same evaporative emission family, vehicles must be similar with respect to:

(i) Type of vapor storage device (e.g., canister, air cleaner, crankcase).

(ii) Canister design characteristics.

(iii) Fuel system characteristics.

(7) Where vehicles are of a type which cannot be divided into evaporative emission families based on the criteria listed above, the Administrator will establish families for those vehicles based upon the features most related to their evaporative emission characteristics.

(8) The gasoline-fueled heavy-duty vehicles covered by an application for certification will be divided into groupings of vehicles on the basis of physical features which are expected to have an affect on evaporative emissions. Each group of vehicles with similar features shall be defined as a separate evaporative emission family.

(9) To be classed in the same evaporative emission family, vehicles must be identical with respect to:

(i) Nominal fuel tank capacity, within a 20-gallon range, or within 25 percent whichever is greater.

(ii) Method of fuel/air metering (i.e., carburetion versus fuel injection).

(iii) Carburetor bowl fuel volume, within a 10cc range.

(10) To be classed in the same evaporative emission control system, vehicles must be identical with respect to:

(i) Method of vapor storage.

(ii) Vapor storage material.

(iii) Vapor storage working capacity, within a 20g capacity.

(iv) Method of carburetor bowl venting.

(v) Vapor purge technique (e.g., air cleaner, carburetor venturi, PCV system, etc.).

(11) Where gasoline-fueled heavy-duty vehicles are types which cannot be divided into evaporative emission family-system combinations based on

the criteria listed above, the Administrator will establish evaporative emission family-system combinations for those vehicles based on features most related to their evaporative emission characteristics.

(b) Emission data. (1) *Emission-data vehicles.* Paragraph (b)(1) of this section applies to light-duty vehicles and light-duty truck emission-data vehicles.

(i) Vehicles will be chosen to be operated and tested for emission data based upon the engine family groupings. Within each engine family, the requirements of this paragraph must be met.

(ii) Vehicles for each engine family will be divided into engine displacement-exhaust emission control system combinations as applicable. A projected sales volume will be established for each combination for the model year for which certification is sought. One vehicle of each combination will be selected in order of decreasing projected sales volume until 70 percent of the projected sales of a manufacturer's total production of vehicles of that engine family is represented, or until a maximum of four vehicles is selected. If any single combination represents over 70 percent, then two vehicles of that combination may be selected. The vehicle selected for each combination will be specified by the Administrator as to such features as engine code, transmission type, fuel system, and inertia weight class.

(iii) The Administrator may select a maximum of four additional vehicles within each engine family based upon features indicating that they may have the highest emission levels of the vehicles in that engine family. In selecting these vehicles, the Administrator will consider such features as the emission control system combination, induction system characteristics, ignition system characteristics, fuel system, rated horsepower, rated torque, compression ratio, inertia weight class, transmission options, and axle ratio.

(iv) If the vehicles selected in accordance with paragraphs (b)(1) (ii) and (iii) of this section do not represent each engine-system combination, then one vehicle of each engine-system combination not represented will be selected by the Administrator. The vehicle selected shall be of the engine displacement with the largest projected sales volume of vehicles with the control system combination in the engine family and will be designated by the Administrator as to such features as engine code, transmission type, fuel system, and inertia weight class.

(v) Within an engine family the Administrator may select one additional vehicle for each engine-system combination with which a manufacturer chooses to demonstrate compliance with applicable emission standards at high altitude.

(vi) The Administrator may combine testing requirements for any vehicle selected under paragraph (b)(1)(v) or (b)(1)(vii)(D) of this section with the testing requirements for any similar vehicle in the same engine-system combination selected under paragraph (b)(1) (ii), (iii) or (iv) of this section or any similar vehicle in the same engine-system, evaporative emission family, evaporative emission control system combination selected under paragraph (b)(1)(vii) (A) or (B) of this section. The testing requirements may be combined by the Administrator by requiring a vehicle selected for testing under paragraphs (b)(1) (ii), (iii), (iv), (vii)(A), or (vii)(B) of this section to be modified (if necessary) after mileage accumulation and emission testing for the purpose of demonstrating compliance with § 86.083–23(c)(1)(ii).

(vii) (A) Vehicles of each evaporative emission family will be divided into evaporative emission control systems. One vehicle of each evaporative emission control system within the evaporative emission family will be selected.

(B) The Administrator may select a maximum of four additional vehicles within each evaporative emission family based upon features indicating that they may have the highest evaporative emission levels of vehicles in that family.

(C) The Administrator may determine that the vehicles selected under paragraphs (b)(1)(ii) through (iv) of this section may be used to satisfy the requirements of paragraphs (b)(1)(vii) (A) and (B) of this section.

(D) The Administrator may also select one additional vehicle for each evaporative emission control system within each evaporative family for those vehicles with which the manufacturer chooses to demonstrate compliance with applicable emission standards at high altitude.

(E) Vehicles selected under paragraph (b)(1)(v) of this section may be used to satisfy the requirements of paragraph (b)(1)(vii)(D) of this section.

(2) *Gasoline-fueled heavy-duty emission-data engines.* Paragraph (b)(2) of this section applies to gasoline-fueled heavy-duty engines.

(i) Engines will be chosen to be run for emission data based upon engine family groupings. Within each engine family, the requirements of this paragraph must be met.

(ii) Engines of each engine family will be divided into engine displacement-exhaust emission control system combinations. A projected sales volume will be established for each combination for the applicable model year. One engine of each combination will be selected in order of decreasing projected sales volume until 70 percent of the projected sales of a manufacturer's total production of engines of that family is represented, or until a maximum of four engines is selected. The engines selected for each combination will be specified by the Administrator as to fuel system.

(iii) The Administrator may select a maximum of two additional engines within each engine family based upon features indicating that they may have the highest emission levels of the engines in that engine family. In selecting these engines, the Administrator will consider such features as the exhaust emission control system, induction system characteristics, ignition system characteristics, fuel system, rated horsepower, rated torque, and compression ratio.

(iv) If the engines selected in accordance with paragraphs, (b)(2) (ii) and (iii) of this section do not represent each engine displacement-exhaust emission control system combination, then one engine of each engine displacement-exhaust emission control system combination not represented shall be selected by the Administrator.

(3) *Gasoline-fueled heavy-duty evaporative emission-data vehicles.* Paragraph (b)(3) of this section applies to gasoline-fueled heavy-duty vehicles.

(i) Vehicles will be chosen to be operated and tested for evaporative emission data based upon the evaporative emission family-system groupings.

(ii)(A) Vehicles for each evaporative emission family will be divided into evaporative emission family-system combinations. One vehicle of each evaporative emission control system within the evaporative emission family will be selected.

(B) The Administrator may select a maximum of two (2) additional vehicles within each evaporative emission family. In selecting these vehicles, the Administrator may consider such features as the exhaust emission-evaporative emission control system combination, the cylinder block characteristics (i.e., in line, vee), the method of aspiration, rated horsepower, rated torque, compression ratio, thermal reactor characteristics, catalytic converter characteristics, the total

weight of the engine including carburetor, manifolds, and all engine-driven accessories, inertia weight class, road load power, transmission options, axle ratios, N/V ratios, engine compartment configuration, and engine coolant thermostat setting.

(4) Diesel heavy-duty emission-data engines. Paragraph (b)(4) of this section applies to Diesel heavy-duty emission-data engines.

(i) Engines will be chosen to be run for emission data based upon engine family groupings. Within each engine family, the requirements of this paragraph must be met.

(ii) Engines of each engine family will be divided into groups based upon exhaust emission control system. One engine of each engine-system combination shall be run for smoke emission data and gaseous emission data as prescribed in § 86.083–26(c)(3). Either the complete gaseous emission test or the complete smoke test may be conducted first. Within each combination, the engine that features the highest fuel feed per stroke, primarily at the speed of maximum rated torque and secondarily at rated speed, will usually be selected. If there are military engines with higher fuel rates than other engines in the same engine-system combination, then one military engine shall also be selected. The engine with the highest fuel feed per stroke will usually be selected.

(iii) The Administrator may select a maximum of one additional engine within each engine-system combination based upon features indicating that it may have the highest emission levels of the engines of that combination. In selecting this engine, the Administrator will consider such features as the injection system, fuel system, compression ratio, rated speed, rated horsepower, peak torque speed, and peak torque.

(c) Durability data. (1) *Durability-data vehicles.* Paragraph (c)(1) of this section applies to light-duty vehicle and light-duty truck durability-data vehicles.

(i) A durability-data vehicle will be selected by the Administrator to represent each engine-system combination. The vehicle selected shall be of the engine displacement with the largest projected sales volume of vehicles with that control-system combination in that engine family and will be designated by the Administrator as to transmission type, fuels system, and inertia weight class.

(ii) A manufacturer may elect to operate and test additional vehicles to represent any engine-system combination. The additional vehicles must be of the same engine displacement, transmission type, fuel system, and inertia weight class as the vehicle selected for that engine-system combination in accordance with the provisions of paragraph (c)(1)(i) of this section. Notice of an intent to operate and test additional vehicles shall be given to the Administrator not later than 30 days following notification of the test fleet selection.

(2) *Gasoline-fueled heavy-duty durability-data engines.* Paragraph (c)(2) of this section applies to gasoline-fueled heavy-duty durability-data engines.

(i) A durability-data engine will be selected by the Administrator to represent each engine-system combination. The engine selected shall be of the displacement with the largest projected sales volume of engines with that exhaust emission control system in that engine family and will be designated by the Administrator as to fuel system.

(ii) [Reserved]

(iii) A manufacturer may elect to operate and test additional engines to represent any engine-system combination. The addional engines must be of the same engine displacement and fuel system as the engine selected for that combination in accordance with the provisions of paragraph (c)(2)(i) of this section. Notice of an intent to run additional engines shall be given to the Administrator not later than 30 days following notification of the test fleet selection. Deterioration factors calculated for each engine-system combination shall be applied separately to military and nonmilitary engines within the same engine system combination.

(3) *Diesel heavy-duty durability-data engines.* Paragraph (c)(3) of this section applies to Diesel heavy-duty durability-data engines.

(i) One engine from each engine-system combination shall be tested as prescribed in § 86.083–26(c)(3)(ii). At each test point, either the completed gaseous emission test or the complete smoke test may be conducted first. Within each combination, the engine which features the highest fuel feed per stroke, primarily at rated speed and secondarily at the speed of maximum rated torque, will usually be selected for durability testing. In the case where more than one engine in an engine-system combination has the highest fuel feed per stroke, the engine with the highest maximum rated horsepower will usually be selected for durability testing. If an engine-system combination includes both military and nonmilitary engines, then the nonmilitary engine with the highest maximum rated horsepower will usually be selected for durability testing.

(ii) A manufacturer may elect to operate and test additional engines to represent any engine-system combination. The additional engines must be of the same model and fuel system as the engine selected in accordance with the provisions of paragraph (c)(3)(i) of this section. Notice of an intent to test additional engines shall be given to the Administrator not later than 30 days following notification of the test fleet selection. Deterioration factors calculated for each engine-system combination shall be applied separately to military and nonmilitary engines within the same engine-system combination.

(d) For purposes of testing under § 86.083–26(a)(9), (b)(9) or (c)(11), the Administrator may require additional emission-data vehicles (or emission-data engines) and durability-data vehicles (or durability-data engines) identical in all material respects to vehicles (or engines) selected in accordance with paragraphs (b) and (c) of this section: *Provided,* That the number of vehicles selected shall not increase the size of either the emission-data fleet or the durability-data fleet by more than 20 percent or one vehicle, whichever is greater.

(e) Any manufacturer whose projected sales for the model year in which certification is sought is less than

(1) 2,000 gasoline-fueled light-duty vehicles, or

(2) 2,000 Diesel light-duty vehicles, or

(3) 2,000 gasoline-fueled light-duty trucks, or

(4) 2,000 Diesel light-duty trucks, or

(5) 2,000 gasoline-fueled heavy-duty engines, or

(6) 1,000 gasoline-fueled heavy-duty vehicles, or

(7) 2,000 Diesel heavy-duty engines,

may request a reduction in the number of test vehicles (or engines) determined in accordance with the foregoing provisions of this section. The Administrator may agree to such lesser number as he determines would meet the objectives of this procedure.

(f)(1) In lieu of testing an emission-data or durability-data vehcile (or engine) selected under paragrpah (b) or (c) of this section, and submitting data therefor, a manufacturer may, with the prior written approval of the Administrator, submit exhaust emission data and/or fuel evaporative emission data, as applicable on a similar vehicle (or engine) for which certification has previously been obtained or for which all applicable data required under § 86.078–23 has previously been submitted.

(2) In lieu of testing a gasoline-fueled heavy-duty evaporative emission-data vehcile selected under paragraph (b)(3) of this section, and submitting data therefore, a manufacturer may, with prior written approval of the Administrator, demonstrate the equivalence or superiority of the evaporative emission control system of the evaporative emission-data vehicle selected for testing, as compared with the evaporative emission control system of another evaporative emission-data vehicle within the same evaporative emission family also selected for testing, but for whch the testing requirements have been, or wil be fulfilled. This demonstration shall be based upon information and/or data deemed acceptable to the Administrator.

(g)(1) This paragraph applies to light-duty vehicles and light-duty trucks.

(2) Where it is expected that more than 33 percent of the vehicles in an engine family will be equipped with an optional item, the full estimated weight of that item shall be included, if required by the Administrator, in the curb weight computation for each vehicle available with that option in the engine family. Where it is expected that 33 percent or less of the vehicles in an engine family will be equipped with an item of optional equipment, no weight for that item will be added in computing curb weight. In the case of mutually exclusive options, only the weight of the heavier option will be added in computing curb weight. Optional equipment weighing less than 3 pounds per item need not be condsidered.

(3) Where it is expected that more than 33 percent of the vehicles in an engine family will be equipped with an item of optional equipment that can reasonably be expected to influence emissions, than such items of optional equipment shall actually be installed, unless specifically excluded by the Administrator, on all emission-data and durability-data vehciles in the engine family on which the option is intended to be offered in production. Optional equipment that can reasonably be expected to influence emissons are the air conditioner, power steering, power brakes and other items determined by the Administrator.

(4) Optional equipment that can reasonably be expected to influence emissions which is utilized on 33 percent or less of the vehicles in the engine family shall not be installed on any vehcile in that engine family unless specifically required under this section.

10. A new § 86.083–25 is proposed and reads as follows:

§ 86.083–25 Maintenance.

(a) *Light-duty vehicles and light-duty trucks.* Paragraph (a) of this section applies to light-duty vehicles and light-duty trucks.

(1) Scheduled maintenance on the engine, emission control system, and fuel system of durability-data vehicles, selected by the Administrator or elected by the manufacturer under § 86.083–24(c)(1), shall be scheduled for performance during durability testing at the same mileage intervals that will be specified in the manufacturer's maintenance instructions furnished to the ultimate purchaser of the motor vehicle. Such maintenance shall be performed, except as provided in paragraph (a)(5)(iii) of this section, only under the following provisions:

(i) Schedules major engine tuneups to manufacturer's specifications may be performed no more frequently than every 12,500 miles of scheduled driving: *Provided,* That no tuneup may be performed after 45,000 miles of scheduled driving. A scheduled major engine tuneup shall be restricted to paragraph (a)(1)(i) (A) or (B) of this section, and shall be conducted in a manner consistent with service instructions and specifications provided by the manufacturer for use by customer service personnel.

(A) *For gasoline-fueled vehicles,* the following items may be inspected, replaced, cleaned, adjusted, and/or serviced as required:

(*1*) Ignition system.

(*2*) Cold starting enrichment system (includes fast idle speed setting).

(*3*) Curb idle speed and air/fuel mixture.

(*4*) Drive belt tension on engine accessories.

(*5*) Valve lash.

(*6*) Inlet air and exhaust gas control valves.

(*7*) Engine bolt torque.

(*8*) Spark plugs.

(*9*) Fuel filter and air filter.

(*10*) Crankcase emission control system.

(*11*) Fuel evaporative emission control system.

(B) *For Diesel vehicles,* a major engine tuneup shall be restricted to the following:

(*1*) Adjust low idle speed.

(*2*) Adjust valve lash if required.

(*3*) Adjust injector timing.

(*4*) Adjust governor.

(*5*) Clean and service injector tips.

(*6*) Adjust drive belt tension on engine accessories.

(*7*) Check engine bolt torque and tighten as required.

(ii) Change of engine and transmission oil, and change or service of oil filter will be allowed at the same mileage intervals that will be specified in the manufacturer's maintenance instructions.

(iii) Readjustment of the engine idle speed (curb idle and fast idle) may be performed, in addition to adjustment during scheduled major engine tuneups, once during the first 5,000 miles of vehicle operation.

(2)(i) *For gasoline-fueled vehicles,* unscheduled maintenance on the engine, emission control system, and fuel system of durability vehicles may be performed, except as provided in paragraph (a)(5)(i) of this section, only under the following provisions:

(A) Any persistently misfiring spark plug may be replaced, in addition to replacement at scheduled major engine tuneup points.

(B) Readjustment of the engine cold starting enrichment system may be performed if there is a problem of stalling or if there is visible black smoke.

(C) Readjustment of the engine idle-speed (curb idle and fast idle) may be performed, in addition to that performed as scheduled maintenance under paragraph (a)(1) of this section, if the idle speed exceeds the manufacturer's recommended idle speed by 300 r.p.m. or more, or if there is a problem of stalling.

(D) The idle mixture may be reset, other than during scheduled major engine tuneups, only with the advance approval of the Administrator.

(ii) *For Diesel vehicles,* unscheduled maintenance on the engine emission control system, and fuel system of durability-data vehicles may be performed except as provided in paragraph (a)(5)(i) of this section, only under the following provisions:

(A) Injectors may be changed if a persistent misfire is detected.

(B) Readjustment of the engine idle speed (curb idle and fast idle) may be performed in addition to that performed as scheduled maintenance under paragraph (a)(1) of this section, if the idle speed exceeds the manufacturer's recommended idle speed by 300 r.p.m. or more, or if there is a problem of stalling.

(3) An exhaust gas recirculation (EGR) system may be serviced during durability testing only under one of the following provisions:

(i) Manufacturers may schedule service to the EGR system at the scheduled major engine tuneup, if an audible and/or visual signal approved by the Administrator alerts the vehicle operator to the need for EGR system maintenance at each of those mileage points. One additional servicing may also be performed as unscheduled maintenance if there is an overt

indication of malfunction and if the malfunction or repair of the malfunction does not render the test vehicle unrepresentative of vehicles in use.

(ii) Manufacturers may service the EGR system as unscheduled maintenance a maximum of three times during the 50,000 miles if failure of the EGR system activates an audible and/or visual signal approved by the Administrator which alerts the vehicle operator to the need for EGR system maintenance. One additional servicing may also be performed as unscheduled maintenance if there is an overt indication of malfunction and if the malfunction or repair of the malfunction does not render the test vehicle unrepresentative of vehicles in use.

(iii) Manufacturers may service the EGR system a maximum of three times during the 50,000 miles either at a scheduled major engine tuneup point or as unscheduled maintenance, if an audible and/or visual signal approved by the Administrator alerts the vehicle operator to the need for EGR system maintenance. The signal may be activated either by EGR system failure (unscheduled maintenance) or need for scheduled periodic maintenance. If maintenance is performed, the signal for scheduled periodic maintenance shall be reset. One additional servicing may also be performed as unscheduled maintenance if there is an overt indication of malfunction and if the malfunction or repair of the malfunction does not render the test vehicle unrepresentative of vehicles in use.

(iv) Manufacturers may schedule service to the EGR system at the scheduled major engine tuneup(s) if failure to perform EGR system maintenance is not likely, as determined by the Administrator, to result in an improvement in vehicle performance. One additional servicing may also be performed as unscheduled maintenance if there is an overt indication of malfunction and if the malfunction or repair of the malfunction does not render the test vehicle unrepresentative of vehicles in use.

(4) The catalytic converter may be serviced once during 50,000 miles if an audible and/or visual signal approved by the Administrator alerts the vehicle operator to the need for maintenance. The signal may be activated either by component failure or need for maintenance at a scheduled point.

(5) Any other engine, emission control system, or fuel system adjustment, repair, removal, disassembly, cleaning, or replacement on durability-data vehicles shall be performed only with the advance approval of the Administrator.

(i) In the case of unscheduled maintenance, such approval will be given if the Administrator:

(A) Has made a preliminary determination that part failure or system malfunction, or the repair of such failure or malfunction, does not render the vehicle unrepresentative of vehicles in use, and does not require direct access to the combustion chamber, except for spark plug, fuel inection component, or removable prechamber removal or replacement; and

(B) Has made a determination that the need for maintenance or repairs is indicated by an overt indication of malfunction such as persistent misfiring, vehicle stalling, overheating, fluid leakage, loss of oil pressure, or charge indicator warning. For the evaporative emission control system this overt indication may be indicated by such items as fuel odor or fluid leakage.

(ii) Emission measurements may not be used as a means of determining the need for unscheduled maintenance under paragraph (a)(5)(i)(A) of this section.

(iii) Requests for authorization of scheduled maintenance of emission control-related components not specifically authorized to be maintained by these regulations must be made prior to the beginning of durability testing. The Administrator will approve the performance of such maintenance if the manufacturer makes a satisfactory showing that the maintenance will be performed on vehicles in use.

(6) If the Administrator determines that part failure or system malfunction occurrence and/or repair rendered the vehicle unrepresentative of vehicles in use, the vehicle shall not be used as a durability-data vehicle.

(7) Where the Administrator agrees under § 86.083–26 to a mileage accumulation of less than 50,000 miles for durability testing, he may modify the requirements of this paragraph.

(8)(i) Adjustment of engine idle speed on emission-date vehicles may be performed once before the 6,436-kilometer (4,000-mile) test point. Any other engine, emission control system, or fuel system adjustment, repair, removal, disassembly, cleaning, or replacement on emission-data vehicles shall be performed only with the advance approval of the Administrator.

(ii) Maintenance on emission-data vehicles selected under §§ 86.083–24 (b)(1)(v) or (b)(1)(vi)(D) and permitted to be tested for purposes of § 86.083–23 (b)(1)(ii) under the provisions of § 86.083–24(b)(1)(vi) may be performed in conjunction with emission control system modifications at the 6,436-kilometer (4,000-mile) test point, and shall be performed in accordance with the maintenance instructions to be provided to the ultimate purchaser required under § 86.083–38.

(iii) Maintenance on those emission-data vehicles selected under § 86.083–24(b)(1)(v) which are not capable of being modified in the field for the purpose of complying with emission standards at an altitude other than intended by the origin design may be performed in conjunction with the emission control system modifications at the 6,436-kilometer (4,000-mile) test point, and shall be approved in advance by the Administrator.

(9) Repairs to vehicle components of the durability-data or emission-data vehicle, other than the engine, emission control system, or fuel system, shall be performed only as a result of part failure, vehicle system malfunction, or with the advance approval of the Administrator.

(10) Complete emissions tests (see §§ 86.106 through 86.145) are required, unless waived by the Administrator, before and after any vehicle maintenance which may reasonably be expected to affect emissions. These test data shall be air posted to the Administrator within 24 hours (or delivered within 3 working days), after the tests, along with a complete record of all pertinent maintenance, including a preliminary engineering report of any malfunction diagnosis and the corrective action taken. A complete engineering report will be delivered or air posted to the Administrator within 10 working days after the tests. In addition, all test data and maintenance reports shall be compiled and provided to the Administrator in accordance with § 86.083–23.

(11) The Administrator shall be given the opportunity to verify the existence of an overt indication of part failure and/or vehicle malfunction (e.g., misfiring, stalling, black smoke), or an activation of an audible and/or visual signal, prior to the performance of any maintenance to which such overt indication or signal is relevant under the provisions of this section.

(12) Equipment, instruments, or tools may not be used to identify malfunctioning, maladjusted, or defective engine components unless the same or equivalent equipment, instruments, or tools will be available to dealerships and other service outlets and

(i) Are used in conjunction with scheduled maintenance on such components.

(ii) Are used subsequent to the identification of a vehicle or engine malfunction, as provided in paragraph

(a)(5)(i) of this section for durability-data vehicles or paragraph (a)(8)(i) of this section for emission-data vehicles, or

(iii) Unless specifically authorized by the Administrator.

(b) [Reserved]

(c)(1) Heavy-duty engines and gasoline-fueled heavy-duty vehicles. Paragraph (c) of this section applies to heavy-duty engines and gasoline-fueled heavy-duty vehicles.

(2)(i) The scheduled maintenance described in this section may be performed on a durability-data engine provided the maintenance is requested in the application for certification. Such scheduled maintenance must be specified at the same intervals in the maintenance instructions furnished to the ultimate purchaser of the vehicle in which the engine, represented by the test engine, is installed. (For equivalent dynamometer hours, engine hours, and mileage intervals, see § 86.079–2.) A scheduled major engine servicing shall be restricted to items listed in this subparagraph and shall be conducted in a manner consistent with service instructions and specifications provided by the manufacturer for use by the customer service personnel.

(A) For gasoline-fueled engines, major engines tuneups to manufacturer's specifications may be performed no more frequently than every 375 hours of scheduled dynamometer operation: *Provided,* No tuneups are performed after 1375 hours of scheduled dynamometer operation. The following items may be inspected, replaced, cleaned, adjusted, and/or serviced as required:

(1) Ignition system.

(2) Cold starting enrichment system (includes fast idle speed setting).

(3) Curb idle speed and air/fuel mixture.

(4) Drive belt tension on engine accessories.

(5) Valve lash.

(6) Inlet air and exhaust gas control valves.

(7) Engine bolt torque.

(8) Spark plugs.

(9) Fuel filter and air filter.

(10) Crankcase emission control system.

(11) Fuel evaporative emission control system.

(B) For Diesel engines one major engine servicing to the manufacturer's specifications may be performed prior to 875 hours (±8 hours) of scheduled dynamometer operation. The following items may be inspected, replaced, cleaned, adjusted, and/or serviced as required:

(1) Low idle speed.

(2) Drive belt tension.

(3) Engine bolt torque.

(4) Valve lash.

(5) Injection timing.

(6) Injector assemblies.

(7) Governor settings.

(C) Normal engine servicing such as engine oil change, and oil filter, fuel filter, and air filter cleaning or replacement will be allowed at manufacturer's recommended intervals. If approved in advance by the Administrator, the maintenance for these items may differ from that specified in the manufacturer's maintenance instructions.

(D) Readjustment of the engine low idle speed may be performed once during the first 125 hours of engine operation.

(ii) Unscheduled maintenance may be performed on durability-data engines, except as provided in paragraph (c)(2)(v)(A) of this section, only under the following provisions:

(A) An injector or spark plug may be changed if a persistent misfire is detected.

(B) Readjustment of a gasoline-fueled engine cold-start enrichment system may be performed if there is a problem of stalling or if there is visible black smoke.

(C) Readjustment of the engine idle speed (curb idle and fast idle) may be performed, in addition to that performed as scheduled maintenance under paragraph (c)(2)(i) of this section, if the idle speed exceeds the manufacturer's recommended idle speed by 300 r.p.m. or more, or if there is a problem of stalling.

(D) The idle mixture may be reset, other than during scheduled major engine tuneups, only with the advance approval of the Administrator.

(iii) Any exhaust gas recirculation (EGR) system may be serviced during durability testing only under one of the following provisions:

(A) Manufacturers may schedule service to the EGR system at the scheduled major engine tuneup if an audible and/or visual signal approved by the Administrator alerts the engine operator to the need for EGR system maintenance at the service point. One additional servicing may also be performed as unscheduled maintenance if there is an overt indication of malfunction and if the malfunction or repair of the malfunction does not render the test engine unrepresentative of engines in use.

(B) Manufacturers may service the EGR system as unscheduled maintenance a maximum of one time during durability testing (1500 hours for gasoline-fuel engines or 1000 hours for Diesel engines) if failure of the EGR system activates an audible and/or visual signal approved by the Administrator which alerts the engine operator to the need for EGR system maintenance. One additional servicing may also be performed as unscheduled maintenance if there is an overt indication of malfunction and if the malfunction or repair of the malfunction does not render the test engine unrepresentative of engines in use.

(C) Manufacturers may service the EGR system a maximum of three times during durability testing (1500 hours for gasoline-fueled engines or 1000 hours for Diesel engines) either at a scheduled major engine tuneup point or as unscheduled maintenance, if an audible and/or visual signal approved by the Administrator alerts the engine operator to the need for EGR system maintenance. The signal may be activated either by EGR system failure (unscheduled maintenance) or need for scheduled periodic maintenance. If maintenance is perormed, the signal for scheduled perodic maintenance shall be reset. One additional servicing may also be performed as an unscheduled maintenance if there is an overt indication of malfunction and if the malfunction or repair of the malfunction does not render the test engine unrepresentative of engines in use.

(D) Manufacturers may schedule service to the EGR system at the scheduled major engine tuneup(s) if failure to perform EGR system maintenance is not likely as determined by the Administrator, to result in an improvement in engine performance. One additional servicing may also be performed as unscheduled maintenance if there is an overt indication of malfunction and if the malfunction or repair of the malfunction does not render the test engine unrepresentative of engines in use.

(iv) The catalytic converter may be serviced once during durability testing (1500 hours for gasoline-fueled engines or 1000 hours for Diesel engines) if an audible and/or visual signal approved by the Administrator alerts the engine operator to the need for maintenance. The signal may be activated either by component failure or need for maintenance at a scheduled point.

(v) Any other engine, emission control system, or fuel system adjustment, repair, removal, disassembly, cleaning, or replacement on durability-data engines shall be performed only with the advance approval of the Administrator.

(A) In the case of unscheduled maintenance such approval will be given if the Administrtor:

(1) Has made a preliminary determination that part failure or system

malfunction, or the repair of such failure or malfunction, does not render the engine unrepresentative of engines in use, and does not require direct access to the combustion chamber, except for spark plug, fuel injection component, or removable prechamber removal or replacement; and,

(2) Has made a determination that the need for maintenance or repairs is indicated by an overt indication of malfunction such as persistent misfiring, engine stalling, overheating, fluid leakage, loss of oil pressure, excessive fuel consumption or excessive power loss.

(B) Emission measurements may not be used as a means of determining the need for unscheduled maintenance under paragraph (c)(2)(v)(A)(1) of this section.

(C) Requests for authorization of scheduled maintenance of emission control related components not specifically authorized to be maintained by these regulations must be made prior to the beginning of durability testing. The Administrator will approve the performance of such maintenance if the manufacturer makes a satisfactory showing that the maintenance will be performed on engines in use.

(vi) If the Administrator determines that part failure or system malfunction occurrence and/or repair rendered the engine unrepresentative of engines in use, the engine shall not be used as a durability-data engine.

(3)(i) Scheduled maintenance on emission-data engines or gasoline-fueled heavy-duty evaporative emission-data vehicles is limited to the adjustment of idle speed once before the 125-hour test point or the 100 evaporative emission cycles test point, respectively provided the idle speed is outside the manufacturer's specifications.

(ii) Any other engine, emission control system, or fuel system, adjustment, repair, removal, disassembly , cleaning, servicing, or replacement shall be performed only with the advance approval of the Administrator.

(iii) The idle speed reset and any scheduled maintenance on the emission-data engine or gasoline-fueled heavy-duty evaporative emission-data vehicle shall be performed prior to the 125-hour test or the 100 evaporative emission cycles test, respectively. The before-maintenance and after-maintenance tests associated with idle speed reset and scheduled maintenance on the emission-data engine or evaporative emission-data vehicle are waived.

(4) [Reserved]

(5)(i) Complete emission tests (see Subparts D or H of this part for gasoline-fueled engines and Subparts D and I, or I and J of this part for Diesel engines) are required, unless waived by the Administrator, before and after:

(A) Scheduled maintenance approved for durability-data engines, except maintenance performed under § 86.038–25(c)(2)(i)(C);

(B) Unscheduled maintenance which may reasonably be expected to affect emissions.

(ii) The tests before and after scheduled maintenance, which are performed on durability-data engines prior to 117 hours, are waived. The test before scheduled maintenance, which is performed on durability-data engines after 117 hours and prior to 133 hours, is waived. The after-maintenance test must be run and the results used in the deterioration factor calculation in accordance with § 86.083–28.

(iii) The idle speed reset and any scheduled maintenance on the emission-data engine shall be performed prior to the 125-hour test. The before-maintenance and after-maintenance tests associated with idle speed reset and scheduled maintenance on the emission-data engine are waived.

(iv) Test data required by this paragraph shall be air posted to the Administrator within 72 hours of test completion (or delivered within 5 working days), along with a complete record of all pertinent maintenance.

(v) When unscheduled maintenance is approved, a preliminary engineering report, unless waived by the Administrator, shall be air posted within 72 hours (or delivered within 5 working days). A final engineering report shall be delivered or air posted within 10 working days after the completion of the emission tests. The Administrator may approve an extension of the time requirements for the final engineering report.

(vi) All test data, maintenance reports, and required engineering reports shall be compiled and provided to the Administrator in accordance with § 86.083–23.

(6) The Administrator shall be given the opportunity to verify the existence of an overt indication of part failure and/or engine malfunction (e.g., misfiring, stalling.)

(7) Equipment, instruments, or tools may not be used to identify malfunctioning, maladjusted, or defective engine components unless the same or equivalent equipment, instruments, or tools will be available to dealerships and other service outlets, and:

(i) Are used in conjunction with scheduled maintenance on such components;

(ii) Are used subsequent to the identification of an engine or vehicle failure or malfunction, as provided in paragraph (c)(2)(v)(A) of this section for durability-data engines or paragraph (c)(3) of this section for emission-data engines or evaporative emission data vehicles, or

(iii) Unless specifically authorized by the Administrator.

11. A new § 86.083–26 is proposed and reads as follows:

§ 86.083–26 Mileage and service accumulation; emission measurements.

(a)(1) Paragraph (a) of this section applies to light-duty vehicles and light-duty trucks.

(2) The procedure for mileage accumulation will be the Durability Driving Schedule as specified in Appendix IV to this part. A modified procedure may also be used if approved in advance by the Administrator. Except with the advance approval of the Administrator, all vehicles will accumulate mileage at a measured curb weight which is within 100 pounds of the estimated curb weight. If the loaded vehicle weight is within 100 pounds of being included in the next higher inertia weight class as specified in § 86.125, the manufacturer may elect to conduct the respective emission tests at higher loaded vehicle weight. Mileage will be accumulated on four wheel drive vehicles in their normal on-highway mode of operation.

(3) *Emission-data vehicles.*—(i) *Gasoline-fueled.* (A) Each gasoline-fueled emission-data vehicle shall be driven 4,000 miles with all emission control systems installed and operating. Complete exhaust emission tests shall be conducted at zero miles and 4,000 miles on those vehicles selected under § 86.083–24 (b)(1)(ii) through (b)(1)(v). Complete exhaust and evaporative emission tests shall be conducted at zero miles and 4,000 miles on those vehicles selected under § 86.083–24(b)(1)(vii). The manufacturer may at his option test the vehicles selected under § 86.083–29(b)(1)(vii) up to three times at the 4,000-mile test point as long as the ±250-mile test tolerance is adhered to. The Administrator may determine under § 86.083–24(f) that no testing is required.

(B) The emission-data vehicle(s) selected for testing under § 86.083–24 (b)(1)(v) or (b)(1)(vii)(D) shall be driven 6,436 kilometers (4,000 miles) at any altitude. Emission tests shall be conducted at zero kilometers (zero miles at any altitude and 6,436 kilometers (4,000 miles) under high altitude conditions.

(C) The emission-data vehicle(s) selected for testing under § 86.083–24 (b)(1)(v) or (b)(1)(vii)(D) and permitted to be tested for purposes of § 86.083–23(b)(1)(ii) under the provisions of § 86.083–24(b)(1)(vi) shall be driven 6,436 kilometers (4,000 miles) at low altitude. Emission tests shall be conducted at zero kilometers (zero miles) at low altitude and 6,436 kilometers (4,000 miles) under both low- and high-altitude conditions. For the purposes of this subparagraph, "low altitude" means any elevation less than 549 meters (1,800 feet).

(ii) *Diesel.* (A) Each Diesel emission-data vehicle shall be driven 6,436 kilometers (4,000 miles) with all emission control systems installed and operating. Emission tests shall be conducted at zero kilometers (zero miles) and 6,436 kilometers (4,000 miles).

(B) The emission-data vehicle(s) selected for testing under § 86.083–24(b)(1)(v) shall be driven 6,436 kilometers (4,000 miles) at any altitude. Emission tests shall be conducted at zero kilometers (zero miles) at any altitude and 6,436 kilometers (4,000 miles) under high altitude conditions.

(C) The emission-data vehicle(s) selected for testing under § 86.083–24(b)(1)(v) and permitted to be tested for purposes of § 86.083–23(b)(1)(ii) under the provisions of § 86.083–24(b)(1)(vi) shall be driven 6,436 kilometers (4,000 miles) at low altitude. Emission tests shall be conducted at zero kilometers (zero miles) at low altitude and 6,436 kilometers (4,000 miles) under both low- and high-altitude conditions. For the purpose of this subparagraph, "low altitude" means any elevation less than 549 meters (1,800 feet).

(4) *Durability-data vehicles.*—(i) *Gasoline-fueled.* Each gasoline-fueled durability-data vehicle selected by the Administrator or elected by the manufacturer under § 86.083–24(c)(1) shall be driven, with all emission control systems installed and operating, for 50,000 miles or such lesser distance as the Administrator may agree to as meeting the objective of this procedure. Complete exhaust emission tests shall be made on all durability-data vehicles selected by the Administrator or elected by the manufacturer under § 86.083–24(c) at the following mileage points: 0; 5,000; 10,000; 15,000; 20,000; 25,000; 30,000; 35,000; 40,000; 45,000; 50,000. The Administrator may determine under § 86.083–24(f) that no testing is required.

(ii) *Diesel.* Each diesel durability-data vehicle shall be driven with all emission control systems installed and operating, for 50,000 miles or such lesser distance as the Administrator may agree to as meeting the objective of this procedure. Complete emission tests (see §§ 86.106 through 86.145) shall be made at the following mileage points: 0; 5,000; 10,000; 15,000; 20,000; 25,000; 30,000; 35,000; 40,000; 45,000; 50,000.

(5) All tests required by this subpart to be conducted after every 5,000 miles of driving for durability-data vehicles and 4,000 miles for emission-data vehicles must be conducted at any accumulated mileage within 250 miles of each of those test points.

(6)(i) The results of each emission test shall be supplied to the Administrator immediately after the test. The manufacturer shall furnish to the Administrator explanation for voiding any test. The Administrator will determine if voiding the test was appropriate based upon the explanation given by the manufacturer for the voided test. If a manufacturer conducts multiple tests at any test point at which the data are intended to be used in the calculation of the deterioration factor, the number of tests must be the same at each point and may not exceed three valid tests. Tests between test points may be conducted as required by the Administrator. Data from all tests (including voided tests) shall be air posted to the Administrator within 24 hours (or delivered within 3 working days). In addition, all test data shall be compiled and provided to the Administrator in accordance with § 86.083–23. Where the Administrator conducts a test on a durability-data vehicle at a prescribed test point, the results of that test will be used in the calculation of the deterioration factor.

(ii) The results of all emission tests shall be rounded, using the "Rounding Off Method" specified in ASTM E29–67, to the number of places to the right of the decimal point indicated by expressing the applicable emission standards of this subpart to three significant figures.

(7) Whenever the manufacturer proposes to operate and test a vehicle which may be used for emission or durability data, he shall provide the zero-mile test data to the Administrator and make the vehicle available for such testing under § 86.083–29 as the Administrator may require before beginning to accumulate mileage on the vehicle. Failure to comply with this requirement will invalidate all test data submitted for this vehicle.

(8) Once a manufacturer begins to operate an emission-data or durability-data vehicle, as indicated by compliance with paragraph (a)(7) of this section, he shall continue to run the vehicle to 4,000 miles or 50,000 miles, respectively, and the data from the vehicle will be used in the calculations under § 86.083–28. Discontinuation of a vehicle shall be allowed only with the written consent of the Administrator.

(9)(i) The Administrator may elect to operate and test any test vehicle during all or any part of the mileage accumulation and testing procedure. In such cases, the manufacturer shall provide the vehicle(s) to the Administrator with all information necessary to conduct this testing.

(ii) The test procedures in §§ 86.106 through 86.145 will be followed by the Administrator. The Administrator will test the vehicles at each test point. Maintenance may be performed by the manufacturer under such conditions as the Administrator may prescribe.

(iii) The data developed by the Administrator for the engine-system combination shall be combined with any applicable data supplied by the manufacturer on other vehicles of that combination to determine the applicable deterioration factors for the combination. In the case of a significant discrepancy between data developed by the Administrator and that submitted by the manufacturer, the Administrator's data shall be used in the determination of deterioration factors.

(10) Emission testing of any type with respect to any certification vehicle other than that specified in this part is not allowed except as such testing may be specifically authorized by the Administrator.

(11) This section does not apply to testing conducted to meet the requirements of § 86.083–23(b)(2).

(b)(1) Paragraph (b) of this section applies to heavy-duty engines and gasoline-fueled heavy-duty vehicles.

(2)(i) For gasoline-fueled engines, the dynamometer service accumulation schedule will consist of several operating conditions which give the percent loads and the modes as specified in the following charts. The percentage of time in each mode must be held within the limits specified. The maximum observed torque for each mode in the service accumulation cycle must be determined at the rpm at which the mode is being conducted. The percent load for that mode will be determined from the maximum torque at the rpm at which the mode is being conducted.

Mode	Observed torque (percent of maximum observed)	Percentage of time
Idle	Idle	23 (22 to 24).
CT	CT	14 (13 to 15).
PTD	10	6 (5 to 7).
Cruise	25	(30 to 32)
PTA	55	15 (14 to 16).
FL	90	11 (10 to 12).

(ii) The equivalent control parameter for engine loading will be manifold vacuum, manifold pressure, or torque. Usage of one of the three parameters will require approval in advance by the Administrator. The control parameter values that correspond to the appropriate percent loads as specified in the emission test cycle will be initially determined at the zero-hour point or after an appropriate break-in procedure. The control parameter values determined initially will be used for the entire service accumulation schedule. If at any time during the service accumulation, the 90 percent torque value cannot be attained, the engine shall be operated at wide-open throttle.

(iii) The average sped shall be between 1,650 and 1,700 rpm. Subject to the requirements as to average speed, there must be operation at speeds in excess of 3,200 rpm (but not in excess of governed speed for governed engines or rated speed for non-governed engines) for a cumulative maximum of 0.5 percent of the actual cycle time, excluding time in transient conditions. Maximum cycle time shall be 15 minutes. A cycle approved in advance by the Administrator shall be used.

(3)(i) For Diesel engines, the following criteria must be met before service accumulation can begin. Failure to comply with these requirements shall invalidate all test data submitted for an engine.

(A) Each engine shall produce at least 95 percent of the maximum horsepower, corrected to rating conditions, at 95 to 100 percent of the rated speed.

(B) The fuel rate at maximum horsepower shall be within manufacturer's specifications.

(ii) During service accumulation, hours can be credited toward the required service accumulation hours when the following criteria are met. If these criteria cannot be met, engine operation shall be discontinued and the Administrator shall be notified immediately. (Adjustments to the fuel rate can be approved under the provisions of § 86.083–25.)

(A) Each engine shall produce at least 95 percent of the maximum horsepower, at 95 to 100 percent of the rated speed, observed at the zero-hour point. Horsepower values shall be corrected to the rating conditions.

(B) The engines shall be operated at 75 percent of the inlet and exhaust restrictions specified in § 86.079–8 except that the tolerance will be ±3 inches of water and ±0.5 inch of Hg respectively.

(C) During each emission test the inlet and exhaust restrictions shall be as specified in § 86.079–8.

(4) If a break-in procedure is used the procedure must be the same as recommended to the ultimate purchaser. Prior approval by the Administrator is require for use of any break-in procedure. The hours accumulated during the break-in procedure will not be counted as part of the service accumulation.

(5)(i) Emission-data engines: Each emission-data engine shall be operated for 125 hours with all emission control systems installed and operating. An emission may be performed after the engine has been approved by the Administrator to begin service accumulation. Evaporative emission controls need not be connected provided normal conditions are maintained in the engine induction system.

(ii) Gasoline-fueled heavy-duty evaporative emission-data vehicles: The evaporative emission control system components of each evaporative emission-data vehicle shall undergo 100 evaporative emission cycles as defined in Heavy-Duty Vehicle Evaporative Emission Control System Service Accumulation Schedule as specified in Appendix XII to this subpart. A minimum of the last 10 evaporative emission cycles shall be accumulated with the evaporative emission-data vehicle. A modified procedure may be used if approved in advance by the Administrator.

(6) Durability-data engines: Each gasoline-fueled durability-data engine shall be operated, with all emission control systems installed and operating, for 1,500 hours. Each Diesel durability-data engine shall be operated for 1,000 hours. Emission measurement, as prescribed, shall be made at 125-hour intervals beginning 125 hours of operation. A zero-hour emission test may be performed after the engine has been approved by the Administrator to begin service accumulation. Evaporative emission controls need not be connected provided normal operating conditions are maintained in the engine induction system.

(7) All tests required by this subpart to be conducted after 125 hours of operation or at any multiple of 125 hours may be conducted at any accumulated number of hours within 8 hours of 125 hours or the appropriate multiple of 125 hours respectively.

(8)(i) Data from all emission tests (including voided tests) shall be air posted to the Administrator within 72 hours (or delivered within 5 working days). The manufacturer shall furnish to the Administrator an explanation for voiding any test. The Administrator will determine if voiding the test was appropriate based upon the explanation given by the manufacturer for the voided test. If a manufacturer conducts multiple tests at any test point at which the data are intended to be used in the calculation of the deterioration factor, the number of tests must be the same at each point and may not exceed 3 valid tests. Tests between test points may be conducted as required by the Administrator. In addition, all test data shall be compiled and provided to the Administrator in accordance with § 86.083–23. Where the Administrator conducts a test on a durability-data engine at a prescribed test point, the results of that test will be used in the calculation of the deterioration factor.

(ii) The results of all emission tests shall be recorded and reported to the Administrator using two places to the right of the decimal point. These numbers shall be rounded in accordance with the "Rounding Off Method" specified in ASTM E 29–67.

(9) Whenever the manufacturer proposes to operate and test an engine or evaporative emission-data vehicle which may be used for emission or durability data, he shall provide such information concerning components used on the engine or evaporative emission-data vehicle as the Administrator may require and make the engine or evaporative emission-data vehicle available for such testing under § 86.083–29 as the Administrator may require, before beginning to accumulate hours or evaporative emission cycles on the engine or evaporative emission-data vehicle. Failure to comply with this requirement will invalidate all test data later submitted for this engine or vehicle.

(10) Once a manufacturer begins to operate an emission-data or durability-data engine or evaporative emission-data vehicle, as indicated by compliance with paragraph (b)(9) of this section, he shall continue to run any emission-data engine to 125 hours, or any evaporative emission-data vehicle to 100 evaporative emission cycles, or any gasoline-fueled durability-data engine to 1,500 hours, and any diesel durability-data engine to 1,000 hours. The data from the engine will be used in the calculations under § 86.345. The data from the evaporative emission-data vehicle will be used in the calculations under § 86.1243–82. Discontinuation of an engine or evaporative emission-data vehicle, shall be allowed only with the prior written consent of the Administrator.

(11)(i) The Administrator may elect to operate and test any test engine or evaporative emission-data vehicle during all or any part of the service accumulation and testing procedure. In such cases the manufacturer shall

provide the engine(s) or evaporative emission-data vehicle(s) to the Administrator with all information necessary to conduct the testing.

(ii) The test procedures (Subparts D or H of this part for gasoline-fueled engines, Subpart M of this part for gasoline-fueled heavy-duty vehicles, and Subparts D, I, or J of this part of diesel engines) will be followed by the Administrator. The Administrator will test the engines or vehicles, as applicable, at each test point. Maintenance may be performed by the manufacturer under such conditions as the Administrator may prescribe.

(iii) The data developed by the Administrator for the engine-system combination shall be combined with any applicable data supplied by the manufacturer on other engines of that combination to determine the applicable deterioration factors for the combination. In the case of a significant discrepancy between data developed by the Administrator and that submitted by the manufacturer, the Administrator's data shall be used in the determination of deterioration factors.

(12) Emission testing of any type with respect to any certification engine or evaporative emission-data vehicle other than that specified in this subpart is not allowed except as such testing may be specifically authorized by the Administrator.

12. A new § 86.083–27 is proposed and reads as follows:

§ 86.083–27 Special test procedures.

(a) For light-duty vehicles, light-duty trucks and gasoline-fueled heavy-duty vehicles the Administrator may, on the basis of a written application therefore by a manufacturer, prescribe test procedures, other than those set forth in this part, for any motor vehicle which he determines is not susceptible to satisfactory testing by the procedures set forth herein or in Subpart B or M of this part.

(b) For heavy-duty engines:

(1) The Administrator, may on the basis of a written application therefore by a manufacturer, prescribe test procedures, other than those set forth in this subpart, for any motor-vehicle engine which he determines is not susceptible to satisfactory testing by the procedures set forth herein or in Subparts D and I of this part.

(2) If the manufacturer does not submit a written application for use of special test procedures but the Administrator determines that a motor-vehicle engine is not susceptible to satisfactory testing by the procedures set forth herein, the Administrator will reject the applicable portions of the application. The Administrator shall notify the manufacturer in writing and set forth the reasons for such rejection in accordance with the provisions of § 86.083–22(c).

13. A new § 86.083–28 is proposed and reads as follows:

§ 86.083–28 Compliance with emission standards.

(a)(1) Paragraph (a) of this section applies to light-duty vehicles and light-duty trucks.

(2) The applicable exhaust and fuel evaporative emission standards of this subpart apply to the emissions of vehicles for their useful life.

(3) Since it is expected that emission control efficiency will change with mileage accumulation on the vehicle, the emission level of a vehicle which has accumulated 50,000 miles will be used as the basis for determining compliance with the standards.

(4) The procedure for determining compliance of a new motor vehicle with exhaust emission standards is as follows:

(i) Separate emission deterioration factors shall be determined from the exhaust emission results of the durability-data vehicle(s) for each engine-system combination. A separate factor shall be established for exhaust HC, exhaust CO, exhaust NOx, and exhaust particulate (diesel vehicles only) for each engine-system combination. A separate evaporative emission deterioration factor shall be determined for each evaporative emission family-evaporative emission control system combination from the testing conducted by the manufacturer (gasoline-fueled vehicles only).

(A) The applicable results to be used in determining the exhaust emission deterioration factors for each engine-system combination shall be:

(*1*) All valid exhaust emission data from the test required under § 86.083–26(a)(4) except the zero-mile tests. This shall include the official test results, as determined in § 86.083–29 for all tests conducted on all durability-data vehicles of the combination selected under § 86.083–24(c) (including all vehicles elected to be operated by the manufacturer under § 86.083–24(c)(1)(ii)).

(*2*) All exhaust emission data from tests conducted before and after the scheduled maintenance provided in § 86.083–25.

(*3*) All exhaust emission data from tests required by maintenance approved under § 86.083–25, in those cases where the Administrator conditioned his approval for the performance of such maintenance on the inclusion of such data in the deterioration factor calculation.

(B) All applicable exhaust emission results shall be plotted as a function of the mileage on the system, rounded to the nearest mile, and the best fit straight lines, fitted by the method of least squares, shall be drawn through all these data points. The interpolated 4,000- and 50,000-mile points on this line must be within the standards provided in § 86.078–8 or § 86.079–9, as applicable, or the data will not be acceptable for use in calculation of a dterioration factor, unless no applicable data point exceeded the standard. An exhaust emission deterioration factor shall be calculated for each engine system combination as follows:

Factor = Exhaust emissions interpolated to 50,000 miles ÷ exhaust emissions interpolated to 4,000 miles.

These interpolated values shall be carried out to a minimum of four places to the right of the decimal point before dividing one by the other to determine the deterioration factor. The results shall be rounded to three places to the right of the decimal point in accordance with ASTM E 29–67.

(C) An evaporative emissions deterioration factor shall be determined from the testing conducted as described in § 86.083–21(b)(4) (ii), for each evaporative emission family evaporative emission control system combination to indicate the evaporative emission level at 50,000 miles relative to the evaporative emission level at 4,000 miles as follows:

Factor = Evaporative emission level at 50,000 miles minus the evaporative emission level at 4,000 miles.

The factor shall be established to a minimum of two places to the right of the decimal.

(ii)(A) The official exhaust emission test results for each emission-data vehicle at the 4,00-mile test point shall be multiplied by the appropriate deterioration factor: *Provided,* That if a deterioration factor as computed in paragraph (a)(4)(i)(B) of this section is less than one, that deterioration factor shall be one for the purposes of this paragraph.

(B) The official evaporative emission test results for each evaporative emission-data vehicle at the 4,00-mile test point shall be adjusted by addition of the appropriate deterioration factor: *Provided,* That if a deterioration factor as computed in paragraph (a)(4)(i)(C) of this section is less than zero, that deterioration factor shall be zero for the purposes of this paragraph.

(iii) The emissions to compare with the standard shall be the adjusted

emissions of paragraph (a) (4) (ii)(A) and (B) of this section for each emission-data vehicle. Before any emission value is compared with the standard, it shall be rounded, in accordance with ASTM E 29–67, to two significant figures. The rounded emission values may not exceed the standard.

(iv) Every test vehicle of an engine family must comply with the exhaust emission standards, as determined in paragraph (a)(4)(iii) of this section, before any vehicles that family may be certified.

(v) Every test vehicle of an evaporative emission family must comply with the evaporative emission standards, as determined in paragraph (a)(4)(iii) of this section, before any vehicle in that family may be certified.

(b)(1) Paragraph (b) of this section applies to heavy-duty engines.

(2) The exhaust emission standards for gasoline-fueled engines in § 86.083–10 or for Diesel engines in § 86.079–11 apply to the emissions of engines for their useful life.

(3) Since emission control efficiency decreases with the accumulation of hours on the engine, the emission level of a gasoline-fueled engine which has accumulated 1,500 hours of dynamometer operation or a diesel engine which has accumulated 1,000 hours of dynamometer operation will be used as the basis for determining compliance with the standards.

(4) The procedure for determining compliance of a new engine with exhaust emission standards is as follows:

(i) Separate emission deterioration factors shall be determined from the emission results of the durability-data engines for each engine-system combination. Separate factores shall be established for HC, CO, and for the combined emissions of HC and NO_x. For Diesel engines, separate factors shall also be established for the acceleration mode (designated as "A"), the lugging mode (designated as "B") and the peak opacity (designated as "C").

(A) The applicable results to be used in determining the deterioration factors for each combination shall be:

(*1*) All valid emission data from the tests required under § 86.083–26(b). These shall include the official test results, as determined in § 86.083–29, for all tests conducted on all gasoline-fueled durability-data engines of the combination selected under § 86.083–24(c)(2) or on all diesel durability-data engines of the combination selected under § 86.083–24(c)(3) (including all engines elected to be operated by the manufacturer under § 86.083–24(c)(2)(iii) for gasoline-fueled engines or under § 86.083–24(c)(3)(ii) for diesel engines).

(*2*) All emission data from the tests conducted before and after maintenance provided in § 86.083–25(c)(2)(i)(A) for gasoline-fueled engines or in § 86.083–25(c)(2)(i)(B) for diesel engines.

(*3*) All emission data from the tests conducted before and after maintenance provided in § 86.083–25(c)(2)(v)(C) for diesel engines if emission tests were conducted.

(B) All applicable emission results for (1) HC, (2), CO, (3), $HC + NO_x$, (4) acceleration smoke ("A"), (5) lugging smoke ("B"), and (6) peak smoke ("C") shall be plotted as a function of durability hours which shall be consistently rounded to the nearest hour. Emission data shall have two figures to the right of the decimal. The best fit straight lines, fitted by the method of least squares, shall be drawn through these data points. The interpolated 125-hour and 1,500-hour points for gasoline-fueled engines or the 1,000-hour point for Diesel engines on each line, rounded to whole numbers in accordance with ASTM E 29–67, must be within the standards specified in § 86.083–10 for gasoline-fueled engines or in § 86.079–11 for Diesel engines or the data shall not be used in the calculation of a deterioration factor, unless no applicable data points exceed the standards.

(C) The interpolated values shall be used to calculate a deterioration factor as follows:

Factor = Exhaust emissions interpolated to 1,500 hours for gasoline-fueled engines or to 1,000 hours for Diesel engines minus the exhaust emissions interpolated to 125 hours. (Negative deterioration factors shall be considered zero.)

(ii) The appropriate deterioration factor, carried out to two places to the right of the decimal point, shall be added to the exhaust emission test results, carried out to two places to the right of the decimal point, for each emission-data engine.

(iii) The emission values to compare with the standards shall be the adjusted emission values of paragraph (b)(4)(ii) of the section rounded to two significant figures in accordance with ASTM E 29–67 for each emission-data engine.

(iv) Every test engine of engine family must comply with all applicable standards, as determined in paragraph (b)(4)(iii) of this section, before any engine in that family will be certified.

(c)(1) Paragraph (c) of this section applies to gasoline-fueled heavy-duty vehicles.

(2) The applicable fuel evaporative emission standard in § 86.083–10 applies to the emissions of vehicles for their useful life.

(3) Because it is expected that emission control efficiency will change during the useful life of the vehicle, an evaporative emission deterioration factor shall be determined from the testing described in § 86.083–21(b)(4)(iii), for each evaporative emission family-evaporative emission control system combination to indicate the evaporative emission control system deterioration during the useful life of the vehicle (minimum 50,000 miles). The factor shall be established to a minimum of two places to the right of the decimal.

(4) The official evaporative emission results for each evaporative emission-data vehicle at the 100 cycle test point shall be adjusted by the addition of the appropriate deterioration factor: *Provided,* that if the deterioration factor as computed in paragraph (c)(3) of this section is less than zero, that deterioration factor shall be zero for the purposes of this paragraph.

(5) The emission level to compare with the standard shall be the adjusted emission level of paragraph (c)(4) of this section for each emission-data vehicle. Before any emission value is compared with the standard, it shall be rounded, in accordance with ASTME 29–67, to two significant figures. The rounded emission values may not exceed the standard.

(6) Every test vehicle of an evaporative emission family must comply with the evaporative emission standard, as determined in paragraph (c)(5) of this section, before any vehicle in that family may be certified.

14. A new § 86.083–29 is proposed and reads as follows:

§ 86.083–29 Testing by the Administrator.

(a)(1) Paragraph (a) of this section applies to light-duty vehicles and light-duty trucks.

(2) The Administrator may require that any one or more of the test vehicles be submitted to him, at such place or places as he may designate, for the purposes of conducting emissions tests. The Administrator may specify that he will conduct such testing at the manufacturer's facility, in which case instrumentation and equipment specified by the Administrator shall be made available by the manufacturer for test operations. Any testing conducted at a manufacturer's facility pursuant to this paragraph shall be sheduled by the manufacturer as promptly as possible.

(3)(i) Whenever the Administrator conducts a test on a test vehicle, the results of that test shall, unless subsequently invalidated by the Administrator, comprise the official data

for the vehicle at the prescibed test point and the manufacturer's data for that prescribed test point shall not be used in determining compliance with emission standards.

(ii) Whenever the Administrator does not conduct a test on a test vehicle at a test point, the manufacturer's test data will be accepted as the official data for that test point: *Provided,* That if the Administrator makes a determination based on testing under paragraph (a)(2) of this section, that there is a lack of correlation between the manufacturer's test equipment and the test equipment used by the Administrator, no manufacturer's test data will be accepted for purposes of certification until the reasons for the lack of correlation are determined and the validity of the data is established by the manufacturer: *And further provided,* That if the Administrator has reasonable basis to believe that any test data submitted by the manufacturer is not accurate or has been obtained in violation of any provisions of this part, the Administrator may refuse to accept that data as the official data pending retesting or submission or further information. If the manufacturer conducts more than one test on a vehicle, as authorized under § 86.083–26(a)(3)(i)(A), the data from the last test in that series of tests on that vehicle, will constitute the official data:

(iii)(A)(*1*) The Administrator may adjust or cause to be adjusted any adjustable parameter of an emission data vehicle or engine which the Administrator has determined to be subject to adjustment for certification and Selective Enforcement Audit testing in accordance with § 86.083–22(e)(1), to any setting within the physically adjustable range of that parameter, as determined by the Administrator in accordance with § 86.083–22(e)(3)(i), prior to the performance of any tests to determine whether such vehicle or engine conforms to applicable emission standards, including tests performed by the manufacturer under § 86.083–23(c)(1). However, if the idle speed parameter is one which the Administrator has determined to be subject to adjustment, the Administrator shall not adjust it to a setting which causes a higher engine idle speed than would have been possible within the physically adjustable range of the idle speed parameter on the vehicle before it accumulated any mileage, all other parameters being adjusted identically for the purpose of comparison. The Administrator, in making or specifying such adjustments, will consider the effect of the deviation from the manufacturer's recommended setting on emissions performance characteristics as well as the likelihood that similar settings will occur on in-use light-duty vehicles or light-duty trucks. In determining likelihood, the Administrator will consider factors such as, but not limited to, the effect of the adjustment on vehicle performance characteristics and surveillance information from similar in-use vehicles.

(*2*) For those vehicles or engine parameters which the Administrator has not determined to be subject to adjustment during certification and Selective Enforcement Audit testing in accordance with § 86.083–22(e)(1), the emission-data vehicle presented to the Administrator for testing shall be calibrated within the production tolerances applicable to the manufacturer's specifications to be shown on the vehicle label (see § 86.083–35(a)(1)(iii)(D)) as specified in the application for certification. If the Administrator determines that a vehicle is not within such tolerances, the vehicle will be adjusted, at the facility designated by the Administrator, prior to the test and an engineering report shall be submitted to the Administrator describing the corrective action taken. Based on the engineering report, the Administrator will determine if the vehicle will be used as an emission-data vehicle.

(B) If the Administrator determines that the test data developed on an emission-data vehicle under paragraph (a)(3)(i) of this section would cause that vehicle to fail due to excessive 4,000 mile emissions or by application of the appropriate deterioration factor, then the following procedure shall be observed:

(*1*) The manufacturer may request a retest. Before the retest, those vehicle or engine parameters which the Administrator has not determined to be subject to adjustment for certification and Selective Enforcement Audit testing in accordance with § 86.083–22(e)(1) may be readjusted to manufacturer's specifications, if these adjustments were made incorrectly prior to the first test. The Administrator may adjust or cause to be adjusted any parameter which the Administrator has determined to be subject to adjustment to any setting within the physically adjustable range of that parameter, as determined by the Administrator in accordance with § 86.083–22(e)(3)(i). However, if the idle speed parameter is one which the Administrator has determined to be subject to adjustment, the Administrator shall not adjust it to a setting which causes a higher engine idle speed than would have been possible within the physically adjustable range of the idle speed parameter on the vehicle before it accumulated any mileage, all other parameters being adjusted identically for the purpose of comparison. Other maintenance or repairs may be performed in accordance with § 86.083–25. All work on the vehicle shall be done at such location and under such conditions as the Administrator may prescribe.

(2) The vehicle will be retested by the Administrator and the results of this test shall comprise the official data for the emission-data vehicle.

(iv) If sufficient durability data are not available at the time of any emission test conducted under paragraph (a)(2) of this section to enable the Administrator to determine whether an emission-data vehicle would fail, the manufacturer may request a retest in accordance with the provisions of paragraphs (a)(3)(iii)(A) and (B) of this section. If the manufacturer does not promptly make such request, he shall be deemed to have waived the right to a retest. A request for retest must be made before the manufacturer removes the vehicle from the test premises.

(b)(1) Paragraph (b) of this section applies to heavy-duty engines and gasoline-fueled heavy-duty vehicles.

(2) The Administrator may require that any one or more of the test engines or test vehicles be submitted to him, at such place or places as he may designate, for the purpose of conducting emissions tests. The Administrator may specify that he will conduct such testing at the manufacturer's facility, in which case instrumentation and equipment specified by the Administrator shall be made available by the manufacturer for test operations. Any testing conducted at a manufacturer's facility pursuant to this paragraph shall be scheduled by the manufacturer as promptly as possible.

(3)(i) Whenever the Administrator conducts a test on a test engine or test vehicle the results of that test, unless subsequently invalidated by the Administrator, shall comprise the official data for the engine or vehicle at that prescribed test point and the manufacturer's data for that prescribed test point shall not be used in determining compliance with emission standards.

(ii) Whenever the Administrator does not conduct a test on a test engine or test vehicle at a test point, the manufacturer's test data will be accepted as the official data for that test point: *Provided,* That if the Administrator makes a determination based on testing under paragraph (b)(2) of this section, that there is a lack of

correlation between the manufacturer's test equipment and the test equipment used by the Administrator, no manufacturer's test data will be accepted for purposes of certification until the reasons for the lack of correlation are determined and the validity of the data is established by the manufacturer: *And further provided,* That if the Administrator has reasonable basis to believe that any test data submitted by the manufacturer is not accurate or has been obtained in violation of any provision of this part, the Administrator may refuse to accept that data as the official data pending retesting or submission of further information.

(iii)(A) The emission-data engine or evaporative emission-data vehicle presented to the Administrator for testing shall be calibrated with the production tolerances applicable to the manufacturer's specifications to be shown on the engine label (see § 86.083–35(a)(2)(iii) as specified in the application for certification. If the Administrator determines that an engine or evaporative emission-data vehicle is not within such tolerances, the engine or evaporative emission-data vehicle shall be adjusted at the facility designated by the Administrator prior to the test and an engineering report shall be submitted to the Administrator describing the corrective action taken. Based on the engineering report the Administrator will determine if the engine or vehicle shall be used as an emission-data engine or evaporative emission-data vehicle.

(B) If the Administrator determines that the test data developed under paragraph (b)(3)(iii)(A) of the section would cause the emission-data engine to fail due to excessive 125-hour emission values or by the application of the deterioration factor, or would cause the evaporative emission-data vehicle to fail due to excessive 100 evaporative emission cycles emission values or by the application of the appropriate deterioration factor, then the following procedure shall be observed.

(1) The manufacturer may request a retest. Before the retest, the engine or evaporative emission-data vehicle may be readjusted to the manufacturer's specifications if these adjustments were made incorrectly prior to the first test, and other maintenance or repairs may be performed in accordance with § 86.083–25. All work on the engine or evaporative emission-data vehicle shall be done at such location and under such conditions as the Administrator may prescribe.

(2) The engine or evaporative emission-data vehicle will be retested by the Administrator and the results of this test shall comprise the official data for the emission-data engine or evaporative emission-data vehicle.

(iv) If sufficient durability-data are not available at the time of any emission test conducted under paragraph (b)(2) of this section to enable the Administrator to determine whether an emission-data engine or evaporative emission-data vehicle would fail, the manufacturer may request a retest in accordance with the provisions of paragraphs (b)(3)(iii)(B)(1) and (2) of this section. If the manufacturer does not promptly make such request, he shall be deemed to have waived the right to a retest. A request for retest must be made before the manufacturer removes the engine or evaporative emission-data vehicle from the test premises.

15. A new § 86.083–30 is proposed and reads as follows:

§ 86.083–30 Certification.

(a)(1) If, after a review of the test reports and data submitted by the manufacturer, data derived from any inspection carried out under § 86.078–7(c) and any other pertinent data or information, the Administrator determines that a test vehicle(s) (or test engine(s)) meets the requirements of the Act and of this subpart, he will issue a certificate of conformity with respect to such vehicle(s) (or engine(s)) except in cases covered by paragraph (c) of this section.

(i) Each certificate of conformity shall state the altitude(s) at which the vehicle(s) covered by the certificate has demonstrated compliance with the applicable emission standards.

(2) Such certificate will be issued for such period not to exceed one model year as the Administrator may determine and upon such terms as he may deem necessary to assure that any new motor vehicle (or new motor vehicle engine) covered by the certificate will meet the requirements of the Act and of this part. Each such certificate shall contain the following language:

This certificate covers only those new motor vehicles (or new motor vehicle engines) which conform, in all material respects, to the design specifications that applied to those vehicles (or engines) described in the application for certification and which are produced during the—model year production period of the said manufacturer, as defined in 40 CFR 86.078–2.

It is a term of this certificate that the manufacturer shall consent to all inspections described in 40 CFR 86.078–7(c) which concern either the vehicle (or engine) certified, or any production vehicle (or production engine) covered by this certificate, or any production vehicle (or production engine) which when completed will be claimed to be covered by this certificate. Failure to comply with all the requirements of § 86.078–7(c) with respect to any such vehicle (or engine) may lead to revocation or suspension of this cetificate as specified in 40 CFR 86.078–30(c). It is also a term of this certificate that this certificate may be revoked or suspended for the other reasons stated in § 86.078–30 (c) or (d).

(3) One certificate will be issued for each engine family and for each gasoline-fueled heavy-duty vehicle evaporative-emission family and will certify compliance with no more than one set of applicable standards except that for gasoline-fueled light-duty vehicles and light-duty trucks, one such certificate will be issued for each engine family-evaporative emission family combination and will certify compliance with no more than one set of applicable standards.

(4) [Reserved]

(5) The counties identified below have substantially all of their area located above 1,219 meters (4,000 ft.):

Counties Located Substantially Above 1,219 Meters (4,000 Feet) in Elevation

State of Arizona

Apache, Navajo

State of Colorado

Adams, Alamosa, Arapahoe, Archuleta, Boulder, Chaffee, Clear Creek, Conejos, Costilla, Crowley, Custer, Dolores, Delta, Denver, Douglas, Eagle, Elbert, El Paso, Fremont, Garfield, Gilpin, Grand, Gunnison, Hinsdale, Huerfano, Jackson, Jefferson, Lake, La Plata, Larimer, Las Animas, Lincoln, Mesa, Mineral, Moffat, Montezuma, Montrose, Morgan, Ouray, Park, Pitkin, Pueblo, Rio Blanco, Rio Grande, Routt, Saguache, San Juan, San Miguel, Summit, Teller, Washington, Weld.

State of Idaho

Bannock, Bear Lake, Bingham, Blaine, Bonneville, Butte, Camas, Caribou, Cassia, Clark, Custer, Franklin, Fremont, Jefferson, Madison, Minidoka, Oneida, Power, Teton, Valley.

State of Montana

Beaverhead, Deer Lodge, Gallatin, Jefferson, Madison, Meagher, Park, Silver Bow.

State of Nebraska

Banner, Kimball, Sioux.

State of Nevada

Carson City, Douglas, Elko, Esmeralda, Eureka, Humboldt, Lander, Lyon, Mineral, Storey, White Pine.

State of New Mexico

Bernalillo, Catron, Colfax, Curry, DeBaca, Grant, Guadalupe, Harding, Lincoln, Los Alamos, Luna, McKinley, Mora, Rio Arriba, Sandoval, San Juan, San Miguel, Sante Fe, Sierra, Socorro, Taos, Torrance, Union, Valencia.

State of Oregon

Lake.

State of Utah

Beaver, Box Elder, Cache, Carbon, Daggett, Davis, Duchesne, Emery, Grand, Iron, Juab, Kane, Millard, Morgan, Piute, Rich, Salt Lake, San Juan, Sanpete, Sevier, Summit, Tooele, Uintah, Utah, Wasatch, Wayne, Weber.

State of Wyoming

Albany, Carbon, Converse, Fremont, Goshen, Hot Springs, Johnson, Laramie, Lincoln, Natrona, Niobrara, Park, Platte, Sublette, Sweetwater, Teton, Uinta, Weston.

(6) [Reserved]

(7) Certificates issued for light-duty vehicles or light-duty trucks certified with catalytic converters shall be subject to the following term in addition to the term in paragraph (a)(2) of this section: "Catalyst-equipped vehicles, otherwise covered by this certificate, which are driven outside the United States, Canada, and Mexico will be presumed to have been operated on leaded gasoline resulting in deactivation of the catalysts. If these vehicles are imported or offered for importation without retrofit of the catalyst, they will be considered not to be within the coverage of this certificate unless included in a catalyst control program operated by a manufacturer or a United States Government Agency and approved by the Administrator."

(8) Certificates issued for incomplete light-duty trucks shall be subject to the following term in addition to the term in paragraph (a)(2) of this section: "For incomplete light-duty trucks, this certificate covers only those new motor vehicles which when completed by having the primary load-carrying device or container attached, conform to the maximum curb weight and frontal area limitations described in the application for certification as required in 40 CFR 86.079–21(d)."

(9)(i) Certificates issued for incomplete gasoline-fueled heavy-duty vehicles shall be subject to the following term in addition to the term in paragraph (a)(2) of this section:

For incomplete heavy-duty vehicles, this certificate covers only those new motor vehicles which when completed by having the primary load-carrying device or container attached, conforms to the maximum completed gross vehicle weight and maximum completed frontal area limitations described in the application for certification as required in 40 CFR § 86.083–21(d) and are not removed from inclusion in the evaporative emission control family—evaporative emission control system combinations described in the application for certification.

(ii) Certificates issued for heavy-duty engines shall be subject to the following term in addition to the term in paragraph (a)(2) of this section: "For heavy-duty engines, this certificate covers only those new motor vehicle engines installed in heavy-duty vehicles which conform to the minimum gross vehicle weight rating, curb weight, or frontal area limitations for heavy-duty vehicles described in 40 CFR 86.079–2."

(b)(1) The Administrator will determine whether a vehicle (or engine) covered by the application complies with applicable standards by observing the following relationships:

(i) *Light-duty vehicles and light-duty trucks.* (A) The durability-data vehicle(s) selected under § 86.083–24(c)(1)(i) shall represent all vehicles of the same engine-system combination.

(B) The emission-data vehicle(s) selected under § 86.083–24(b)(1)(ii), (b)(1)(iii), and (b)(1)(iv) shall represent all vehicles of the same engine-system combination as applicable to be sold below 4,000 feet.

(C) The emission-data vehicle(s) selected under § 86.083–24(b)(1)(vii)(A) and (b)(1)(vii)(B) shall represent all vehicles of the same evaporative control system within the evaporative family, as applicable, to be sold below 4000 ft.

(D) The emission-data vehicle(s) selected under § 86.083–24(b)(1)(v) shall represent all vehicles of the same engine-system combination to be sold at high altitude.

(E) The emission-data vehicle(s) selected under § 86.083–24(b)(1)(vii)(D) shall represent all vehicles of the same evaporative control system within the evaporative family sold at high altitude.

(ii) *Gasoline-fueled heavy-duty engines.* (A) A test engine selected under § 86.083–24(b)(2)(ii) and (iv) shall represent all engines in the same engine family of the same engine displacement-exhaust emission control system combination.

(B) A test engine selected under § 86.083–24(b)(2)(iii) shall represent all engines in the same engine family of the same engine displacement-exhaust emission control system combination.

(C) A test engine selected under § 86.083–24(c)(2)(i) shall represent all engines of the same engine-system combination.

(iii) *Gasoline-fueled heavy-duty vehicles.* The test vehicle selected under § 86.083–24(b)(3)(ii)(A) and (b)(3)(ii)(B) shall represent all vehicles of the same evaporative-emission control system within the evaporative emission family, as applicable.

(iv) *Diesel heavy-duty engines.* (A) A test engine selected under § 86.083–24(b)(3)(ii) shall represent all engines in the same engine-system combination.

(B) A test engine selected under § 86.083–24(b)(3)(iii) shall represent all engines of that emission control system at the rated fuel delivery of the test engine.

(C) A test engine selected under § 86.083–24(c)(3)(i) shall represent all engines of the same engine-system combination.

(2) The Administrator will proceed as in paragraph (a) of this section with respect to the vehicles (or engines) belonging to an engine family or engine family-evaporative emission family combination (as applicable), all of which comply with all applicable standards.

(3) If, after a review of the test reports and data submitted by the manufacturer, data derived from any additional testing conducted pursuant to § 86.083–29, data or information derived from any inspection carried out under § 86.078–7(c) or any other pertinent data or information, the Administrator determines that one or more test vehicles (or test engines) of the certification test fleet do not meet applicable standards, he will notify the manufacturer in writing, setting forth the basis for his determination. Within 30 days following receipt of the notification, the manufacturer may request a hearing on the Administrator's determination. The request shall be in writing, signed by an authorized representative of the manufacturer and shall include a statement specifying the manufacturer's objections to the Administrator's determination and data in support of such objections. If, after a review of the request and supporting data, the Administrator finds that the request raises a substantial factual issue, he shall provide the manufacturer a hearing in accordance with § 86.078–6 with respect to such issue.

(4) For light-duty vehicles and light-duty trucks the manufacturer may, at his option, proceed with any of the following alternatives with respect to an emission-data vehicle determined not in compliance with all applicable standards for which it was tested:

(i) Request a hearing under § 86.078–6; or

(ii) Remove the vehicle configuration (or evaporative vehicle configuration, as applicable) which failed, from his application;

(A) If the failed vehicle was tested for compliance with exhaust emission standards only: The Administrator may select, in place of the failed vehicle, in accordance with the selection criteria employed in selecting the failed vehicle, a new emission-data vehicle to be tested for exhaust emission compliance only.

(B) If the failed vehicle was tested for compliance with both exhaust and

evaporative emission standards: The Administrator may select, in place of the failed vehicle, in accordance with the selection criteria employed in selecting the failed vehicle, a new emission-data vehicle which will be tested for compliance with both exhaust and evaporative emission standards. If one vehicle cannot be selected in accordance with the selection criteria employed in selecting the failed vehicle, then two vehicles may be selected (i.e., one vehicle to satisfy the exhaust emission vehicle selection criteria and one vehicle to satisfy the evaporative emission vehicle selection criteria). The vehicle selected to satisfy the exhaust emission vehicle selection criteria will be tested for compliance with exhaust emission standards only. The vehicle selected to satisfy the evaporative emission vehicle selection criteria will be tested for compliance with both exhaust and evaporative emissions standards; or

(iii) Remove the vehicle configuration (or evaporative vehicle configuration, as applicable) which failed from his application and add a vehicle configuration(s) (or evaporative vehicle configuration(s), as applicable) not previously listed. The Administrator may require, if applicable, that the failed vehicle be modified to the new engine code (or evaporative emission code, as applicable) and demonstrate by testing that it meets applicable standards for which it was originally tested. In addition, the Administrator may select, in accordance with the vehicle selection criteria given in § 86.083–24(b), a new emission-data vehicle or vehicles. The vehicles selected to satisfy the exhaust emission vehicle selection criteria will be tested for compliance with exhaust emission standards only. The vehicles selected to satisfy the evaporative emission vehicle selection criteria will be tested for compliance with both exhaust and evaporative emission standards; or

(iv) Correct a component or system malfunction and show that with a correctly functioning system or component the failed vehicle meets applicable standards for which it was originally tested. The Administrator may require a new emission-data vehicle, of identical vehicle configuration (or evaporative vehicle configuration as applicable) to the failed vehicle, to be operated and tested for compliance with the applicable standards for which the failed vehicle was originally tested.

(5) For heavy-duty engines and gasoline-fueled heavy-duty vehicles, the manufacturer may, at his option, proceed with any of the following alternatives with respect to any engine family or any gasoline-fueled heavy-duty evaporative emission family represented by a test engine(s) or vehicle(s) determined not in compliance with applicable standards:

(i) Request a hearing under § 86.078–6; or

(ii) Delete from the application for certification the engines represented by the failing test engine. (Engines so deleted may be included in a later request for certification under § 86.083–32.) The Administrator will then select in place of each failing engine an alternate engine chosen in accordance with selection criteria employed in selecting the engine that failed; or

(iii) Modify the test engine and demonstrate by testing that it meets applicable standards. Another engine which is in all material respects the same as the first engine, as modified, shall then be operated and tested in accordance with applicable test procedures.

(6) If the manufacturer does not request a hearing or present the required data under paragraphs (b)(4) or (b)(5) (as applicable) of this section, the Administrator will deny certification.

(c)(1) Notwithstanding the fact that any certification vehicle(s) (or certification engine(s)) may comply with other provisions of this subpart, the Administrator may withhold or deny the issuance of a certificate of conformity (or suspend or revoke any such certificate which has been issued) with respect to any such vehicle(s) (or engine(s)) if:

(i) The manufacturer submits false or incomplete information in his application for certification thereof;

(ii) The manufacturer renders inaccurate any test data which he submits pertaining thereto.

(iii) Any EPA Enforcement Officer is denied access on the terms specified in § 86.078–7(c) to any facility or portion thereof which contains any of the following:

(A) The vehicle (or engine);

(B) Any components used or considered for use in its modification or build up into a certification vehicle (or certification engine);

(C) Any production vehicle (or production engine) which is or will be claimed by the manufacturer to be covered by the certificate;

(D) Any step in the construction of a vehicle (or engine) described in (C) of this subdivision;

(E) Any records, documents, reports, or histories required by this part to be kept concerning any of the above.

(iv) Any EPA Enforcement Officer is denied "reasonable assistance" (as defined in § 86.078–7(c)) in examining any of the items listed in paragraph (c)(1)(iii) of this section.

(2) The sanctions of withholding, denying, revoking, or suspending of a certificate may be imposed for the reasons in paragraphs (c)(1)(i), (ii), (iii), or (iv) of this section only when the infraction is substantial.

(3) In any case in which a manufacturer knowingly submits false or inaccurate information or knowingly renders inaccurate or invalid any test data or commits any other fraudulent acts and such acts contribute substantially to the Administrator's decision to issue a certificate of conformity, the Administrator may deem such certificate void ab initio.

(4) In any case in which certification of a vehicle (or engine) is proposed to be withheld, denied, revoked, or suspended under paragraph (c)(1)(iii), or (c)(1)(iv) of this section, and in which the Administrator has presented to the manufacturer involved reasonable evidence that a violation of § 86.078–7 (c) in fact occurred, the manufacturer, if he wished to contend that, even though the violation occurred, the vehicle (or engine) in question was not involved in the violation to a degree that would warrant withholding denial, revocation, or suspension of certification under either paragraph (c)(1)(iii) or (c)(1)(iv) of this section, shall have the burden of establishing that contention to the satisfaction of the Administrator.

(5) Any revocation or suspension of certification under paragraph (c)(1) of this section shall:

(i) Be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with § 86.078–6 hereof.

(ii) Extend no further than to forbid the introduction into commerce of vehicles (or engines) previously covered by certification which are still in the hands of the manufacturer, except in cases of such fraud or other misconduct as makes certification invalid ab initio.

(6) The manufacturer may request in the form and manner specified in paragraph (b)(3) of this section that any determination made by the Administrator under paragraph (c)(1) of this section to withhold or deny certification be reviewed in a hearing conducted in accordance with § 86.078–6. If the Administrator finds, after a review of the request and supporting data, that the request raises a substantial factual issue he will grant the request with respect to such issue.

(d)(1) *For light-duty vehicles and light-duty trucks.* Notwithstanding the fact that any vehicle configuration or

engine family may be covered by a valid outstanding certificate of conformity, the Administrator may suspend such outstanding certificate of conformity in whole or in part with respect to such vehicle configuration or engine family if:

(i) The manufacturer refuses to comply with the provisions of a test order issued by the Administrator pursuant to § 86.603; or

(ii) The manufacturer refuses to comply with any of the requirements of § 86.603; or

(iii) The manufacturer submits false or incomplete information in any report or information provided pursuant to the requirements of § 86.609; or

(iv) The manufacturer renders inaccurate any test data which he submits pursuant to § 86.609; or

(v) Any EPA Enforcement Officer is denied access to a facility on the terms specified in § 86.606.

(vi) Any EPA Enforcement Officer is denied the opportunity on the terms specified in § 86.606 to

(A) Monitor vehicle selection pursuant to § 86.607,

(B) Select vehicles for testing pursuant to § 86.607, or

(C) Monitor vehicle testing performed to satisfy any of the requirements of this part; or

(vii) Any EPA Enforcement Officer is denied "reasonable assistance" as defined in § 86.606 in examining any of the items listed in that section; or

(viii) The manufacturer refuses to comply with the requirements of §§ 86.604 (a), 86.605, 86.607, 86.608, 86.610, or 86.611.

(2) The sanction of suspending a certificate may not be imposed for the reasons in paragraphs (d)(1)(i), (ii) or (viii) of this section where such refusal is caused by conditions and circumstances outside the control of the manufacturer which renders it impossible to comply with those requirements. Such conditions and circumstances shall include, but are not limited to, any uncontrollable factors which result in the temporary unavailability of equipment and personnel needed to conduct the required tests, such as equipment breakdown or failure or illness of personnel, but shall not include failure of the manufacturer to adequately plan for and provide the equipment and personnel needed to conduct the tests. The manufacturer will bear the burden of establishing the presence of the conditions and circumstances required by this paragraph.

(3) The sanctions of suspending a certificate may be imposed for the reasons in paragraphs (d)(1)(iii), (iv), (v), (vi), (vii) of this section only when the infraction is substantial.

(4) In any case in which a manufacturer knowingly submitted false or inaccurate information or knowingly rendered inaccurate any test data or committed any other fraudulent acts, and such acts contributed substantially to the Administrator's original decision not to suspend or revoke a certificate of conformity in whole or in part, the Administrator may deem such certificate void from the date of such fraudulent act.

(5) In any case in which certification of a vehicle is proposed to be suspended under paragraph (d)(1)(v), (d)(1)(vi), or (d)(1)(vii) of this section, and in which the Administrator has presented to the manufacturer involved reasonable evidence that a violation of § 86.606 in fact occurred, the manufacturer, if he wishes to contend that, even though the violation occurred, the vehicle configuration or engine family in question was not involved in the violation to a degree that would warrant suspension of certification under either paragraph (d)(1)(v), (d)(1)(vi), or (d)(1)(vii) of this section, shall have the burden of establishing that contention to the satisfaction of the Administrator.

(6) Any suspension of certification under paragraph (d)(1) of this section shall:

(i) Be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with § 86.613 hereof and

(ii) Not apply to vehicles no longer in the hands of the manufacturer.

16. A new § 86.083–32 is proposed and reads as follows:

§ 86.083–32 Addition of a vehicle or engine after certification.

(a) If a manufacturer proposes to add to his product line a vehicle (or engine) of the same engine-system combination as vehicles (or engines) previously certified but which was not described in the application for certification when the test vehicle(s) (or test engine(s)) representing other vehicles (or engines) of that combination was certified, he shall notify the Administrator. Such notification shall be in advance of the addition unless the manufacturer elects to follow the procedure described in § 86.083–34. This notification shall include a full description of the vehicle (or engine) to be added.

(b) The Administrator may require the manufacturer to perform such tests on the test vehicle(s) (or test engine(s)) representing the vehicle (or engine) to be added which would have been required if the vehicle (or engine) had been included in the original application for certification.

(c) If, after a review of the test reports and data submitted by the manufacturer, and data derived from any testing conducted under § 86.083–29, the Administrator determines that the test vehicle(s) or test engine(s) meets all applicable standards, the appropriate certificate will be amended accordingly. If the Administrator determines that the test vehicle(s) (or test engine(s)) does not meet applicable standards, he will proceed under § 86.083–30(b).

17. A new § 86.083–33 is proposed and reads as follows:

§ 86.083–33 Changes to a vehicle or engine covered by certification.

(a) The manufacturer shall notify the Administrator of any change in production vehicles (or production engines) in respect to any of the parameters listed in § 86.083–24(a)(3), § 86.083–24(b)(1)(iii), § 86.983–24(b)(2)(iii), § 86.083–24(b)(3)(iii), or § 86.083–24(b)(4)(iii) as applicable, giving a full description of the change. Such notification shall be in advance of the change unless the manufacturer elects to follow the procedure described in § 86.083.34.

(b) Based upon the description of the change, and data derived from such testing as the Administrator may require or conduct, the Administrator will determine whether the vehicle (or engine), as modified, would still be covered by the certificate of conformity then in effect.

(c) If the Administrator determines that the outstanding certificate would cover the modified vehicles (or engines) he will notify the manufacturer in writing. Except as provided in § 86.083–34, the change may not be put into effect prior to the manufacturer's receiving this notification. If the Administrator determines that the modified vehicles (or engines) would not be covered by the certificates then in effect, the modified vehicles (or engines) shall be treated as additions to the product line subject to § 86.083.32.

18. A new § 86.083–34 is proposed and reads as follows:

§ 86.083–34 Alternative procedure for notification of additions and changes.

(a) A manufacturer may, in lieu of notifying the Administrator in advance of an addition of a vehicle (or engine) under § 86.083–32 or a change in a vehicle (or engine) under § 86.083–33, notify him concurrently with the making of the change if the manufacturer believes the addition or change will not require any testing under the appropriate section. Upon notification to

the Administrator, the manufacturer may proceed to put the addition or change into effect.

(b) The manufacturer may continue to produce vehicles (or engines) as described in the notification to the Administrator for a maximum of 30 days unless the Administrator grants an extension in writing. This period may be shortened by a notification in accordance with paragraph (c) of this section.

(c) If the Administrator determines, based upon a description of the addition or change, that no test data will be required, he will notify the manufacturer in writing of the acceptability of the addition or change. If the Administrator determines that test data will be required, he will notify the manufacturer to rescind the change within 5 days of receipt of the notification. The Administrator will then proceed as in § 86.083–32 (b) and (c), or § 86.083–33 (b) and (c) as appropriate.

(d) Election to produce vehicles (or engines) under this section will be deemed to be a consent to recall all vehicles (or engines) which the Administrator determines under § 86.083–32(c) do not meet applicable standards and to cause such noncomformity to be remedied at no expense to the owner.

19. A new § 86.983–35 is proposed and reads as follows:

§ 86.083–35 Labeling.

(a) The manufacturer of any motor vehicle (or motor vehicle engine) subject to the applicable emission standards of this subpart, shall, at the time of manufacture, affix a permanent legible label, of the type and in the manner described below, containing the information hereinafter provided, to all production models of such vehicles (or engines) available for sale to the public and covered by a certificate of conformity under § 86.083–30(a).

(1) *Light-duty vehicles and light-duty trucks.*—(i) *A permanent, legible label shall be affixed in a readily visible position in the engine compartment.*

(ii) The label shall be affixed by the vehicle manufacturer who has been issued the certificate of conformity for such vehicle, in such a manner that it cannot be removed without destroying or defacing the label. The label shall not be affixed to any equipment which is easily detached from such vehicle.

(iii) The label shall contain the following information lettered in the English language in block letters and numerals, which shall be of a color that contrasts with the background of the label:

(A) The label heading: Vehicle Emission Control Information;

(B) Full corporate name and trademark of the manufacturer;

(C) Engine displacement (in cubic inches), engine, family identification and evaporative family identification;

(D) Engine tuneup specifications and adjustments, as recommended by the manufacturer to the ultimate purchaser, including but not limited to idle speed(s), ignition timing, the idle air-fuel mixture setting procedure and value (e.g., idle CO, idle air-fuel ratio, idle speed drop), high idle speed, initial injection timing, and valve lash (as applicable) as well as other parameters deemed necessary by the manufacturer. These specifications should indicate the proper transmission position during tuneup and what accessories (e.g., air-conditioner), if any, should be in operation. If a manufacturer provides tuneup specifications and adjustments for his vehicle for operation at an altitude other than that at which compliance was demonstrated, e.g., adjustments for operation below 1,219 meters for vehicles which demonstrated compliance at elevations above 1,219 meters, the manufacturer may either include these specifications and adjustments on his engine compartment label, or may indicate on the label where these adjustments might be found, i.e., by reference to the owner's manual or shop manual.

(E) An unconditional statement of compliance with the appropriate model year U.S. Environmental Protection Agency regulations which apply to light-duty vehichles or light-duty trucks;

(F) The altitude at which the vehicle has demonstrated compliance with the applicable emission standards as specified by the certificate of conformity issued under § 86.083–30. (An example of an acceptable statement is: "Compliance demonstrated above/below 4,000 feet.")

(2) *Heavy-duty engines.* (i) A permanent legible label shall be affixed to the engine in a position in which it will be readily visible after installation in the vehicle.

(ii) The label shall be attached to an engine part necessary for normal engine operation and not normally requiring replacement during engine life.

(iii) The label shall contain the following information lettered in the English language in block letters and numerals which shall be of a color that contrasts with the background of the label:

(A) The label heading: Engine Exhaust Emission Control Information;

(B) Full corporate name and trademark of manufacturer;

(C) Engine displacement (in cubic inches) and engine family and model designations;

(D) Date of engine manufacture (month and year);

(E) Engine specifications and adjustments as recommended by the manufacturer. These specifications should indicate the proper transmission position during tuneup and what accessories (e.g., air conditioner), if any, should be in operation;

(F) For gasoline-fueled engines the label should include the idle speed, ignition timing, and the idle air-fuel mixture setting procedure and value (e.g., idle CO, idle air-fuel ratio, idle speed drop), and valve lash.

(G) For diesel engines the label should include the advertised hp. at rpm, fuel rate at advertised hp. in mm^3/stroke, valve lash, initial injection timing, and idle speed.

(H) An unconditional statement of compliance with the appropriate model year (e.g., 1979) U.S. Environmental Protection Agency regulations applicable to heavy-duty engines.

(iv) The label may be made up of one or more pieces: *Provided,* That all pieces are permanently attached to the same engine or vehicle part as applicable.

(b) The provisions of this section shall not prevent a manufacturer from also reciting on the label that such vehicle (or engine) conforms to any applicable State emission standards for new motor vehicles (or new motor vehicle engines) or any other information that such manufacturer deems necessary for, or useful to, the proper operation and satisfactory maintenance of the vehicle (or engine).

(c)(1) The manufacturer of any light-duty vehicle or light-duty truck subject to the emission standards of this subpart, shall, in addition and subsequent to setting forth those statements on the label required by the Department of Transportation (DOT) pursuant to 49 CFR 567.4, set forth, on the DOT label or on an additional label located in proximity to the DOT label and affixed as described in 49 CFR 567.4(b), the following information in the English language, lettered in block letters and numerals not less than three thirty-seconds of an inch high, of a color that contrasts with the background of the label:

(i) The heading: "Vehicle Emission Control Information";

(ii) The statement: "This Vehicle Conforms to U.S. EPA Regulations Applicable to 1979 Model Year New Motor Vehicles."

(iii) One of the following statements, as applicable, in letters and numerals not less than six thirty-seconds of an

inch high and of a color that contrasts with the background of the label:

(A) For all vehicles certified as noncatalyst-equipped: "NON-CATALYST;"

(B) For all vehicles certified as catalyst-equipped which are included in a manufacturer's catalyst control program for which approval has been given by the Administrator: "CATALYST-APPROVED FOR IMPORT;"

(C) For all vehicles certified as catalyst-equipped which are not included in a manufacturer's catalyst control program for which prior approval has been given by the Administrator: "CATALYST."

(2) In lieu of selecting either of the labeling options of paragraph (c)(1) of this section, the manufacturer may add the information required by paragraph (c)(1)(iii) of this section to the label required by paragraph (a) of this section. The required information will be set forth in the manner prescribed by paragraph (c)(1)(iii) of this section.

(d) Incomplete light-duty trucks or incomplete heavy-duty vehicles optionally certified as light-duty trucks shall have the following statement printed on the label required in paragraph (a)(1) of this section in lieu of the statement required by paragraph (a)(1)(iii)(E) of this section: "This vehicle conforms to U.S. EPA regulations applicable to 19— Model Year New Motor Vehicles when completed at a maximum curb weight of —— pounds and a maxcimum frontal area of —— square feet."

(e) Incomplete heavy-duty vehicles having an 8,500 pound gross vehicle weight rating or less shall have the following statement printed on the label required in paragraph (a)(2) or (a)(3) of this section in lieu of the statement required by paragraph (a)(2)(iii)(F) or (a)(3)(iii)(F) of this section: "This engine conforms to U.S. EPA regulations applicable to 19— Model Year New Heavy-Duty Engines when installed in a vehicle completed at a curb weight of more than 6,000 pounds or with a frontal area greater than 46 square feet."

(f) Incomplete gasoline-fueled heavy-duty vehicles shall have the following statement printed on the label required in paragraph (a)(2) of this section in lieu of the statement required in paragraph (a)(2)(iii) of this section:

"This vehicle conforms to U.S. EPA regulations applicable to 19—— Model Year New Motor Vehicles when completed at a maximum gross vehicle weight of ——— pounds, a maximum frontal area of ——— square feet, a maximum nominal fuel tank capacity of ——— gallons, and an evaporative emission control system of ——— grams working capacity.

(g) The manufacturer of any incomplete vehicle shall notify the purchaser of such vehicle of any curb weight, frontal area, or gross vehicle weight rating limitations affecting the emissions certificate application to that vehicle. This notification shall be transmitted in a manner consistent with the National Highway Traffic Safety Administration safety notification requirements published in 49 CFR Part 568.

20. A new § 86.083–37 is proposed and reads as follows:

§ 86.083–37 Production vehicles and engines.

(a) Any manufacturer obtaining certification under this part shall supply to the Administrator, upon his request, a reasonable number of production vehicles (or engines) selected by the Administrator which are representative of the engines, emission control systems, fuel systems, and transmissions offered and typical of production models available for sale under the certificate. These vehicles (or engines) shall be supplied for testing at such time and place and for such reasonable periods as the Administrator may require. Heavy-duty engines supplied under this paragraph may be required to be mounted in chassis and appropriately equipped for operation on a chassis dynamometer, and may additionally be required to have completed engine compartments and all available fuel tanks appropriately installed on the vehicle to allow for a proper environment for all evaporative emission control system components during any fuel evaporative emission testing.

(b)(1) Any manufacturer of light-duty vehicles or light-duty trucks, obtaining certification under this part shall notify the Administrator on a quarterly basis, of the number of vehicles domestically produced for sale in the United States and the number of vehicles produced and imported for sale in the United States during the preceding quarter. A manufacturer may elect to provide this information every 60 days instead of quarterly, to combine it with the notification required under § 86.078–36. The notification must be submitted 30 days after the close of the reporting period unless, upon petition by the manufacturer, the Administrator finds good cause to waive this requirement and set an alternative reporting date for this report. The vehicle production information required shall be submitted as follows:

(i) Total production volume expressed in terms of units produce.

(ii) Model type production volume, expressed for each model type in terms of units produced and as a percentage of total production.

(iii) Base level production volume, expressed for each model type in terms of units produced and as a percentage of total production.

(iii) Based level production volume, expressed for each base level in terms of units produced and as a percentage of (A) the total production of its respective model type(s) and, (B) total production.

(iv) Vehicle configuration production volume, expressed for each vehicle configuration in terms of units produced, and as a percentage of the total production of its respective base level. In addition, each vehicle configuration shall be identified by its appropriate engine-system combination.

(2) All light-duty vehicles and light-duty trucks covered by a certificate of conformity under § 86.083–30(a) shall be adjusted by the manufacturer to the ignition or injection timing specification detailed in § 86.083–35(a)(1)(iii)(D).

(c) *Heavy-duty engines and vehicles.* Any heavy-duty engine or vehicle manufacturer obtaining certification under this part shall notify the Administrator, on a quarterly basis, of the number of engines or vehicles of each engine family—evaporative emission family—engine displacement-exhaust emission control system-fuel system combination produced for sale in the United States during the preceding quarter.

(d) The following definitions apply to this section:

(1) "Model type" means a unique combination of car line, basic engine, and transmission class.

(2) "Base level" means a unique combination of basic engine, inertia weight, and transmission class.

(3) "Vehicle configuration" means a unique combination of basic engine, engine code, inertia weight, transmission configuration, and axle ratio within a base level.

21. A new § 86.083–38 is proposed and reads as follows:

§ 86.083–38 Maintenance instructions.

(a) The manufacturer shall furnish or cause to be furnished to the purchaser of each new motor vehicle (or motor vehicle engine) subject to the standards prescribed in §§ 86.082–8, 86.082–9, 86.083–10, or 86.079–11, as applicable, written instructions for the maintenance and use of the vehicle (or engine) by the purchaser as may be reasonable and necessary to assure the proper functioning of emission control systems.

(1) Such instructions shall be provided for those vehicle and engine components listed in Appendix VI to this part (and for any other components) to the extent that maintenance of these components is necessary to assure the proper functioning of emission control systems.

(2) Such instructions shall be in clear, and to the extent practicable, nontechnical language.

(b) The maintenance instructions required by this section shall contain a general description of the documentation which the manufacturer will require from the ultimate purchaser or any subsequent purchaser as evidence of compliance with the instructions.

(c) For gasoline-fueled light-duty vehicles and light-duty trucks.

(1) Such instructions shall specify the performance of all scheduled maintenance performed by the manufacturer under § 86.083–25(a), and shall explain the conditions under which EGR system and catalytic converter maintenance are to be performed (e.g., what type of warning device is being employed and whether the device is activated by component failure or the need for periodic maintenance).

(2) [Reserved]

(3) [Reserved]

(d) For Diesel light-duty vehicles and light-duty trucks.

(1) Such instructions shall specify the performance of all scheduled maintenance performed by the manufacturer under § 86.083–25(a) and shall explain the conditions under which EGR system and catalytic converter maintenance are to be performed (e.g., what type of warning device is being employed and whether the device is activated by component failure or the need for periodic maintenance).

(2) [Reserved]

(e) For gasoline-fueled heavy-duty engines, such instructions shall specify the performance of all scheduled maintenance performed by the manufacturer under § 86.083–25(c)(2). Scheduled maintenance in addition to that performed on the durability-data engine under § 86.083–25(d)(2) may be recommended for reasons such as to offset the effects of operating conditions which differ from the dynamometer durability cycle or to increase the life of the engine beyond 1,500 hours (or the equivalent). The instructions may schedule maintenance on a calendar time basis and/or mileage basis in addition to the engine service time basis that was followed by the manufacturer under § 86.083–25(c)(2).

(f) For Diesel heavy-duty engines, such instructions shall specify the performance of all scheduled maintenance performed by the manufacturer under § 86.083–25(d)(2). Scheduled maintenance in addition to that performed on the durability-data engine under § 86.083–25(d)(2) may be recommended for reasons such as to offset the effects of operating conditions which differ from the dynamometer durability cycle or to increase the life of the engine beyond 1,000 hours (or the equivalent). The instructions may schedule maintenance on a calendar time basis, mileage basis, engine service time basis, or combinations of each.

(Secs. 202, 206, 301 of the Clean Air Act, as amended (42 U.S.C. §§ 7521, 7525, 7601))

22. A new Subpart M is proposed to read as follows:

Subpart M—Evaporative Emission Test Procedures for New Gasoline-Fueled Heavy-Duty Vehicles

Sec,

86.1201–83 Applicability.
86.1202–83 Definitions.
86.1203–83 Abbreviations.
86.1204 [Reserved]
86.1205–83 Introduction; structure of subpart.
86.1206–83 Equipment required; overview.
86.1207–83 Sampling and analytical system; evaporative emissions.
86.1208 [Reserved]
86.1209 [Reserved]
86.1210 [Reserved]
86.1211 [Reserved]
86.1212 [Reserved]
86.1213–83 Fuel specifications.
86.1214–83 Analytical gases.
86.1215–83 EPA heavy-duty vehicle (HDV) urban dynamometer driving schedule.
86.1216–83 Calibrations; frequency and overview.
86.1217–83 Evaporative emission enclosure calibrations.
86.1218–83 Dynamometer calibration.
86.1219 [Reserved]
86.1220 [Reserved]
86.1221–83 Hydrocarbon analyzer calibration.
86.1222 [Reserved]
86.1223 [Reserved]
86.1224 [Reserved]
86.1225 [Reserved]
86.1226–83 Calibration of other equipment.
86.1227–83 Test procedures; overview.
86.1228–83 Transmissions.
86.1229–83 Dynamometer load determination.
86.1230–83 Test sequence; general requirements.
86.1231–83 Vehicle preparation.
86.1232–83 Vehicle preconditioning.
86.1233–83 Diurnal breathing loss test.
86.1234–83 Running loss test.
86.1235–83 Dynamometer procedure.
86.1236–83 Engine starting and restarting.
86.1237–83 Dynamometer runs.
86.1238–83 Hot soak test.
86.1239 [Reserved]
86.1240 [Reserved]
86.1241 [Reserved]
86.1242–83 Records required.
86.1243–83 Calculations; evaporative emissions.
86.1244 [Reserved]
86.1245 [Reserved]

Authority: Secs. 202, 206, 301, Clean Air Act as amended (42 U.S.C. 7521, 7525, 7601)

Subpart M—Evaporative Emission Test Procedures for New Gasoline-Fueled Heavy-Duty Vehicles

§ 86.1201–83 Applicability.

(a) The provisions of this subpart are applicable to new gasoline-fueled heavy-duty vehicles.

(b) Provisions of this subpart apply to tests performed by both the Administrator and motor vehicle manufacturers.

(c) Test procedures and equipment other than those described in this subpart may be used by the vehicle manufacturer if shown to yield results which correlate with results yielded by those described in this subpart (with the reference driving schedule described in § 86.1215–83(a)) and if approved in advance by the Administrator.

§ 86.1202–83 Definitions.

Applicable definitions in sections (§§) 86.077–2, 86.078–2, 86.079–2, 86.080–2, 86.081–2 and 86.083–2 apply to this subpart.

§ 86.1203–83 Abbreviations.

The abbreviations in § 86.079–3 apply to this subpart.

§ 86.1204 [Reserved]

§ 86.1205–83 Introduction; structure of subpart.

(a) This subpart describes the equipment required and the procedures to follow in order to determine evaporative emission levels from gasoline-fueled heavy-duty vehicles.

(b) Three topics are addressed in this subpart. Sections 86.1206–83 through 86.1215–83 set forth specifications and equipment requirements; §§ 86.1216–83 through 86.1226–83 discuss calibration methods and frequency; test procedures and data requirements are listed (in approximate order of performance) in §§ 86.1227–83 through 86.1245–83.

§ 86.1206–83 Equipment required; overview.

This subpart specifies procedures for testing of heavy-duty vehicles. Equipment required and specifications are as follows:

(a) *Evaporative emissions tests.* § 86.1207–83 specifies the necessary equipment.

(b) *Fuel, analytical gas, and driving schedule specifications.* Fuel specifications for emission testing and for service accumulation are specified in

§ 86.1213–83. Analytical gases are specified in § 86.1214–83. Both vehicle preconditioning for the diurnal loss test and vehicle operation prior to the hot soak loss test include operation on a chassis dynamometer. The driving cycle (EPA heavy-duty vehicle urban dynamometer driving schedule) is specified in § 86.1215–83.

§ 86.1207–83 Sampling and analytical system; evaporative emissions.

The following is a description of the components which will be used in evaporative emissions sampling systems for testing under this subpart.

(a) *Evaporative emission measurement enclosure.* The enclosure shall be readily sealable, rectangular in shape, with space for personnel access to all sides of the vehicle. When sealed, the enclosure shall be gas tight in accordance with § 86.1217–83. Interior surfaces must be impermeable to hydrocarbons. At least one surface shall be constructed of flexible, impermeable material to allow for minor volume changes which result from temperature changes. Wall design should promote maximum dissipation of heat, and no interior surface temperatures shall be less than 68° F (20° C).

(b) *Evaporative emission hydrocarbon analyzer.* A hydrocarbon analyzer utilizing the hydrogen flame ionization principle (FID) shall be used to monitor the atmosphere within the enclosure. Instrument bypass flow may be returned to the enclosure. The FID shall have a response time to 90 percent of final reading of less than 1.5 seconds, and be capable of meeting performance requirements expressed as a function of C_{std}, where C_{std} is the specific enclosure hydrocarbon level, in ppm, corresponding to the evaporative emission standard.

(1) Stability of the analyzer shall be better than 0.01 C_{std} ppm at zero and span over a 15-minute period on all ranges used.

(2) Repeatability of the analyzer, expressed as one standard deviation, shall be better than 0.005 C_{std} ppm on all ranges used.

(c) *Evaporative emission hydrocarbon data recording system.* The electrical output of the FID shall be recorded at least at the initiation and termination of each diurnal and hot soak. The recording may be by means of a strip chart potentiometric recorder, by use of an online computer system, or by other suitable means. In any case, the recording system must have operational characteristics (signal to noise ratio, speed of response, etc.) equivalent to or better than those of the signal source being recorded, and must provide a permanent record of results. The record shall show a positive indication of the initiation and completion of each soak.

(d) *Tank fuel heating system.* The tank fuel heating system shall consist of a heat source and a temperature controller. A typical heat source is a 2000 W heating pad. Other sources may be used as required by circumstances. The temperature controller may be manual, such as a variable voltage transformer, or may be automated. The heating system must not cause hot spots on the tank wetted surface which could cause local overheating of the fuel. Heat must not be applied to the vapor in the tank above the liquid fuel. The temperature controller must be capable of controlling the fuel tank temperature during the diurnal soak to within ±3°F (1.7°C) of the following equation:

$$F = T_o + 0.4t$$

or for SI units:

$$C = T_o + (2/9)t$$

Where:

F = Temperature in °F
C = Temperature in °Ct
t = Time since start of test in minutes
T_o = Initial temperature

(e) *Temperature recording system.* Strip chart recorder(s) or an automatic data processor shall be used to record enclosure ambient and vehicle fuel tank temperature at least once every minute. The temperature recorder or data processor shall have a time accuracy of ±15s, a time precision of ±15s and be capable of resolving temperature to ±0.75°F (0.42°C). The temperature recording system (recorder and sensor) shall have an accuracy of ±3°F (1.7°C). Two ambient temperature sensors, connected to provide one average output, shall be located in the enclosure. These sensors shall be located at the approximate vertical centerline of each side wall extending 4 inches (nominally) into the enclosure at a height of 3±0.5 ft (0.9+0.2 m). The vehicle fuel tank temperature sensor shall be located in the fuel tank so as to measure the temperature of the prescribed test fuel at the approximate mid-volume of the fuel. Manufacturers shall arrange that vehicles furnished for testing at Federal certification facilities be equipped with iron-constantan Type J thermocouples for measurement of fuel tank temperature.

(f) *Purge blower.* One or more portable or fixed blowers shall be used to purge the enclosure. The blowers shall have sufficient flow capacity to reduce the enclosure hydrocarbon concentration from the test level to the ambient level between tests. Actual flow capacity will depend upon the time available between tests.

(g) *Mixing blower.* One or more blowers or fans with a total capacity of 250 to 750 cfm per 1000 ft^3 of enclosure volume shall be used to mix the contents of the enclosure during evaporative emission testing. The mixing blower(s) shall be arranged such that a uniform concentration is maintained. No portion of the air stream shall be directed towards the vehicle.

§§ 86.1208–86.1212 [Reserved]

§ 86.1213–83 Fuel specifications.

(a) Gasoline having the following specifications will be used in emissions testing.

Item	ASTM	Leaded	Unleaded
Octane, research, minimum	D2699	98	93
Sensitivity, minimum		7.5	7.5
Lead (organic), grams/U.S. gallon		[1]1.4	0.00–0.05
Distillation range:			
IBP, degrees Fahrenheit	D86	75–95	75–95
10 pct, point, degrees Fahrenheit	D86	120–135	120–135
50 pct, point, degrees Fahrenheit	D86	200–230	200–230
90 pct, point, degrees Fahrenheit	D86	300–325	300–325
EP, degrees Fahrenheit (maximum)	D86	415	415
Sulphur, weight percent, maximum	D1266	0.10	0.10
Phosphorus, grams/U.S. gallon, maximum [1]		0.01	0.005
RVP, pounds per square inch	D323	8.7–9.2	8.7–9.2
Hydrocarbon composition:			
Olefins, percent, maximum	D1319	10	10
Aeromatics, percent, maximum	D1319	35	35
Saturates	D1319	([2])	([2])

[1] Minimum.
[2] Remainder.

(b) Gasoline representative of commercial gasoline which will be generally available through retail outlets shall be used in service accumulation. For leaded gasoline the minimum lead

content shall be 1.4 grams per U.S. gallon, except that where the Administrator determines that vehicles represented by a test vehicle will be operated using gasoline of different lead content than that prescribed in this paragraph, he may consent in writing to use a gasoline with a different lead content. The octane rating of the gasoline used shall be no higher than 1.0 research octane number above the minimum recommended by the manufacturer and have a minimum sensitivity of 7.5 octane numbers, where sensitivity is defined as the research octane number minus the motor octane number. The Reid vapor pressure of the gasoline used shall be characteristic of the motor fuel used during the season in which the service accumulation takes place.

(c) The specification range of the gasoline to be used under paragraph (b) of this section shall be reported.

§ 86.1214-83 Analytical gases.

(a) Analyzer gases.

(1) Gases for the hydrocarbon analyzer shall be single blends of propane using air as the diluent.

(2) Fuel for the evaporative emission enclosure FID shall be a blend of 40±2% hydrogen with the balance being helium. The mixture shall contain less than 1 ppm equivalent carbon response. 98 to 100 percent hydrogen fuel may be used with advance approval by the Administrator.

(3) The allowable zero gas (air or nitrogen) impurity concentrations shall not exceed 1 ppm equivalent carbon response, 1 ppm carbon monoxide, 0.04 percent (400 ppm) carbon dioxide and 0.1 ppm nitric oxide.

(4) "Zero grade air" includes aritificial "air" consisting of a blend of nitrogen and oxygen with oxygen concentrations between 18 and 21 mole percent.

(5) The use of proportioning and precision blending devices to obtain the required analyzer gas concentrations is allowable provided their use has been approved in advance by the Administrator.

(b) Calibration gases shall be traceable to within ±1 percent of NBS gas standards.

(c) Span gases shall be accurate to within ±2 percent of true concentration, where true concentration refers to NBS gas standards.

§ 86.1215-83 EPA heavy-duty vehicle (HDV) urban dynamometer driving schedule.

(a) The EPA dynamometer driving schedule for heavy-duty vehicles is a 1060 second transient speed versus time cycle which is designed to simulate gasoline-fueled HDV operation in urban areas. A second by second listing of this schedule is given in Appendix I(d) of this part. 33% of the cycle is idle operation, and the average vehicle speed is 18.9 mph (30.4 km/hr).

(b) The speed tolerance at any given time on the transient speed vs. time driving schedule is defined by upper and lower limits. The upper limit is 4 mph (6.4 km/hr) higher than the highest point on the trace within 1 second of the given time. The lower limit is 4 mph (6.4 km/hr) lower than the lowest point on the trace within 1 second of the given time. Speed variations greater than the tolerances (such as may occur during gear changes) are acceptable provided they occur for less than 2 seconds on any occasion. Speeds lower than those prescribed are acceptable provided the vehicle is operated at maximum available power during such occurrences.

(c) The Administrator will use this driving schedule when conducting evaporative emission tests.

§ 86.1216-83 Calibrations; frequency and overview.

(a) Calibrations shall be performed as specified in §§ 86.1217-83 through 86.1226-83.

(b) At least yearly or after any maintenance which could alter background emission levels, enclosure background emission measurements shall be performed.

(c) At least monthly or after any maintenance which could alter calibration, the following calibrations and checks shall be performed:

(1) Calibrate the hydrocarbon analyzer (see § 86.1221-83).

(2) Calibrate the dynamometer. If the dynamometer receives a weekly performance check (and remains within calibration) the monthly calibration need not be performed (see § 86.1218-83).

(3) Perform a hydrocarbon retention check and calibration on the evaporative emission enclosure (see § 86.1217-83).

§ 86.1217-83 Evaporative emission enclosure calibrations.

The calibration of the evaporative emission enclosure consists of three parts: Initial and periodic determination of enclosure background emissions; initial determination of enclosure internal volume; and periodic hydrcarbon retention check and calibration.

(a) *Initial and periodic determination of enclosure background emissions.* Prior to its introduction into service, annually therafter, and after any repair which can affect the enclosure background emissions, the enclosure shall be checked to determine that it does not contain materials which will themselves emit hydrocarbons. Proceed as follows:

(1) Zero and span (calibrate if required) the hydrocarbon analyzer.

(2) Purge the enclosure until a stable background hydrocarbon reading is obtained.

(3) Turn on the mixing blower (if not already on).

(4) Seal enclosure and measure background hydrocarbon concentration, enclosure termperature, and barometric pressure. These are the initial readings C_{HCi}, T_i, and P_{Bi} for the enclosure background determination.

(5) Allow the enclosure to stand undisturbed without sampling for four hours.

(6) Measure the hydrocarbon concentration on the same FID. This is the final concentration, C_{HCf}. Also measure final temperature and barometric pressure.

(7) Calculate the mass change of hydrocarbons in the enclosure according to the equations in paragraph (d) of this section. The enclosure background emissions shall not be greater than 0.4g for the 4 hours.

(b) *Initial determination of enclosure internal volume.* Prior to its introduction into service the enclosure internal volume shall be determined by the following procedure.

(1) Carefully measure the internal length, width and height of the enclosure, accounting for irregularities (such as braces, cooling system components, etc.) and calculate the internal volume.

(2) Perform an enclosure calibration check according to subparagraphs (1) through (7) of paragraph (c) of this section.

(3) If the calculated mass does not agree within ±2 percent of the injected propane mass, then corrective action is required.

(c) *Hydrocarbon retention check and calibration.* The hydrocarbon retention check provides a check upon the calculated volume and also measures the leak rate. Prior to its introduction into service and at least monthly thereafter the enclosure leak rate shall be determined as follows:

(1) Zero and span (calibrate if required) the hydrocarbon analyzer.

(2) Purge the enclosure until a stable background hydrocarbon reading is obtained.

(3) Turn on the mixing bower(s) (if not already on).

(4) Seal enclosure and measure background hydrocarbon concentration,

temperature and barometric pressure. These are the initial readings C_{HCi}, T_i and P_{Bi} for the enclosure calibration.

(5) Inject into the enclosure a known quantity of pure propane. (4g is a convenient quantity.) The propane may be measured by volume flow or by mass measurement. The method used to measure the propane shall have an accuracy and precision of ±0.5 percent of the measured value.

(6) After a minimum of 5 minutes of mixing, analyze the enclosure atmosphere for hydrocarbon content; also record temperature and pressure. These measurements are the final readings for the enclosure calibration as well as the initial readings for the retention check.

(7) To verify the enclosure calibration calculate the mass of propane using the measurements taken in steps (4) and (6) using the equations in paragraph (d) of this section. This quantity must be within ±2 percent of that measured in step (5) above.

(8) Allow the enclosure to remain sealed for a minimum of 4 hours without sampling and with the mixing blower(s) operating. After 4 hours analyze the enclosure atmosphere for hydrocarbon content; record temperature and barometric pressure. These are the final readings for the hydrocarbon retention check.

(9) Calculate, the hydrocarbon mass using the equations in paragraph (d) and the readings taken in (8). It may not differ by more than ±4 percent of the value in step (6).

(d) *Calculations.* The calculation of net hydrocarbon mass change is used to determine enclosure background and leak rate. It is also used to check the enclosure volume measurement. The mass change is calculated from the initial and final readings of hydrocarbon concentration, termperature and pressure according to the following equation:

$$M_{HC} = kV \times 10^{-4} \frac{C_{HCf} P_{Bf}}{T_f} - \frac{C_{HCi} P_{Bi}}{T_i}$$

Where:

M_{HC} = Hydrocarbon mass change, g.
C_{HC} = Hydrocarbon concentration as ppm carbon.
V = Enclosure volume, ft^3 (m^3), as measured in paragraph (b)(1) of this section.
P_B = Barometric pressure, in. Hg (kPa).
T = Enclosure ambient temperature, R(K).
k = 3.05, for SI units k = 17.60.
i = Indicates initial reading.
f = Indicates final reading.

Note.—Hydrocarbon concentration is stated in ppm carbon, that is, ppm propane × 3. Expressions in parentheses are for SI units.

§ 86.1218-83 Dynamometer calibration.

(a) The dynamometer shall be calibrated at least once each month or performance verified at least once each week and then calibrated as required. The calibration shall consist of the manufacturer's recommended calibration procedure plus a determination of the dynamometer frictional power absorption. If the dynamometer is to be used for driving only the reference (transient) schedule, the frictional power absorption needs to be determined only at 50.0 mph (80.5 km/hr). If the dynamometer is to be used for driving the steady-state cycle, the frictional power absorption needs to be determined through the range of 15 to 50 mph. One method for determining dynamometer frictional power absorption at 50.0 mph (80.5 km/hr) is described below. The same general method can be use at other speeds. Other methods may be used if shown to yield equivalent results. The measured absorbed road power includes the dynamometer friction as well as the power absorbed by the power absorption unit. The dynamometer is driven above the test speed range. The device used to drive the dynamometer is then disengaged from the dynamometer and the roll(s) is (are) allowed to coastdown. The kinetic energy of the system is dissipated by the dynamometer. This method neglects the variations in roll bearing friction due to the drive axle weight of the vehicle. In the case of dynamometers with paired rolls, the inertia and power absorption of the free (rear) roll may be neglected if its inertia is less than 3.0% of the total equivalent inertia required for vehicle testing.

(1) Devise a method to determine the speed of the roll(s) to be measured for power absorption. A fifth wheel, revolution pickup, or other suitable means may be used.

(2) Place a vehicle on the dynamometer or devise another method of driving the dynamometer.

(3) If the dynamometer is capable of simulating more than a single inertia mass, engage the inertial flywheel or other inertial simulation system for the most common vehicle mass category for which the dynamometer is used. In addition, other vehicle mass categories may be calibrated, if desired.

(4) Drive the dynamometer up to 50 mph (80.5 km/hr).

(5) Record indicated road power.

(6) Drive the dynamometer up to 60.0 mph (96.9 km/hr).

(7) Disengage the device used to drive the dynamometer.

(8) Record the time for the dynamometer roll(s) to coastdown from 55.0 mph (88.5 km/hr) to 45.0 mph (72.4 km/hr).

(9) Adjust the power absorption unit to a different level.

(10) Repeat steps (4) to (8) above sufficient times to cover the range of road power used.

(11) Calculate absorbed road power (HP_d). (See paragraph (c) of this section.)

(12) Plot indicated road load power at 50 mph (80.5 km/hr) versus road load power at 50 mph (80.5 km/hr).

(b) The performance check consists of conducting a dynamometer coastdown and comparing the coastdown time to that recorded during the last calibration. If the coastdown times differ by more than 1 second or by 5 percent of the time recorded during the last calibration, which ever is greater, a new calibration is required.

(c) Calculations. The road load power actually absorbed by each roll assembly (or roll-inertia weight assembly) of the dynamometer is calculated from the following equation:

$$HP_d = (½)(W/32.2)(V_1^2 - V_2^2)/55t$$

Where:

HP_d = Power, horsepower (kilowatts)
W = Equivalent inertia, lb (kg)
V_1 = Initial velocity, ft/s (m/s) (55 mph = 88.5 km/h = 80.67 ft/s = 24.58 m/s)
V_2 = Final velocity, ft/s (m/s) (45 mph = 72.4 km/h = 66 ft/s = 20.11 m/s)
t = Elapsed time for rolls to coast from 55 mph to 45 mph (88.5 to 72.4 km/hr).

(Expressions in parenthesis are for SI units). When the coastdown is from 55 to 45 mph (88.5 to 72.4 km/hr) the above equation reduces to:

$$HP_d = 0.06073\ (W/t)$$

For SI units:

$$HP_d = 0.09984\ (W/t)$$

The total road load power actually absorbed by the dynamometer is the sum of the absorbed road load power of each roll assembly.

§§ 86.1219-86.1220 [Reserved]

§ 86.1221-83 Hydrocarbon analyzer calibration.

The FID hydrocarbon analyzer shall receive the following initial and periodic calibration.

(a) Initial and periodic optimization of detector response. Prior to its introduction into service and at least annually thereafter the FID hydrocarbon analyzer shall be adjusted for optimum hydrocarbon response. Alternate methods yielding equivalent results to the procedure listed below may be used.

(1) Follow the manufacturer's instructions for instrument startup and basic operating adjustment using the appropriate fuel and zero-grade air.

(2) Optimize on the most common operating range. Introduce into the analyzer, a propane in air mixture with a propane concentration equal to approximately 90 percent of the most common operating range.

(3) Select an operating fuel flow rate that will give near maximum response and least variation in response with minor fuel flow variations.

(4) To determine the optimum air flow, use the fuel flow setting determined above and vary air flow.

(5) After the optimum flow rates have been determined, they are recorded for future reference.

(b) Initial and periodic calibration. Prior to its introduction into service and monthly thereafter the FID hydrocarbon analyzer shall be calibrated on all normally used instrument ranges. Use the same flow rate as when analyzing samples.

(1) Adjust analyzer to optimize performance.

(2) Zero the hydrocarbon analyzer with zero-grade air.

(3) Calibrate on each normally used operating range with propane-in-air calibration gases having nominal concentrations of 15, 30, 45, 60, 75, and 90 percent of that range. For each range calibrated, if the deviation from a least-squares best-fit straight line is 2 percent or less of the value at each data point, concentration values may be calculated by use of a single calibration factor for that range. If the deviation exceeds 2 percent at any point, the best-fit non-linear equation which represents the data to within 2 percent of each test point shall be used to determine concentration.

§ 86.1222–86.1225 [Reserved]

§ 86.1226–83 Calibration of other equipment.

Other test equipment used for testing shall be calibrated as often as required by the manufacturer or as necessary according to good practice.

§ 86.1227–83 Test procedures; overview.

(a) The overall test consists of prescribed sequences of fueling, parking, and operating conditions. Vehicles are tested only for evaporative emissions.

(b) The evaporative emission test (gasoline-fueled vehicles only) is designed to determine hydrocarbon evaporative emissions as a consequence of diurnal temperature fluctuation, urban driving and hot soaks during engine-off periods. It is associated with a series of events representative of heavy-duty vehicle operation, which result in hydrocarbon vapor losses. The test procedure is designed to measure:

(1) Diurnal breathing losses resulting from daily temperature changes, measured by the enclosure technique;

(2) Running losses from suspected sources (if indicated by engineering analysis or vehicle inspection) resulting from a simulated trip on a chassis dynamometer, measured by carbon traps; and

(3) Hot soak losses which result when the vehicle is parked and the hot engine is turned off, measured by the enclosure technique.

§ 86.1228–83 Transmissions.

(a) All test conditions, except as noted, shall be run in a manner representative of in-use operation, and where appropriate, according to the manufacturer's recommendation to the ultimate purchaser.

(b) Except for the first idle mode, idle modes less than one minute in length shall be run with automatic transmissions in "Drive" and the wheels braked; manual transmissions shall be in gear with the clutch disengaged, except first idle. The first idle mode and idle modes longer than one minute in length shall be run with automatic transmissions in "Neutral", and manual transmissions shall be in "Neutral" with the clutch engaged (clutch may be disengaged for engine start-up).

(c) The vehicle shall be driven with minimum accelerator pedal movement to maintain the desired operation.

(d) Accelerations shall be driven smoothly according to the manufacturer's recommendation to the ultimate purchaser. For manual transmissions, the operator shall accomplish each shift with minimum time. If the vehicle cannot accelerate at the specified rate, the vehicle shall be operated at maximum available power until the vehicle speed reaches the value prescribed for that time in the driving schedule.

(e) For those deceleration modes which decelerate to zero, manual transmission clutches shall be depressed when the speed drops below 15 mph (24.1 km/hr), when engine roughness is evident, or when engine stalling is imminent.

§ 86.1229–83 Dynamometer load determination.

(a) Flywheels, electrical or other means of simulating inertia shall be used. The value of equivalent inertia weight shall be within 250 pounds of the loaded vehicle weight (LVW). Loaded vehicle weight is defined as follows:

(1) For test vehicles which have an actual weight less than 0.7×(GVWR),

LVW=0.7×(Gross Vehicle Weight Rating).

(2) For test vehicles which have an actual weight (as tested) greater than 0.7×(GVWR),

LVW=Actual Weight of Test Vehicle.

(b) Power absorption unit adjustment.

(1) The power absorption unit shall be adjusted to reproduce road load power at 50 mph true speed. The indicated road load power setting shall take into account the dynamometer friction. The relationship between road load (absorbed) power and indicated road load power for a particular dynamometer shall be determined by the procedure outlined in § 86.1218–83 or other suitable means.

(2) The road load power used shall be determined from the following equation:

$$RLP=0.67\,(H-0.75)W+0.00125[LVW-(N\times DW)]$$

where

RLP=Road Load Power at 50 mph (horsepower).
H=Vehicle overall maximum height (feet).
W=Vehicle overall maximum width (feet).
LVW=Loaded vehicle weight (pounds).
DW=Vehicle weight supported by the dynamometer (pounds).
N=Number of dynamometer rolls supporting a tire.

or, for vehicles which the manufacturer could have certified by the light-duty truck (LDT) test procedure as allowed in the optional certification provision (§ 86.074–1(b)), the manufacturer may determine the road load power by an alternate procedure if approved in advance by the Administrator. For vehicles which the manufacturer does choose to certify by the light-duty truck test procedure, the evaporative emission test procedure (and standard) will be that specified by the light-duty truck regulations.

§ 86.1230–83 Test sequence; general requirements.

(a) The test sequence shown in Figure M83–1 shows the steps encountered as the test vehicle undergoes the test procedure.

(b) Ambient temperature levels encountered by the test vehicle throughout the test sequence shall not be less than 68°F (20°C) nor more than 86°F (30°C). The vehicle shall be approximately level during all phases of the test sequence to prevent abnormal fuel distribution.

BILLING CODE 6560-01-M

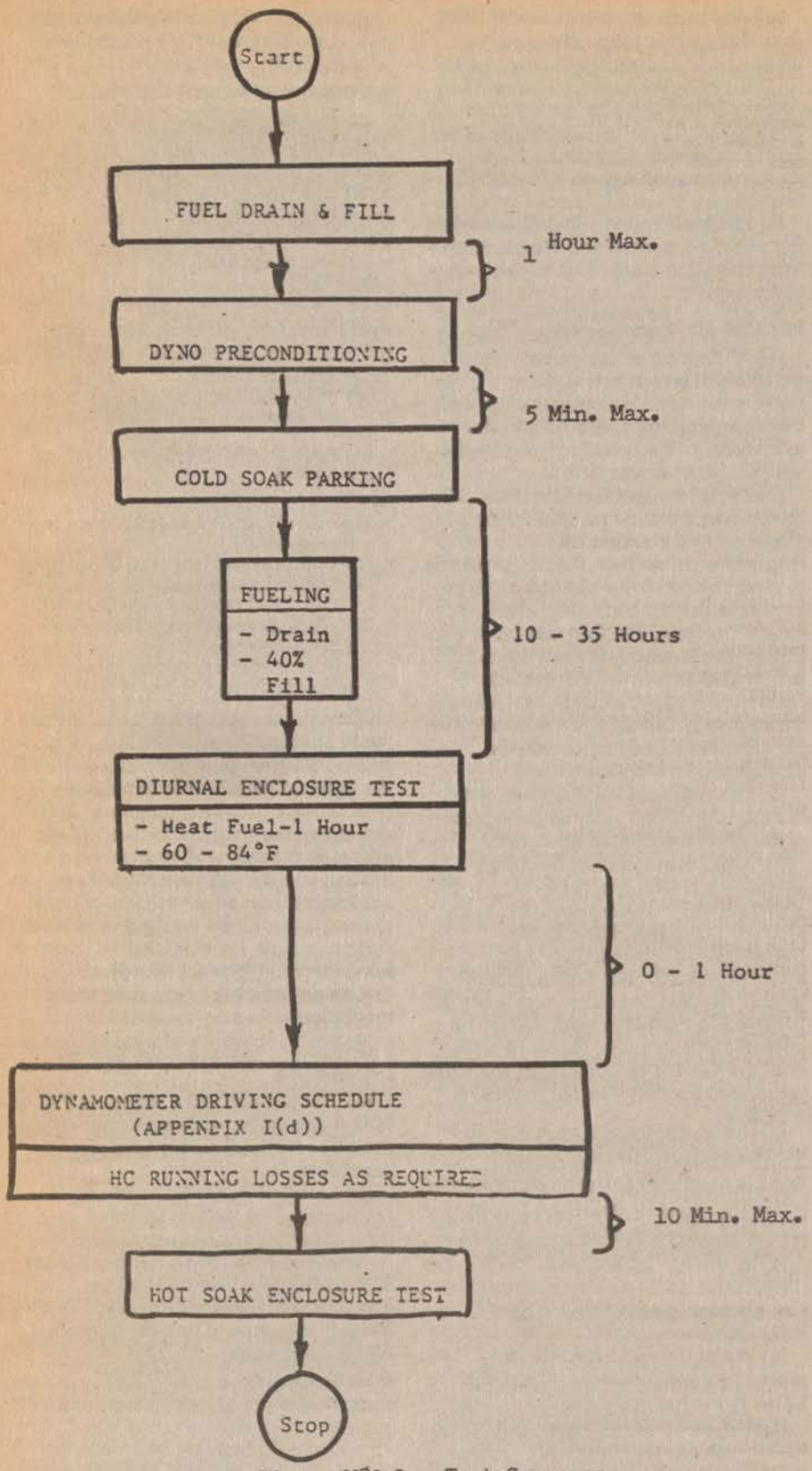


Figure M83-1 - Test Sequence

BILLING CODE 6560-01-C

§ 86.1231–83 Vehicle preparation.

(a) Prepare the fuel tank(s) for recording the temperature of the prescribed test fuel at the approximate mid-volume of the fuel when the tank is 40% full.

(b) Provide additional fittings and adapters, as required, to accommodate a fuel drain at the lowest point possible in the tank(s) as installed on the vehicle.

§ 86.1232–83 Vehicle preconditioning.

(a) The vehicle shall be moved to the test area and the following operations performed:

(1) The fuel tank(s) shall be drained through the provided fuel tank(s) drain(s) and filled to the prescribed "tank fuel volume" with the specified test fuel, § 86.1213–83. For the above operations the evaporative emission control system shall neither be abnormally purged nor abnormally loaded.

(2) Within one hour of being fueled the vehicle shall be placed, either by being driven or pushed, on a dynamometer and operated through one HDV urban dynamometer driving schedule, (see § 86.1215–83). A test vehicle may not be used to set dynamometer horsepower.

(3) The Administrator may choose to conduct or require the conduct of additional preconditioning to insure that the evaporative emissions control system is stabilized. The additional preconditioning shall consist of an initial one hour minimum soak and one, two or three driving cycles of the dynamometer driving schedule, as described in paragraph (a)(2) of this section, each followed by a soak of at least one hour with engine off, engine compartment cover closed and cooling fan off. The vehicle may be driven off the dynamometer for the soak period which follows each driving cycle.

(b) After completion of preconditioning the vehicle shall be driven off the dynamometer and parked. The engine shall be turned off within five minutes of completion of preconditioning. The vehicle may be pushed to its parking location after its engine has been turned off.

§ 86.1233–83 Diurnal breathing loss test.

(a) Following vehicle preparation and vehicle preconditioning procedures described in §§ 86.1231–83 and 86.1232–83 the diurnal test shall start not less than 10 or more than 35 hours after the end of the preconditioning procedure. The start of vehicle operation shall follow the end of the diurnal test within one hour.

(b) The evaporative emissions enclosure shall be purged for several minutes immediately prior to the test.

Note.—If at anytime the hydrocarbon concentration exceeds 15,000 ppm C the enclosure should be immediately purged. This concentration provides a 4:1 safety factor against the lean flammability limit.

(c) The FID hydrocarbon analyzer shall be zeroed and spanned immediately prior to the test.

(d) If not already on, the evaporative enclosure mixing fan(s) shall be turned on at this time.

(e) For vehicles with multiple tanks, the largest tank shall be designated as the primary tank and shall be heated in accordance with the procedures described in paragraph (1) of this section. All other tanks shall be designated as auxiliary tanks and shall undergo a similar heat build such that the fuel temperature shall be within 3° F (1.7° C) of the primary tank.

(f) Immediately prior to the diurnal breathing loss test, the fuel tank(s) of the prepared vehicle shall be drained and recharged with the specified test fuel, § 86.1213–83, to the prescribed "tank fuel volume", defined in § 86.078–2. The temperature of the fuel prior to its delivery to the fuel tank shall be between 50 and 60° F (10 and 16° C). The fuel tank cap(s) is not installed until the diurnal heat build begins.

(g) The test vehicle, with the engine shut off, shall be moved into the evaporative emission enclosure, the test vehicle windows and any storage compartments shall be opened, the fuel tank temperature sensor shall be connected to the temperature recording system, and, if required, the heat source shall be properly positioned with respect to the fuel tank(s) and/or connected to the temperature controller.

(h) The temperature recording system shall be started.

(i) The fuel may be artificailly heated to the starting diurnal temperature, 60 ± 2°F(16 ± 1.1°C).

(j) When the fuel temperature recording system reaches at least 58°F (14°C), immediately:

(1) Install fuel tank cap(s).

(2) Turn off purge blowers, if not already off at this time.

(3) Close and seal enclosure doors.

(k) When the fuel temperature recording system reaches 60 ± 2°F(16 ± 1.1°C) immediately:

(1) Analyze enclosure atmosphere for hydrocarbons and record. This is the initial (time = 0 minutes) hydrocarbon concentration, C_{HCi} (see § 86.1243–83).

(2) Start dirunal heat build and record time. This commences the 60 ± 2 minute test period.

(l) The fuel shall be heated in such a way that its temperature change conforms to the following function to within ±3°F (± 1.7°C);

$$F = T_o + 0.4t$$

for SI units, $c = T_o + (2/9)t$

Where:

F = fuel temperature, °F
C = fuel temperature, °C
t = time since beginning of test, minutes
T_o = initial temperature.

After 60 ±2 minutes of heating, the fuel temperature rise shall be 24 ±1°F (13.3 ±0.5°C).

(m) The FID hydrocarbon analyzer shall be zeroed and spanned immediately prior to the end of the diurnal test.

(n) The end of the diurnal breathing loss test occurs 60 ±2 minutes after the heat build begins, paragraph (k)(2). Analyze the enclosure atmosphere for hydrocarbons and record. This is the final (time = 60 minutes) hydrocarbon concentration, C_{HCf} (see § 86.1234–83). The time (or elapsed time) of this analysis shall be recorded.

(o) The heat source shall be turned off and the enclosure doors unsealed.

(p) The heat source shall be moved away from the vehicle, if required, and/or disconnected from the temperature controller, the fuel tank temperature sensor shall be disconnected from the temperature recording system, and the test vehicle windows and any storage compartments may be closed. The vehicle shall be either driven or pushed out of the evaporative emission enclosure.

§ 86.1234–83 Running loss test.

If an engineering analysis or vehicle inspection indicates the possibility of evaporative emissions during vehicle operation, evaporative emission running loss measurements shall be made during vehicle operation or the dynamometer in preparation for the hot soak test. Since running loss measurements cannot be made in the enclosure, the equipment described in Subpart B, § 86.177–17 for running loss measurements shall be used to collect these emissions.

(a) The procedure in § 86.1235–83 shall be followed.

(b) Prior to the initiation of the dynamometer hot soak preparation run, the vapor loss measurement system shall be connected to all suspected sources of running loss evaporative emissions.

(c) Operation on the dynamometer prior to the hot soak test shall be conducted according to the procedures of §§ 86.1235–83 through 86.1237–83.

(d) Within one minute after the end of hot soak preparations run, the vapor

loss measurement system shall be disconnected from the vehicle and the inlets and outlets sealed.

(e) Within one hour from the end of the running loss measurement, the vapor collection traps shall be weighed.

§ 86.1235-83 Dynamometer procedure.

(a) The dynamometer run consists of one HDV urban dynamometer driving schedule cycle starting within one hour after completion of the diurnal loss test. This run includes engine startup (with all accessories turned off) and operation over the driving schedule.

(b) During dynamometer operation, one or more cooling fans shall be positioned so as to direct cooling air to the vehicle in an appropriate manner. The engine compartment cover shall be closed. If, however, the manufacturer can show that the engine compartment cover must be open to provide a test representative of field operation, the Administrator will allow the engine cover to be open. In the case of vehicles with front engine compartments, the fan(s) shall be squarely positioned within 12 inches of the vehicle. In the case of vehicles with rear engine compartments (or if special designs make the above impractical), the cooling fan(s) shall be placed in a position to provide sufficient air to maintain vehicle cooling. The fan capacity shall normally not exceed 10,600 cfm (5.0 m^3/s). If, however, the manufacturer can show that during field operation the vehicle receives additional cooling, and that such additional cooling is needed to provide a representative test, the fan capacity may be increased or additional fans used.

(c) The vehicle speed as measured from the dynamometer rolls shall be used.

(d) Practice runs over the prescribed driving schedule may be performed at test points, provided emissions are not measured, for the purpose of finding the minimum throttle action to maintain the proper speed-time relationship, or to permit test procedure adjustments.

Note.—When using two-roll dynamometers a truer speedtime trace may be obtained by minimizing the rocking of the vehicle in the rolls. The rocking of the vehicle changes the tire rolling radius on each roll. This rocking may be minimized by restraining the vehicle horizontally (or nearly so) by using a cable and winch, or chain.

(e) Drive wheel tires shall be inflated to the maximum gauge pressure recommended to the ultimate purchaser. If drive wheel tires have a maximum recommended inflation gauge pressure of less than 45 psi (310 kPa), they may be inflated up to a guage pressure of 45 psi (310 kPa) in order to prevent tire damage. The drive wheel tire pressure shall be reported with the test results.

(f) If the dynamometer has not been operated during the 2-hour period immediately preceding the test it shall be warmed up for 15 minutes by operating at 30 mph (48 km/h) using a non-test vehicle or as recommended by the dynamometer manufacturer.

(g) If the dynamometer horsepower must be adjusted manually, the power shall be set within 1 hour prior to dynamometer operation preceding the hot soak test. The test vehicle shall not be used to make the adjustment.

(h) If the dynamometer horsepower is selected by automatic control, the power may be set anytime prior to the beginning of the driving cycle.

(i) Multiple drive axle vehicles will be tested in one axle drive mode of operation. Full time multiple drive axle vehicles will have all but one axle temporarily disengaged by the vehicle manufacturer. Multiple drive axle vehicles which can be manually shifted to a one axle drive mode will be tested in the one axle drive mode of operation, unless this would pose a safety hazard, in which case all but one axle will be temporarily disengaged by the vehicle manufacturer.

§ 86.1236-83 Engine starting and restarting.

(a) Starting:

(1) The engine shall be started (including choke operation) according to the manufacturer's recommended starting procedures in the owner's manual. The initial idle period shall begin when the engine starts.

(2) The operator may use the choke, accelerator pedal, etc., where necessary to keep the engine running.

(3) If the manufacturer's operating instructions in the owner's manual do not specify a warm engine starting procedure, the engine shall be started by depressing the accelerator pedal about half way and cranking the engine until it starts.

(4) If the vehicle does not start after 10 seconds of cranking, cranking shall cease and the reason for failure to start shall be determined. If failure to start is an operational error, the vehicle shall be rescheduled for the running loss test. If failure to start is caused by a vehicle malfunction, corrective action of less than 30 minutes duration may be taken, and the test continued. When the engine starts, the driving schedule timing sequence shall begin. If failure to start is caused by vehicle malfunction and the vehicle cannot be started, the test shall be voided, the vehicle removed from the dynamometer, and corrective action may be taken. The reasons for the malfunction (if determined) and the corrective action taken shall be reported to the Administrator.

(b) Stalling: (1) If the engine stalls during an idle period, the engine shall be restarted immediately and the driving schedule continued. If the engine cannot be started soon enough to allow the vehicle to follow the next acceleration as prescribed, the driving schedule indicator shall be stopped. When the vehicle restarts, the driving schedule indicator shall be reactivated.

(2) If the engine stalls during some operating mode other than idle, the driving schedule indicator shall be stopped, the vehicle shall then be restarted and accelerated to the speed required at that point in the driving schedule and the driving schedule continued. During acceleration to this point, shifting shall be performed in accordance with § 86.1228-83.

(3) If the vehicle will not restart within one minute the test shall be voided, the vehicle removed from the dynamometer, corrective action taken, and the vehicle rescheduled for testing. The reason for the malfunction (if determined) and the corrective action taken shall be reported to the Administrator.

§ 86.1237-83 Dynamometer runs.

(a) The vehicle shall be either driven or pushed onto the dynamometer; however, if driven, the period of engine operation between the end of the diurnal loss test and beginning of the hot soak preparation run shall not exceed 3 minutes, and the vehicle shall be driven at minimum throttle. The dynamometer run shall follow the diurnal heat build by not more than one hour. The vehicle shall be stored prior to dynamometer operation in such a manner that it is not exposed to precipitation (e.g., rain or dew).

(b) The following steps be taken for the dynamometer run:

(1) Place drive wheels of vehicles on the dynamometer.

(2) Position the cooling fan(s).

(3) Attach an exhaust tube to the vehicle tailpipe(s).

(4) Start the engine.

(5) Operate the vehicle according to the dynamometer driving schedule (§ 86.1215-83).

(6) At the end of the last deceleration, disconnect the exhaust tube from the vehicle tailpipe(s) and drive vehicle from the dynamometer.

§ 86.1238-83 Hot soak test.

The one-hour hot-soak evaporative emission test shall be conducted immediately following one cycle of the dynamometer driving schedule.

(a) Prior to the completion of the dynamometer cycle, the evaporative emission enclosure shall be purged for several minutes.

(b) The FID hydrocarbon analyzer shall be zeroed and spanned immediately prior to the test.

(c) If not already on, the evaporative enclosure mixing fan(s) shall be turned on at this time.

(d) Upon completion of the dynamometer run the exhaust tube shall be disconnected from the vehicle tailpipe(s), the cooling fan(s) shall be moved, and the vehicle shall be disconnected from the dynamometer and then driven at mimimum throttle to the vehicle entrance of the enclosure.

(e) The vehicle's engine must be stopped before any part of the vehicle enters the enclosure. The vehicle may be pushed or coasted into the enclosure.

(f) The test vehicle windows and any storage compartments shall be opened; if not already open.

(g) The temperature recording system shall be started and the time of engine shut off shall be noted on the evaporative emissions hydrocarbon data recording system.

(h) The enclosure doors shall be closed and sealed within two minutes of engine shutdown and within ten minutes after the end of the dynamometer run.

(i) The 60 ± 0.5 minute hot soak begins when the enclosure doors are sealed. The enclosure atmosphere shall be analyzed and recorded. This is the initial (time = 0 minutes) hydrocarbon concentration, C_{HCi}, for use in calculating evaporative losses, (see § 86.1243–83).

(j) The test vehicle shall be permitted to soak for a period of one hour in the enclosure.

(k) The FID hydrocarbon analyzer shall be zeroed and spanned immediately prior to the end of the test.

(l) At the end of the 60 ± 0.5 minute test period, the enclosure atmosphere shall again be analyzed and the time recorded. This is the final (time = 60 minutes) hydrocarbon concentration, C_{HCf}, for use in calculating evaporative losses, (see § 86.1243–83). This operation completes the evaporative emission measurement procedures.

§ 86.1239—86.1241 [Reserved]

§ 86.1242–83 Records required.

The following information shall be recorded with respect to each test:

(a) Test number.

(b) System or device tested (brief description).

(c) Date and time of day for each part of the test schedule.

(d) Instrument operator.

(e) Driver or operator.

(f) Vehicle: ID number; Manufacturer; Model Year; Engine Family; Evaporative emissions family; Basic engine description (including displacement, number of cylinders, and catalyst usage); Engine maximum power rating and rated speed; Fuel system (including number of carburetors, number of carburetor barrels, fuel injection type, fuel tank(s) capacity and location, and number and size (volume and working capacity) of evaporative control canisters), Engine code; Gross vehicle weight rating; Actual curb weight at zero miles; Actual road load at 50 mph; Transmission configuration; Axle ratio; Vehicle line; Odometer reading; Idle rpm; and Drive wheel tire pressure, as applicable.

(g) Indicated road load power absorptioin at 50 mph (80 km/hr) and dynamometer serial number. As an alternative to recording the dynamometer serial number, a reference to a vehicle test cell number may be used, provided the test cell records show the pertinent information.

(h) All pertinent instrument information such as tuning, gain, serial number, detector number and range. As an alternative, a reference to a vehicle test cell number may be used, with the advance approval of the Administrator, provided test cell calibration records show the pertinent instrument information.

(i) Recorder charts: Identify zero, span and enclosure gas sample traces.

(j) Test cell barometric pressure, humidity, and ambient temperature.

Note.—A central laboratory barometer may be used: *Provided,* That individual test cell barometric pressure are shown to be within ±0.1 percent of the barometric pressure at the central barometer location.

(k) Fuel temperatures as prescribed.

§ 86.1243–83 Calculations; evaporative emissions.

The calculation of the net hydrocarbon mass change in the enclosure is used to determine the diurnal and hot-soak mass emissions. The mass is calculated from initial and final hydrocarbon concentrations in ppm carbon, initial and final enclosure ambient temperatures, initial and final barometric pressures, and net enclosure volume using the following equation:

$$M_{HC} = kV_n \times 10^{-4} \left(\frac{C_{HCf} P_{Bf}}{T_f} - \frac{C_{HCi} P_{Bi}}{T_i} \right)$$

Where:

M_{HC} = hydrocarbon mass, g.

C_{HC} = hydrocarbon concentration as ppm carbon.

V_n = net enclosure volume ft³ (m³) as determined by subtracting 100 ft³ (2.84 m³) (volume of vehicle with windows and any storage compartments open) from the enclosure volume. A manufacturer may use the measured volume of the vehicle (instead of the nominal 100 ft³) provided the measured volume is determined and used for all vehicles tested by that manufacturer.

P_B = barometric pressue, in. Hg (kPa).

T = enclosure ambient temperature, R (K).

$k = .208\ (12 + H/C)$; for SI units, $k = 1.2\ (12 + H/C)$.

Where:

H/C = Hydrogen-carbon ratio.

H/C = 2.33 for diurnal emissions.

H/C = 2.2 for hot soak emissions.

i = Indicates initial reading.

f = Indicates final reading.

The final reported results shall be computed by summing the individual evaporative emissions results determined for the diurnal breathing loss test, running loss test, and the hot soak test.

§ 86.1244, 86.1245 [Reserved]

23. It is proposed that Appendix I to Part 86 be amended by adding a new paragraph (d) to read as follows:

Appendix I—Urban Dynamometer Driving Schedules

* * * * *

(d) EPA Urban Dynamometer Driving Schedule for Heavy-Duty Vehicles.

BILLING CODE 6560-01-M

SPEED VERSUS TIME SEQUENCE

RECORD (SEC)	SPEED (MPH)	RECORD (SEC)	SPEED (MPH)	RECORD (SEC)	SPEED (MPH)	RECORD (SEC)	SPEED (MPH)	RECORD (SEC)	SPEED (MPH)	RECORD (SEC)	SPEED (MPH)	RECORD (SEC)	SPEED (MPH)	RECORD (SEC)	SPEED (MPH)	RECORD (SEC)	SPEED (MPH)	RECORD (SEC)	SPEED (MPH)
0.	0.0	50.	12.26	100.	31.01	150.	0.0	200.	0.0	250.	0.0	300.	0.24	350.	12.00	400.	19.00	450.	32.85
1.	0.0	51.	14.29	101.	31.00	151.	0.0	201.	0.0	251.	0.0	301.	0.60	351.	11.73	401.	18.86	451.	33.01
2.	0.0	52.	14.56	102.	31.62	152.	0.0	202.	0.0	252.	0.0	302.	0.0	352.	11.00	402.	18.29	452.	34.00
3.	0.0	53.	15.20	103.	33.00	153.	0.0	203.	4.15	253.	0.0	303.	1.42	353.	11.00	403.	19.00	453.	33.68
4.	0.0	54.	15.76	104.	32.37	154.	0.0	204.	6.00	254.	0.0	304.	2.00	354.	11.00	404.	19.61	454.	32.52
5.	0.0	55.	17.00	105.	30.43	155.	0.0	205.	6.00	255.	0.0	305.	3.08	355.	11.90	405.	20.00	455.	32.00
6.	0.0	56.	17.00	106.	30.00	156.	0.0	206.	6.00	256.	0.0	306.	5.63	356.	12.89	406.	20.00	456.	32.00
7.	0.0	57.	17.23	107.	30.00	157.	0.0	207.	5.30	257.	0.0	307.	4.00	357.	10.36	407.	20.00	457.	32.95
8.	0.0	58.	18.77	108.	30.51	158.	0.0	208.	4.14	258.	0.0	308.	4.00	358.	7.26	408.	20.00	458.	33.00
9.	0.0	59.	20.54	109.	32.41	159.	0.0	209.	1.96	259.	0.0	309.	3.34	359.	4.95	409.	20.00	459.	33.00
10.	0.0	60.	19.60	110.	33.00	160.	0.0	210.	0.0	260.	0.0	310.	1.37	360.	4.68	410.	19.45	460.	33.42
11.	0.0	61.	18.14	111.	32.27	161.	0.0	211.	0.0	261.	0.0	311.	1.00	361.	6.68	411.	20.42	461.	34.00
12.	0.0	62.	17.48	112.	32.00	162.	0.0	212.	0.0	262.	0.0	312.	0.0	362.	8.00	412.	21.87	462.	34.74
13.	0.0	63.	17.00	113.	31.04	163.	0.0	213.	0.0	263.	0.0	313.	0.0	363.	7.84	413.	20.97	463.	35.00
14.	0.0	64.	16.34	114.	32.20	164.	0.0	214.	0.0	264.	0.0	314.	0.0	364.	7.00	414.	20.37	464.	35.00
15.	0.0	65.	15.00	115.	33.36	165.	0.0	215.	0.0	265.	0.0	315.	0.0	365.	6.53	415.	22.00	465.	35.00
16.	0.0	66.	15.00	116.	34.00	166.	0.0	216.	0.0	266.	0.0	316.	0.0	366.	7.89	416.	22.00	466.	35.00
17.	0.0	67.	15.00	117.	34.00	167.	0.0	217.	0.0	267.	0.0	317.	0.0	367.	10.57	417.	22.66	467.	35.00
18.	0.0	68.	15.96	118.	34.00	168.	0.0	218.	0.0	268.	0.0	318.	0.0	368.	11.00	418.	23.00	468.	35.00
19.	0.0	69.	12.35	119.	33.01	169.	0.0	219.	0.0	269.	0.0	319.	0.23	369.	10.10	419.	23.97	469.	35.84
20.	0.0	70.	15.28	120.	31.86	170.	0.0	220.	0.0	270.	0.0	320.	1.39	370.	10.74	420.	25.51	470.	37.99
21.	0.0	71.	14.27	121.	30.10	171.	0.0	221.	0.0	271.	0.0	321.	2.00	371.	10.42	421.	29.00	471.	38.00
22.	0.0	72.	12.59	122.	26.17	172.	0.0	222.	0.0	272.	0.0	322.	4.11	372.	11.00	422.	29.00	472.	37.69
23.	0.0	73.	12.25	123.	23.39	173.	0.0	223.	0.0	273.	0.0	323.	5.00	373.	12.46	423.	29.00	473.	38.41
24.	0.0	74.	9.28	124.	21.46	174.	0.51	224.	0.0	274.	0.0	324.	6.02	374.	14.77	424.	30.51	474.	39.37
25.	0.19	75.	8.00	125.	17.28	175.	0.33	225.	0.0	275.	0.0	325.	7.18	375.	14.09	425.	31.00	475.	39.00
26.	1.00	76.	8.00	126.	15.83	176.	0.0	226.	0.0	276.	0.0	326.	7.33	376.	16.20	426.	30.00	476.	39.00
27.	1.51	77.	8.38	127.	13.76	177.	0.0	227.	0.0	277.	0.0	327.	6.49	377.	17.00	427.	30.00	477.	38.10
28.	2.66	78.	9.53	128.	12.60	178.	0.0	228.	0.0	278.	0.0	328.	7.00	378.	17.00	428.	30.00	478.	39.00
29.	4.64	79.	10.69	129.	10.33	179.	0.0	229.	0.0	279.	0.0	329.	7.00	379.	17.00	429.	30.54	479.	39.41
30.	6.96	80.	11.00	130.	8.28	180.	0.0	230.	0.0	280.	0.0	330.	7.00	380.	17.00	430.	31.00	480.	40.57
31.	8.86	81.	9.00	131.	5.38	181.	0.0	231.	0.48	281.	0.0	331.	7.00	381.	15.02	431.	31.86	481.	41.73
32.	7.71	82.	9.00	132.	2.91	182.	0.0	232.	1.64	282.	0.0	332.	7.00	382.	15.71	432.	31.00	482.	42.00
33.	7.45	83.	9.32	133.	0.0	183.	0.0	233.	0.41	283.	0.0	333.	7.43	383.	14.00	433.	31.17	483.	41.92
34.	9.22	84.	10.00	134.	0.0	184.	0.0	234.	0.0	284.	0.0	334.	8.00	384.	14.92	434.	32.33	484.	40.00
35.	10.00	85.	9.36	135.	0.0	185.	0.0	235.	0.0	285.	0.0	335.	8.00	385.	15.38	435.	33.00	485.	40.00
36.	9.08	86.	9.00	136.	0.0	186.	0.0	236.	0.0	286.	0.0	336.	7.09	386.	15.78	436.	33.00	486.	39.49
37.	10.08	87.	9.95	137.	0.0	187.	0.0	237.	0.0	287.	0.0	337.	11.06	387.	16.00	437.	33.80	487.	37.66
38.	11.24	88.	14.33	138.	0.0	188.	0.0	238.	0.0	288.	0.0	338.	12.89	388.	16.00	438.	34.00	488.	37.00
39.	12.79	89.	17.53	139.	0.0	189.	0.0	239.	0.0	289.	0.0	339.	14.49	389.	16.25	439.	35.12	489.	36.01
40.	14.00	90.	19.42	140.	0.0	190.	0.0	240.	0.0	290.	0.0	340.	11.46	390.	17.41	440.	36.00	490.	34.86
41.	12.58	91.	20.00	141.	0.0	191.	0.0	241.	0.0	291.	0.0	341.	13.08	391.	18.56	441.	36.00	491.	33.70
42.	12.87	92.	20.74	142.	0.0	192.	0.0	242.	0.0	292.	0.0	342.	16.55	392.	19.00	442.	34.82	492.	32.54
43.	13.00	93.	21.00	143.	0.0	193.	0.0	243.	0.0	293.	0.0	343.	16.00	393.	19.88	443.	33.25	493.	29.54
44.	13.00	94.	21.11	144.	0.0	194.	0.0	244.	0.0	294.	0.0	344.	15.34	394.	21.00	444.	32.09	494.	26.46
45.	13.68	95.	23.84	145.	0.0	195.	0.0	245.	0.0	295.	0.0	345.	12.32	395.	21.00	445.	32.00	495.	22.28
46.	15.00	96.	27.00	146.	0.0	196.	0.0	246.	0.0	296.	0.0	346.	13.00	396.	21.00	446.	32.00	496.	19.91
47.	15.00	97.	27.00	147.	0.0	197.	0.13	247.	0.0	297.	0.0	347.	13.00	397.	20.49	447.	32.00	497.	18.76
48.	13.37	98.	29.05	148.	0.0	198.	0.71	248.	0.0	298.	0.0	348.	13.00	398.	20.00	448.	32.00	498.	17.60
49.	12.03	99.	32.52	149.	0.0	199.	0.0	249.	0.0	299.	0.0	349.	15.86	399.	19.18	449.	32.00	499.	16.44

RECORD (SEC)	SPEED (MPH)	RECORD (SEC)	SPEED (MPH)	RECORD (SEC)	SPEED (MPH)	RECORD (SEC)	SPEED (MPH)	RECORD (SEC)	SPEED (MPH)	RECORD (SEC)	SPEED (MPH)	RECORD (SEC)	SPEED (MPH)	RECORD (SEC)	SPEED (MPH)	RECORD (SEC)	SPEED (MPH)	RECORD (SEC)	SPEED (MPH)
500.	14.57	550.	12.73	600.	46.00	650.	50.47	700.	55.00	750.	56.00	800.	10.71	850.	13.00	900.	21.11	950.	0.0
501.	13.13	551.	14.78	601.	46.00	651.	51.00	701.	54.50	751.	55.63	801.	6.08	851.	13.68	901.	23.84	951.	0.0
502.	11.97	552.	16.05	602.	46.92	652.	51.00	702.	54.66	752.	55.00	802.	2.61	852.	15.00	902.	27.00	952.	0.0
503.	10.81	553.	17.41	603.	47.00	653.	51.00	703.	55.00	753.	55.00	803.	1.45	853.	15.00	903.	27.00	953.	0.0
504.	9.31	554.	19.72	604.	47.00	654.	51.00	704.	54.03	754.	55.00	804.	0.30	854.	13.37	904.	29.05	954.	0.0
505.	7.50	555.	21.52	605.	47.00	655.	51.00	705.	54.00	755.	55.00	805.	0.0	855.	12.03	905.	32.52	955.	0.0
506.	6.34	556.	23.35	606.	47.00	656.	51.42	706.	54.00	756.	55.00	806.	0.0	856.	12.26	906.	31.01	956.	0.0
507.	4.37	557.	24.83	607.	47.00	657.	52.00	707.	54.00	757.	55.00	807.	0.0	857.	14.29	907.	31.00	957.	0.0
508.	3.03	558.	25.99	608.	47.00	658.	52.00	708.	54.00	758.	55.00	808.	0.0	858.	14.56	908.	31.62	958.	0.0
509.	1.87	559.	27.15	609.	47.04	659.	52.00	709.	54.00	759.	55.00	809.	0.0	859.	15.20	909.	33.00	959.	0.0
510.	0.71	560.	28.31	610.	49.00	660.	52.00	710.	54.00	760.	54.22	810.	0.0	860.	16.76	910.	32.37	960.	0.0
511.	0.0	561.	29.46	611.	49.33	661.	52.20	711.	54.00	761.	54.00	811.	0.0	861.	17.00	911.	30.43	961.	0.0
512.	0.0	562.	30.62	612.	49.51	662.	53.00	712.	54.00	762.	54.00	812.	0.0	862.	17.00	912.	30.00	962.	0.0
513.	0.0	563.	31.78	613.	49.00	663.	53.00	713.	54.77	763.	54.00	813.	0.0	863.	17.23	913.	30.00	963.	0.0
514.	0.0	564.	32.94	614.	49.00	664.	53.00	714.	56.00	764.	54.00	814.	0.0	864.	18.77	914.	30.51	964.	0.0
515.	0.0	565.	34.18	615.	49.00	665.	53.00	715.	56.00	765.	54.00	815.	0.0	865.	20.54	915.	32.41	965.	0.0
516.	0.0	566.	34.25	616.	49.00	666.	53.00	716.	56.00	766.	54.00	816.	0.0	866.	19.60	916.	33.00	966.	0.0
517.	0.0	567.	37.41	617.	48.72	667.	53.00	717.	56.02	767.	54.00	817.	0.0	867.	18.14	917.	32.27	967.	0.0
518.	0.0	568.	38.56	618.	48.87	668.	53.00	718.	57.00	768.	54.00	818.	0.0	868.	17.98	918.	32.00	968.	0.0
519.	0.0	569.	39.72	619.	50.00	669.	53.00	719.	56.67	769.	54.00	819.	0.0	869.	17.00	919.	31.04	969.	0.0
520.	0.0	570.	40.00	620.	50.00	670.	52.38	720.	56.00	770.	54.00	820.	0.0	870.	16.34	920.	32.20	970.	0.0
521.	0.0	571.	40.00	621.	50.00	671.	52.00	721.	56.00	771.	54.00	821.	0.0	871.	15.00	921.	33.36	971.	0.0
522.	0.0	572.	40.00	622.	50.00	672.	52.93	722.	56.00	772.	54.00	822.	0.0	872.	15.00	922.	34.00	972.	0.0
523.	0.0	573.	40.00	623.	49.78	673.	52.91	723.	56.00	773.	54.00	823.	0.0	873.	15.00	923.	34.00	973.	0.0
524.	0.0	574.	40.00	624.	49.00	674.	52.25	724.	56.00	774.	53.01	824.	0.0	874.	15.96	924.	34.00	974.	0.0
525.	0.0	575.	40.00	625.	49.00	675.	53.00	725.	56.00	775.	50.86	825.	0.0	875.	12.35	925.	33.01	975.	0.0
526.	0.0	576.	40.82	626.	49.69	676.	53.00	726.	56.00	776.	49.70	826.	0.0	876.	15.28	926.	31.86	976.	0.0
527.	0.0	577.	41.00	627.	50.00	677.	53.00	727.	56.00	777.	48.54	827.	0.0	877.	14.27	927.	30.10	977.	0.0
528.	0.0	578.	41.00	628.	50.00	678.	53.00	728.	56.00	778.	47.39	828.	0.0	878.	12.59	928.	26.17	978.	0.0
529.	0.0	579.	41.30	629.	50.00	679.	53.00	729.	56.91	779.	46.23	829.	0.0	879.	12.25	929.	23.39	979.	0.0
530.	0.0	580.	42.00	630.	49.68	680.	53.00	730.	57.00	780.	45.07	830.	0.0	880.	9.28	930.	21.46	980.	0.51
531.	0.0	581.	42.00	631.	49.00	681.	53.00	731.	57.00	781.	43.91	831.	0.19	881.	8.00	931.	17.28	981.	0.33
532.	0.0	582.	42.00	632.	49.00	682.	53.00	732.	57.00	782.	42.51	832.	1.00	882.	8.00	932.	15.83	982.	0.0
533.	0.0	583.	42.93	633.	48.20	683.	53.00	733.	57.00	783.	40.60	833.	1.51	883.	8.38	933.	13.76	983.	0.0
534.	0.0	584.	43.00	634.	48.00	684.	53.00	734.	57.00	784.	39.44	834.	2.66	884.	9.53	934.	12.60	984.	0.0
535.	0.0	585.	43.00	635.	48.00	685.	53.98	735.	57.85	785.	38.28	835.	4.64	885.	10.69	935.	10.33	985.	0.0
536.	0.0	586.	43.00	636.	48.27	686.	55.00	736.	58.00	786.	37.13	836.	6.96	886.	11.00	936.	8.28	986.	0.0
537.	0.0	587.	43.56	637.	49.00	687.	55.00	737.	58.00	787.	35.94	837.	8.86	887.	9.00	937.	5.38	987.	0.0
538.	0.0	588.	44.71	638.	49.58	688.	55.00	738.	58.00	788.	33.81	838.	7.71	888.	9.00	938.	2.91	988.	0.0
539.	0.0	589.	45.00	639.	50.00	689.	55.00	739.	58.00	789.	32.66	839.	7.45	889.	9.32	939.	0.0	989.	0.0
540.	0.0	590.	44.97	640.	50.00	690.	55.00	740.	58.00	790.	30.50	840.	9.22	890.	10.00	940.	0.0	990.	0.0
541.	0.0	591.	44.18	641.	50.00	691.	55.00	741.	58.00	791.	28.34	841.	10.00	891.	9.36	941.	0.0	991.	0.0
542.	0.0	592.	44.66	642.	50.00	692.	55.00	742.	58.00	792.	26.37	842.	9.08	892.	9.00	942.	0.0	992.	0.0
543.	0.0	593.	44.00	643.	50.00	693.	55.00	743.	58.00	793.	25.03	843.	10.08	893.	9.95	943.	0.0	993.	0.0
544.	2.36	594.	44.00	644.	50.00	694.	55.00	744.	58.00	794.	21.87	844.	11.24	894.	14.33	944.	0.0	994.	0.0
545.	3.94	595.	44.81	645.	50.00	695.	55.00	745.	57.15	795.	19.85	845.	12.79	895.	17.53	945.	0.0	995.	0.0
546.	5.31	596.	45.00	646.	50.00	696.	55.00	746.	56.00	796.	16.56	846.	14.00	896.	19.42	946.	0.0	996.	0.0
547.	8.26	597.	45.00	647.	50.00	697.	55.00	747.	56.00	797.	15.40	847.	12.58	897.	20.00	947.	0.0	997.	0.0
548.	9.42	598.	45.00	648.	50.00	698.	55.00	748.	56.00	798.	14.24	848.	12.87	898.	20.74	948.	0.0	998.	0.0
549.	11.15	599.	45.44	649.	50.00	699.	55.00	749.	56.00	799.	12.17	849.	13.00	899.	21.00	949.	0.0	999.	0.0

RECORD (SEC)	SPEED (MPH)	RECORD (SEC)	SPEED (MPH)	RECORD (SEC)	SPEED (MPH)	RECORD (SEC)	SPEED (MPH)	RECORD (SEC)	SPEED (MPH)	RECORD (SEC)	SPEED (MPH)	RECORD (SEC)	SPEED (MPH)	RECORD (SEC)	SPEED (MPH)	RECORD (SEC)	SPEED (MPH)	RECORD (SEC)	SPEED (MPH)
1000.	0.0	1050.	0.0																		
1001.	0.0	1051.	0.0																		
1002.	0.0	1052.	0.0																		
1003.	0.13	1053.	0.0																		
1004.	0.71	1054.	0.0																		
1005.	0.0	1055.	0.0																		
1006.	0.0	1056.	0.0																		
1007.	0.0	1057.	0.0																		
1008.	0.0	1058.	0.0																		
1009.	4.15	1059.	0.0																		
1010.	6.00	1060.	0.0																		
1011.	6.00																				
1012.	6.00																				
1013.	5.30																				
1014.	4.14																				
1015.	1.96																				
1016.	0.0																				
1017.	0.0																				
1018.	0.0																				
1019.	0.0																				
1020.	0.0																				
1021.	0.0																				
1022.	0.0																				
1023.	0.0																				
1024.	0.0																				
1025.	0.0																				
1026.	0.0																				
1027.	0.0																				
1028.	0.0																				
1029.	0.0																				
1030.	0.0																				
1031.	0.0																				
1032.	0.0																				
1033.	0.0																				
1034.	0.0																				
1035.	0.0																				
1036.	0.0																				
1037.	0.48																				
1038.	1.64																				
1039.	0.41																				
1040.	0.0																				
1041.	0.0																				
1042.	0.0																				
1043.	0.0																				
1044.	0.0																				
1045.	0.0																				
1046.	0.0																				
1047.	0.0																				
1048.	0.0																				
1049.	0.0																				

BILLING CODE 6560-01-C

BILLING CODE 6560-01-C

24. An Appendix XII to Part 86 is proposed and reads as follows:

Appendix XII.—Heavy Duty Vehicle (HDV) Evaporative Emission System Service Accumulation Procedure

Any vapor storage device which adsorbs HC vapors and subsequently releases them to the engine induction system during vehicle operation shall be subjected to a minimum of 100 load-purge cycles. One load-purge cycle shall be accomplished by conducting one of the following procedures:

(1) *Vehicle procedure:* Park a fully-warm vehicle (a vehicle that has been driven for at least 15 minutes) for a time period of at least 3 hours. Then drive the vehicle through at least one cycle of the HDV reference (transient) urban dynamometer driving schedule.

(2) *Laboratory procedure:* Flow gasoline vapors into a pre-purged vapor storage device until at least 10 percent of the input HC mass flow rate is passing through the device. Purge the device with a volume of air which is at least as great as, and which has a temperature no higher than that which would be drawn through the device if it were installed on the test vehicle and the vehicle was operated according to the HDV reference (transient) urban dynamometer driving schedule.

Ten load-purge cycles accumulated immediately prior to certification testing shall be conducted according to method (1) listed above. The preceding 90 cycles (minimum) shall be conducted according to either methods (1) or (2) above, or any combination of these methods.

A modified procedure may also be used, if approved in advance by the Administrator.

[FR Doc. 80-13142 Filed 4-29-80; 8:45 am]

BILLING CODE 6560-01-M

federal register

Wednesday
April 30, 1980

Part V

Architectural and Transportation Barriers Compliance Board

Compliance With Standards for Access to and Use of Buildings by Handicapped Persons; Practice and Procedures for Compliance Hearings

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1150

Practice and Procedures for Compliance Hearings; Standards for Access to and Use of Buildings by Handicapped Persons

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Proposed rules.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (hereinafter referred to as A&TBCB) is proposing to revise its regulation relating to the compliance with standards for access to and use of buildings by the handicapped (Practice and Procedures for Compliance Hearings, 36 CFR Part 1150.) The changes proposed are designed to conform the regulation to the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, Pub. L. 95–602 (hereinafter referred to as the 1978 Act) and reflect technical and clarifying improvements based on experiences with the regulation since its adoption in December, 1976, as well as to make the regulation more readily understandable.

DATE: Comments must be received on or before June 30, 1980.

ADDRESS: Send comments to: Charles Goldman, General Counsel, Rulemaking Docket 79–2, A&TBCB, Room 1014, 330 C. Street, SW., Washington, D.C. 20201. Comments received will be available for public inspection in Room 1014 from from 9 a.m. to 5:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Charles Goldman, General Counsel, (202) 245–1801 (Voice or TTY).

SUPPLEMENTARY INFORMATION: The Architectural and Transportation Barriers Compliance Board (hereinafter referred to as A&TBCB) was established under section 502 of the Rehabilitation Act of 1973, Pub. L. 93–112, 87 Stat. 391. Section 502(d) (29 U.S.C. 792(d)) provides that the A&TBCB shall hold hearings and issue orders it deems necessary to ensure compliance with standards of buildings and facilities issued under the Acrhitectural Barriers Act of 1968, Pub. L. 90–480, as amended, 42 U.S.C. 4151 *et seq.* The provisions of Subchapter II of Chapter 5 and Chapter 7 of Title 5, United States Code, apply to the A&TBCB procedures. An order of compliance issued by the A&TBCB is a final order of compliance for purposes of judicial review. Pub. L. 93–516, 88 Stat. 1621, the Rehabilitation Act Amendments of 1974, provides that an order of compliance may include the withholding or suspension of Federal funds with respect to any building found not to be in compliance with the applicable standands.

The 1978 Act provides that an order of compliance issued by an administrative law judge shall be deemed an order of the Board and shall be a final order for the purpose of judicial review. The 1978 Act also provides that any complanant or participant may obtain review of a final order. The 1978 Act vests in the Executive Director of the A&TBCB the final authority with respect to the investigation of alleged noncompliance in the issuance of formal complaints. The 1978 Act also authorizes the A&TBCB to direct the Executive Director to bring court actions to enforce compliance orders.

The A&TBCB in 1976 adopted procedures to enable it to implement its enforcement responsibility with respect to buildings subject to section 502. 41 FR 55441 (1976). This regulation has been in effect for approximately three years. A review of the regulation was precipitated by enactment of the 1978 Act. Based on that review, revisions are proposed to various sections of the regulation.

In the proposed revised regulation the terms "complaint" and "facility" have been defined to more clearly show the applicability of the regulation to all instances of alleged violation coming to the attention of the Executive Director concerning structures other than buildings. The period of informal resolution has been extended from 60 to 90 days in keeping with the actual practice of the Board and responding parties. Within 10 days after the end of the 90 day period the Executive Director is to issue a formal citation of alleged noncompliance or determination not to proceed to litigation, though he/she may act before the expiration of the 90 day informal resolution period if circumstances merit or after the expiration of the 10 day period. In general, the Board's overall goal of resolving complaints within 180 days has been met. That goal should not be affected by the proposed revisions.

It is proposed that "compliance" be defined as showing no violation exists, correcting the alleged violation, agreeing to correct it, or timely implementing a compliance plan approved by the Executive Director. Under the proposed revised regulation the administrative law judge is to be given an additional 10 days, making a total of 30 days to render his decision which is reviewable in Federal court, and not the A&TBCB. Provisions relating to the A&TBCB functioning as an appellate tribunal in compliance cases have been deleted to implement the 1978 Act. A new provision relates to the authorization of court enforcement of A&TBCB compliance orders.

To enhance the readability of the regulation, other revisions have been proposed. Words which are not commonly used, except perhaps by lawyers, were, for the most part, eliminated from the text. Reorganization of sections or paragraphs was undertaken to ease access to these rules of procedures. For purposes of clarity, other nonsubstantive editorial changes were made.

It is proposed to revise 36 CFR Part 1150 to read as follows:

PART 1150—PRACTICE AND PROCEDURES FOR COMPLIANCE HEARING

Subpart A—General Information

Sec.

1150.1 Purpose and application.
1150.2 Policy of amicable resolution.
1150.3 Definitions.
1150.4 Scope and interpretation of rules.
1150.5 Suspension of rules.

Subpart B—Parties, Complainants, Participants

1150.11 Parties.
1150.12 Complainants.
1150.13 Participation on Petition.
1150.14 Appearance.

Subpart C—Form, Execution, Service and Filing of Documents for Proceedings on Citations

1150.21 Form of documents to be filed.
1150.22 Signature of documents.
1150.23 Filing and service.
1150.24 [Reserved]
1150.25 Date of service.
1150.26 Certificate of service.

Subpart D—Time

1150.31 Computation.
1150.32 Extension of time or postponement.

Subpart E—Proceedings Prior to Hearings; Pleadings and Motions

1150.41 Informal resolution.
1150.42 Citations.
1150.43 Answers.
1150.44 Amendments.
1150.45 Request for hearing.
1150.46 Motions.
1150.47 Disposition of motions and petitions.
1150.48 PER: citation, answer, amendment.

Subpart F—Responsibilities and Duties of Judge

1150.51 Who presides.
1150.52 Authority of judge.
1150.53 Disqualification of judge.

Subpart G—Prehearing Conferences and Discovery

Sec.
1150.61 Prehearing conference.
1150.62 Exhibits.
1150.63 Discovery.

Subpart H—Hearing Procedures

1150.71 Briefs.
1150.72 Purpose of hearing.
1150.73 Testimony.
1150.74 Exclusion of evidence.
1150.75 Objections.
1150.76 Exceptions.
1150.77 Official notice.
1150.78 Public documents.
1150.79 Offer of proof.
1150.80 Affidavits.
1150.81 Consolidated or joint hearing.
1150.82 PER proceedings.

Subpart I—The Record

1150.91 Record for decision.
1150.92 Official transcript.

Subpart J—Posthearing Procedures; Decisions

1150.101 Posthearing briefs; proposed findings.
1150.102 Decision.
1150.103 PER: posthearing briefs, decision.
1150.104 Judicial review.
1150.105 Court enforcement.

Subpart K—Miscellaneous Provisions

1150.111 Ex parte communications.
1150.112 Post-order proceedings.
1150.113 Amicable resolution.
1150.114 Effect of partial invalidity.

Authority: Sec. 502 of the Rehabilitation Act of 1973, Pub. L. 93–112, as amended, 87 Stat. 391 (29 U.S.C. 792).

Subpart A—General Information

§ 1150.1 Purpose and application.

(a) The purpose of the regulations in this part is to implement section 502 of the Rehabilitation Act of 1973, Pub. L. 93–112, 29 U.S.C. 792, *as amended by* the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, Pub. L. 95–602, section 118, 92 Stat. 2979, by establishing rules of procedure for public hearings which ensure compliance with standards issued under the Architectural Barriers Act of 1968, Pub. L. 90–480, as amended, 42 U.S.C. 4151 *et seq.* (including standards of the United States Postal Service).

(b) These regulations govern proceedings which involve buildings and facilities designed, constructed, or altered after the effective date of relevant standards issued under the Architectural Barriers Act of 1968, as amended, or section 502 of the Rehabilitation Act of 1973, as amended.

§ 1150.2 Policy of amicable resolution.

The policy of the Architectural and Transportation Barriers Compliance Board is to maximize the accessibility and usability of buildings, and facilities through amicable means. To this end, the Architectural and Transportation Barriers Compliance Board encourages voluntary and informal resolution of all complaints.

§ 1150.3 Definitions.

(a) "A&TBCB" means the Architectural and Transportation Barriers Compliance Board.

(b) "Agency" means Federal department, agency or instrumentality as defined in sections 551(1) and 701(b)(1) of Title 5, United States Code, or an agency official authorized to represent the agency.

(c) "Architectural Barriers Act" means the Architectural Barriers Act of 1968, Pub. L. 90–480, as amended, 42 U.S.C. 4151 *et seq.*

(d) "Building" means any building or facility, including the site and structures appurtenant to it (other then a privately owned residential structure not leased by the government on or after January 1, 1977, for subsidized housing programs including any renewal of a lease entered before January 1, 1977, which renewal is on or after such date, and any building or facility on a military installation designed and constructed primarily for use by able-bodied military personnel) the intended use of which either will require that such building or facility be accessible to the public or may result in the employment or residence therein of physically handicapped persons, as defined in section 706(6) of Title 24, United States Code (section 111 of the Rehabilitation Act Amendments of 1974, Pub. L. 93–516), which building or facility is—

(1) To be constructed or altered by or on behalf of the United States; or

(2) To be leased in whole or in part by the United States (i) after August 12, 1968, and before January 1, 1977, after construction or alteration in accordance with plans and specifications of the United States, or (ii) on or after January 1, 1977, including any renewal of a lease entered into before January 1, 1977, which renewal is on or after such date; or

(3) To be financed in whole or in part by a contract, grant or loan made by the United States after August 12, 1968, if the building or facility is subject to standards for design, construction or alteration issued under the law authorizing the grant or loan; or

(4) To be constructed under the authority of the National Capital Transportation Act of 1965 or Title III of the Washington Metropolitan Area Transit Regulation Compact.

(e) "Chairperson" means the Chairperson of the A&TBCB.

(f) "Complaint" means any written notice of an alleged violation, whether from an individual or organization, or other written information reasonably indicating to the Executive Director a violation of the standard.

(g) "Construction" means the construction of a new building, the acquisition, expansion, remodeling, alteration, and renovation of existing buildings.

(h) "Day" means calendar day.

(i) "Executive Director" means the A&TBCB Executive Director.

(j) "Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.

(k) "Judge" means an Administrative Law Judge appointed by the A&TBCB and assigned to the case in accordance with either section 3105 or 3314 of Title 5, United States Code.

(l) "PER" means Provisional Expedited Relief.

(m) "Privately Owned Residential Structure" means a residential building or facility not owned by a Federal agency or instrumentality, a state, county, municipal or other governmental entity, or a political subdivision of it, or an instrumentality of a state, county, municipal or other governmental entity or a political subdivision of it.

(n) "Respondent" means a party answering the citation, including PER Citation.

(o) "Section 502 of the Rehabilitation Act" means section 502 of the Rehabilitation Act of 1973, Pub. L. 93–112, 29 U.S.C. 792, as amended.

(p) "Standard" means any standard for accessibility and usability prescribed under the Architectural Barriers Act.

§ 1150.4 Scope and interpretation of rules.

(a) These rules shall govern all compliance proceedings held before a judge and all alleged violations coming to the Executive Director as a complaint.

(b) In the absence of a specific provision in these rules, procedure shall be in accordance with the Administrative Procedure Act, Subchapter II of Chapter 5 and Chapter 7, or Title 5, United States Code, and the Federal Rules of Civil Procedure, in that order.

(c) These rules and regulations shall be liberally construed to effectuate the purposes and provisions of the Architectural Barriers Act and section 502 of the Rehabilitation Act.

(d) Words importing the singular number may extend and be applied to a plural and vice versa.

§ 1150.5 Suspension of rules.

Upon notice to all parties, the judge, with respect to matters pending before him/her, may modify or waive any rule in these regulations upon determination that no party will be unduly prejudiced and that the ends of justice will be served.

Subpart B—Parties, Complainants, Participants

§ 1150.11 Parties.

(a) The term parties includes (1) any agency, state or local body, or other person named as a respondent in a notice of hearing or opportunity for hearing, (2) the Executive Director and (3) any person named as a party by order of the judge.

(b) The Executive Director has the sole authority to initiate proceedings by issuing a citation under § 1150.42, on the basis of (1) a complaint from any person or (2) alleged violations coming to his/her attention through any means.

§ 1150.12 Complainants.

(a) Any person may submit a complaint to the A&TBCB alleging that a building or facility does not comply with applicable standards issued under the Architectural Barriers Act. Complaints must be in writing and should be sent to: Executive Director, Architectural and Transportation Barriers Compliance Board, Washington, D.C. 20201. Complaints may, but need not, contain (1) the complainant's name and where he/she may be reached, (2) the facility or building and, if known, the funding agency and (3) a brief description of the barriers. A complaint form is available at the above address.

(b) The A&TBCB shall hold in confidence the identity of all persons submitting complaints unless the person submits a written authorization otherwise.

(c) The A&TBCB shall give or mail, by certified mail, return receipt requested, to the complainant a copy of these regulations.

(d) A complainant is not a party to the proceedings as a matter of course, but may petition the judge to participate under § 1150.13.

(e) The A&TBCB shall send the complainant a copy of the final order issued by the judge. The complainant has standing to obtain judicial review of that order.

§ 1150.13 Participation on petition.

(a) By petitioning the judge, any person may be permitted to participate in the proceedings when he/she claims an interest in the proceedings and may contribute materially to their proper disposition. A complainant shall be permitted to participate in the proceeding when he/she petitions the judge.

(b) The judge may, in his/her discretion, determine the extent of participation of petitioners, including as an intervening party or participant. The judge may, in his/her discretion, limit participation to submitting documents and briefs, or permit the introduction of evidence and questioning of witnesses.

§ 1150.14 Appearance.

(a) A party may appear in person or by counsel or other representative and participate fully in any proceedings. An agency, state or local body, corporation or other association, may appear by any of its officers or by any employee it authorizes to appear on its behalf.

(b) A representative of a party or participant shall be deemed to control all matters respecting the interest of such party or participant in the proceedings.

(c) This section shall not be construed to require any representative to be an attorney-at-law.

(d) Withdrawal of appearance of any representative is effective when a written notice of withdrawal is filed and served on all parties and participants.

Subpart C—Form, Execution, Service and Filing of Documents for Proceedings on Citations

§ 1150.21 Form of documents to be filed.

Documents to be filed under the rules in this part shall be dated, the original signed in ink, shall show the docket number and title of the proceeding and shall show the title, if any, and address of the signatory. Copies need not be signed; however, the name of the person signing the original, but not necessarily his/her signature, shall be reproduced. Documents shall be legible and shall not be more than 8½ inches wide.

§ 1150.22 Signature of documents.

The signature of a party, authorized officer, employee or attorney constitutes a certification that he/she has read the document, that to the best of his/her knowledge, information, and belief there is a good ground to support it, and that it is not interposed for delay. If a document is not signed or is signed with intent to defeat the purpose of this section, it may be stricken as sham and false and the proceeding may proceed as though the document had not been filed.

§ 1150.23 Filing and service.

(a) *General.* All notices, written motions, requests, petitions memoranda, pleadings, briefs, decisions, and correspondence to the judge, from a party or a participant or vice versa, relating to a proceeding after its commencement shall be filed and served on all parties and participants.

(b) *Filing.* Parties shall submit for filing the original and two copies of documents, exhibits, and transcripts of testimony. Filings shall be made in person or by mail, with the hearing clerk at the address stated in the notice of hearing or notice of opportunity for hearing, during regular business hours. Regular business hours are every Monday through Friday (Federal legal holidays excepted) from 9 a.m. to 5:30 p.m. Standard or Daylight Savings Time, whichever is effective in the city where the office of the judge is located at the time.

(c) *Service.* Service of one copy shall be made on each party and participant by personal delivery or by certified mail, return receipt requested, properly addressed with postage prepaid. When a party or participant has appeared by attorney or other representative, service upon the attorney or representative is deemed service upon the party or participant.

§ 1150.24 [Reserved]

§ 1150.25 Date of service.

The date of service shall be the day when the matter is deposited in United States mail or is delivered in person, except that the date of service of the initial notice of hearing or opportunity for hearing shall be the date of its delivery, or the date that its attempted delivery is refused.

§ 1150.26 Certificate of service.

The original of every document filed and required to be served upon parties to a proceeding shall be endorsed with a certificate of service signed by the party making service or by his/her attorney or representative, stating that such service has been made, the date of service, and the manner of service, whether by mail or personal delivery.

Subpart D—Time

§ 1150.31 Computation.

In computing any period of time under these rules or in any order issued under them, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or Federal legal holiday, in which event it includes the next following business day. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays, and Federal legal holidays shall be excluded from the computation.

§ 1150.32 Extension of time or postponement.

(a) Requests for extension of time shall be addressed to the judge and served on all parties and participants. Requests should set forth the reasons for the application.

(b) If made promptly, answers to requests for extension of time are permitted.

(c) The judge may grant the extension upon a showing of good cause by the applicant.

Subpart E—Proceedings Prior to Hearings; Pleadings and Motions

§ 1150.41 Informal resolution.

(a) The A&TBCB immediately shall serve copies of complaints on all interested agencies and persons. In addition, the A&TBCB shall apprise any person who might become a party to compliance proceedings of the alleged instances of noncompliance and afford him/her a reasonable opportunity to respond or submit pertinent documents.

(b) The Executive Director or his/her designee shall seek the cooperation of persons and agencies in obtaining compliance and shall provide assistance and guidance to help them comply voluntarily.

(c) Upon request of the Executive Director, interested agencies or persons, including, but not limited to, occupant agencies, recipients of assistance, and lessors, shall submit to the Executive Director or his/her designee timely, complete, and accurate reports concerning the particular complaint. Report shall be completed at such times, and in such form containing all information as the Executive Director or his/her designee may prescribe.

(d) The Executive Director, or his/her designee, shall have access during normal business hours to books, records, accounts and other sources of information and facilities as may be pertinent to ascertain compliance. Considerations of privacy or confidentiality asserted by an agency or person may not bar the Executive Director from evaluating such materials or seeking to enforce compliance. The Executive Director may seek a protective order authorizing the use of allegedly confidential materials on terms and conditions specified by the judge.

(e) Complaints should be resolved informally and expeditiously, by the interested persons or agencies. If compliance with the applicable standards is not achieved informally or an impasse concerning the allegations of compliance or noncompliance is reached, the Executive Director will review the matter, including previous attempts by agencies to resolve the complaint, and take actions including, but not limited to, surveying and investigating buildings, monitoring compliance programs of agencies, furnishing technical assistance, such as standard interpretation, to agencies, and obtaining assurances, certifications, and plans of action as may be necessary to ensure compliance.

(f) All actions to informally resolve complaints under paragraphs (a) through (e) of this section shall be completed within ninety (90) days after receipt of the complaint by all affected agencies and persons. A complaint shall be deemed informally resolved if the person or agencies responsible for the alleged violation either (1) demonstrates to the Executive Director that no violation has occurred or (2) corrects the violation or (3) agrees in writing to implement specific compliance action within a definite time agreed to by the Executive Director or (4) are timely implementing a plan for compliance agreed to by the Executive Director. No later than ten (10) days after the termination of the ninety (90) day period the Executive Director shall either issue a citation under § 1150.42 or determine in writing that a citation will not be issued at that time and the reasons that it is considered unnecessary.

(g) A determination not to issue a citation shall be served in accordance with § 1150.23 on all interested agencies and persons upon whom a citation would have been served if it had been issued. The failure of the Executive Director to take action within the ten (10) day period after termination of the ninety (90) day informal resolution period shall not preclude the Executive Director from taking action thereafter.

(h) Nothing in paragraphs (a)–(g) of this section shall be construed as precluding the Executive Director before the termination of the ninety (90) day informal resolution period from (1) issuing a citation if it is reasonably clear that informal resolution cannot be achieved within that time, or (2) determining not to issue a citation if it is reasonably clear that compliance can be achieved or that issuance of a citation is not otherwise warranted.

§ 1150.42 Citations.

(a) If there appears to be a failure or threatened failure to comply with a relevant standard, and the noncompliance or threatened noncompliance cannot be corrected or resolved by informal means under § 1150.41, the Executive Director on behalf of the A&TBCB may issue a written citation, requesting the ordering of relief necessary to ensure compliance with the standards or guidelines and requirements. The relief may include the suspension or withholding of funds and/or specific corrective action.

(b) The citation shall be served upon all interested parties, including but not limited to the complainant, the agency having custody, control, or use of the building or facility, and the agency funding by contract, grant, or loan, the allegedly noncomplying building or facility.

(c) The citation shall contain (1) a concise jurisdictional statement reciting the provisions of section 502 of the Rehabilitation Act and Architectural Barriers Act under which the requested action may be taken, (2) a short and plain basis for requesting the imposition of the sanctions, (3) a statement either that within fifteen (15) days a hearing date will be set or that the agency or affected parties may request a hearing within fifteen (15) days from service of the citation, and (4) a list of all pertinent documents necessary for the judge to make a decision on the alleged noncompliance, including but not limited to, contracts, invitations for bids, specifications, contract or grant drawings, and correspondence.

(d) The Executive Director shall file copies of all pertinent documents listed in the citation simultaneously with filing the citation.

§ 1150.43 Answers.

(a) Answers shall be filed by respondents within fifteen (15) days after receipt of a citation.

(b) The answer shall admit or deny specifically and in detail, matters set forth in each allegation of the citation. If the respondent is without knowledge, the answer shall so state and such statement shall be deemed a denial. Matters not specifically denied shall be deemed admitted. Failure to file an answer shall constitute an admission of all facts recited in the citation.

(c) Answers shall contain a list of additional pertinent documents not listed in the citation when respondent reasonably believes these documents are necessary for the judge to make a decision. Copies of the listed documents shall be filed with the answer.

(d) Answers may also contain a request for a hearing under § 1150.45.

§ 1150.44 Amendments.

(a) The Executive Director may amend the citation as a matter of course before an answer is filed. A respondent may amend its answer once as a matter of course, not later than five (5) days after the filing of the original answer. Other

amendments of the citation or the answer shall be made only by leave of judge.

(b) An amended citation shall be answered within five (5) days of its service, or within the time for filing an answer to the original citation, whichever is longer.

§ 1150.45 Request for hearing.

When a citation does not state that a hearing will be scheduled, the respondent, either in a separate paragraph of the answer, or in a separate document, may request a hearing. Failure of a respondent to request a hearing within fifteen (15) days from service of the citation shall be deemed a waiver of the right to a hearing and shall constitute consent to the making of a decision on the basis of available information.

§ 1150.46 Motions.

(a) Motions and petitions shall state the relief sought, the authority relied upon, and the facts alleged.

(b) If made before or after the hearing, these matters shall be in writing. If made at the hearing, they may be stated orally or the judge may require that they be reduced to writing and filed and served on all parties.

(c) Except as otherwise ordered by the judge, responses to a written motion or petition shall be filed within ten (10) days after the motion or petition is served. An immediate oral response may be made to an oral motion. All oral arguments on motions will be at the discretion of the judge.

(d) A reply to a response may be filed within five (5) days after the response is served. The reply shall address only the contents of the response.

§ 1150.47 Disposition of motions and petitions.

The judge may not sustain or grant a written motion or petition prior to expiration of the time for filing responses, but may overrule or deny such motion or petition without awaiting response; providing however, that prehearing conferences, hearings, and decisions need not be delayed pending disposition of motions or petitions. All motions and petitions may be ruled upon immediately after reply. Motions and petitions not disposed of in separate rulings or in decisions will be deemed denied.

§ 1150.48 PER: citation, answer, amendment.

(a) Unless otherwise specified, other relevant sections shall apply to PER proceedings.

(b) In addition to all other forms of relief requested, the citation shall request PER when it appears to the Executive Director that immediate and irreparable harm from noncompliance with the standard is occurring or is about to occur. Citations requesting PER shall recite specific facts and include the affidavit or the notarized complaint upon which the PER request is based. Citations requesting PER shall recite that a hearing regarding PER has been scheduled to take place eight (8) days after receipt of the citation. Citations requesting PER may be filed without prejudice to proceedings, in which per is not requested and without prejudice to further proceedings if PER is denied. The time and place of hearing fixed in the citation shall be reasonable and shall be subject to change for cause.

(c) Answers to citations requesting PER shall be in the form of all answers, as set forth in § 1150.43, and must be filed within four (4) days after receipt of the citation. Answers shall recite in detail, by affidavit or by notarized answer, why the PER requested should not be granted.

(d) When a citation contains both a request for relief to ensure compliance with a standard and a request for PER, an answer to the PER request shall be filed in accordance with paragraph (c) of this section and an answer to a request for other relief shall be filed in accordance with § 1150.43.

(e) Citations and answers in PER proceedings may not be amended prior to hearing. Citations and answers in PER proceedings may be amended at the hearing with the permission of the judge.

Subpart F—Responsibilities and Duties of Judge

§ 1150.51 Who presides.

(a) A judge assigned to the case under section 3105 or 3344 of Title 5, United States Code (formerly section 11 of the Administrative Procedure Act), shall preside over the taking of evidence in any hearing to which these rules of procedure apply.

(b) The A&TBCB shall, in writing, promptly notify all parties and participants of the assignment of the judge. This notice may fix the time and place of hearing.

(c) Pending his/her assignment, the responsibilities, duties and authorities of the judge under these regulations shall be executed by the A&TBCB, through the Chairperson or another member of the A&TBCB designated by the Chairperson. A Board member shall not serve in this capacity in any proceeding relating to the member, his/her Federal agency, or organization of which he/she is otherwise interested.

§ 1150.52 Authority of judge.

The judge shall have the duty to conduct a fair hearing, to take all necessary action to avoid delay, and maintain order. He/she shall have all powers necessary to effect these ends, including (but not limited to) the power to:

(a) Arrange and issue notice of the date, time, and place of hearings previously set.

(b) Hold conferences to settle, simplify, or fix the issues in proceedings, or to consider other matters that may aid in the expeditious disposition of the proceedings.

(c) Require parties and participants to state their position with respect to the various issues in the proceedings.

(d) Administer oaths and affirmations.

(e) Rule on motions, and other procedural items on matters pending before him/her.

(f) Regulate the course of the hearing and conduct of counsel.

(g) Examine witnesses and direct witnesses to testify.

(h) Receive, rule on, exclude or limit evidence.

(i) Fix the time for filing motions, petitions, briefs, or other items in matters pending before him/her.

(j) Issue decisions.

(k) Take any action authorized by the rules in this part or the provisions of sections 551 through 559 of Title 5, United States Code (the Administrative Procedure Act).

§ 1150.53 Disqualification of judge.

(a) A judge shall disqualify himself/herself whenever in his/her opinion it is improper for him/her to preside at the proceedings.

(b) At any time following appointment of the judge and before the filing of the decision, any party may request the judge to withdraw on grounds of personal bias or prejudice either against it or in favor of any adverse party, by promptly filing with him/her an affidavit setting forth in detail the alleged grounds for disqualification.

(c) If, in the opinion of the judge, the affidavit referred to in paragraph (b) of this section is filed with due diligence and is sufficient on its face, the judge shall promptly disqualify himself/herself.

(d) If the judge does not disqualify himself/herself, he/she shall so rule upon the record, stating the grounds for his/her ruling. Then, he/she shall proceed with the hearing, or, if the hearing has closed, he/she shall proceed with the issuance of the decision.

Subpart G—Prehearing Conferences and Discovery

§ 1150.61 Prehearing conderence.

(a) At any time before a hearing, the judge on his/her own motion or on motion of a party, may direct the parties or their representatives to exchange information or to participate in a prehearing conference for the purpose of considering matters which tend to simplify the issues or expedite the proceedings.

(b) The judge may issue a prehearing order which includes the agreements reached by the parties. Such order shall be served upon all parties and participants and shall be a part of the record.

§ 1150.62 Exhibits.

(a) Proposed exhibits shall be exchanged at the prehearing conference, or otherwise prior to the hearing if the judge so requires. Proposed exhibits not so exchanged may be denied admission as evidence.

(b) The authenticity of all proposed exhibits will be deemed admitted unless written objection to them is filed prior to the hearing or unless good cause is shown at the hearing for failure to file such written objection.

§ 1150.63 Discovery.

(a) Parties are encouraged to engage in voluntary discovery procedures. For good cause shown under appropriate circumstances, but not as a matter of course, the judge may entertain motions for permission for discovery and issue orders including orders—(1) to submit testimony upon oral examination or written interrogatories before an officer authorized to administer oaths, (2) to permit service of written interrogatories upon the opposing party, (3) to produce and permit inspection of designated documents, and (4) to permit service upon the opposing parties of a request for the admission of specified facts.

(b) Motions for discovery shall be granted only to the extent and upon such terms as the judge in his/her discretion considers to be consistent with and essential to the objective of securing a just and inexpensive determination of the merits of the citation without unnecessary delay.

(c) In connection with any discovery procedure, the judge may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression or undue burden or expense, including limitations on the scope, method, time and place for discovery, and provisions for protecting the secrecy of confidential information or documents. If any party fails to comply with a discovery order of the judge, without an excuse or explanation satisfactory to the judge, the judge may decide the fact or issue relating to the material requested to be produced, or the subject matter of the probable testimony, in accordance with claims of the other party in interest or in accordance with the other evidence available to the judge, or make such other ruling as he/she determines just and proper.

Subpart H—Hearing Procedures

§ 1150.71 Briefs.

The judge may require parties and participants to file written statements of position before the hearing begins. The judge may also require the parties to submit trial briefs.

§ 1150.72 Purpose of hearing.

Hearings for the receipt of evidence will be held only in cases where issues of fact must be resolved. Where it appears from the citation, the answer, stipulations, or other documents in the record, that there are no matters of material fact in dispute, the judge may enter an order so finding, vacating the hearing date, if one has been set, and fixing the time for filing briefs.

§ 1150.73 Testimony.

(a) Formal rules of evidence shall not apply, but rules or principles designed to assure production of the most probative evidence available do apply. Testimony shall be given orally under oath or affirmation; but the judge, in his/her discretion, may require or permit the direct testimony of any witness to be prepared in writing and served on all parties in advance of the hearing. Such testimony may be adopted by the witness at the hearing and filed as part of the record.

(b) All witnesses shall be available for cross-examination and, at the discretion of the judge, may be cross-examined without regard to the scope of direct examination as to any matter which is relevant and material to the proceeding.

(c) When testimony is taken by deposition, an opportunity shall be given, with appropriate notice, for all parties to cross-examine the witness. Objections to any testimony or evidence presented shall be deemed waived unless raised at the time of the deposition.

(d) Witnesses appearing before the judge shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. Witnesses whose depositions are taken and the persons taking the same shall be entitled to the same fees as are paid for like services in the courts of the United States. Witness fees and mileage shall be paid by the party requesting the witness to appear, and the person taking a deposition shall be paid by the party requesting the taking of the deposition.

§ 1150.74 Exclusion of evidence.

The judge may exclude evidence which is immaterial, irrelevant, unreliable, or unduly repetitious.

§ 1150.75 Objections.

Objections to evidence or testimony shall be timely and may briefly state the grounds.

§ 1150.76 Exceptions.

Exceptions to rulings of the judge are unnecessary. It is sufficient that a party at the time the ruling of the judge is sought, makes known the action which he/she desires the judge to take, or his/her objection to an action taken, and his/her grounds for it.

§ 1150.77 Official Notice.

Where official notice is taken or is to be taken of a material fact not apearing in the evidence of record, any party on timely request, shall be afforded an opportunity to question the propriety of taking notice or to rebut the fact noticed.

§ 1150.78 Public documents.

When a party or participant offers, in whole or in part, a public document, such as an official report, decision, opinion, or published scientific or economic statistical data issued by any of the executive departments, or their subdivisions, legislative agencies or committees or administrative agencies of the Federal government (including government-owned corporations), or a similar document issued by a State or local government or their agencies, and such document (or part thereof) has been shown by the offeror to be reasonably available to the public, such document need not be produced or marked for identification, but may be offered for official notice, as a public document by specifying the document or its relevant part.

§ 1150.79 Offer of proof.

On offer of proof made in connection with an objection taken to a ruling of the judge rejecting or excluding proffered oral testimony shall consist of a statement of the substance of the evidence which counsel contends would be adduced by such testimony. If the excluded evidence consists of evidence in documentary or written form or refers to documents or records, a copy of the evidence shall be marked for

identification and shall accompany the record as the offer of proof.

§ 1150.80 Affidavits.

An affidavit is not inadmissible as such. Unless the judge fixes other time periods, affidavits shall be filed and served on the parties not later than fifteen (15) days prior to the hearing. Not less than seven (7) days prior to hearing, a party may file and serve written objections to any affidavit on the ground that he/she believes it necessary to test the truth of its assertions at hearing. In such event the assertions objected to will not be received in evidence unless the affidavit is made available for cross-examination, or the judge determines that cross-examination is not necessary for the full and true disclosure of facts referred to in such assertions. Not withstanding any objection, however, affidavits may be considered in the case of any respondent who waives a hearing.

§ 1150.81 Consolidated or joint hearing.

In cases in which the same of related facts are asserted to constitute noncompliance with standards or guidelines and requirements, the judge may order all related cases consolidated and may make other orders concerning the proceedings as will be consistent with the objective of securing a just and inexpensive determination of the case without unnecessary delay.

§ 1150.82 PER Proceedings.

(a) In proceedings in which a citation, or part of one, seeking PER has been filed, the judge shall make necessary rulings with respect to time for filing of pleadings, the conduct of the hearing, and to all other matters. He/she shall do all other things necessary to complete the proceeding in the minimum time consistent with the objective of securing an expeditious, just and inexpensive determination of the case. The times for actions set forth in these rules shall be followed unless otherwise ordered by the judge.

(b) The judge shall determine the terms and conditions for orders of PER. These orders must be consistent with preserving the rights of all parties so as to permit the timely processing of the citation, or part of it, not requesting PER, as well as consistent with the provisions and objectives of the Architectural Barriers Act and section 502 of the Rehabilitation Act. In issuing an order for PER, the judge shall make the following specific findings of fact and conclusions of law (1) The Executive Director is likely to succeed on the merits of the proceeding; (2) the threatened injury or violation outweighs the threatened harm to the respondent if PER is granted; and (3) granting PER is in the public interest.

(c) The judge may dismiss any citation or part of a citation seeking PER when the judge finds that the timely processing of a citation not requesting PER will adequately ensure the objectives of section 502 of the Rehabilitation Act and that immediate and irreparable harm caused by noncompliance with the standards or guidelines and requirements is not occurring or about to occur.

Subpart I—The Record

§ 1150.91 Record for decision.

The transcript of testimony, exhibits and all papers, documents and requests filed in the proceeding, including briefs and proposed findings and conclusions, shall constitute the record for decision.

§ 1150.92 Official transcript.

The official transcripts of testimony, and any exhibits, briefs, or memoranda of law filed with them, shall be filed with the judge. Transcripts of testimony in hearings may be obtained from the official reporter by the parties and the public at rates not to exceed the maximum rates fixed by the contract between the A&TBCB and the reporter. Upon notice to all parties, the judge may authorize corrections to the transcript as are necessary to reflect accurately the testimony.

Subpart J—Posthearing Procedures; Decisions

§ 1150.101 Posthearing briefs; proposed findings.

The judge shall fix the terms, including time, for filing post-hearing statements of position or briefs, which may contain proposed findings of fact and conclusions of law. The judge may fix a reasonable time for such filing, but this period shall not exceed thirty (30) days from the receipt by the parties of the transcript of the hearing.

§ 1150.102 Decision.

(a) The judge shall issue a decision within thirty (30) days after the hearing ends or, when the parties submit posthearing briefs, within thirty (30) days after the filing of the briefs.

(b) The decision shall contain (1) all findings of fact and conclusions of law regarding all material issues of fact and law presented in the record, (2) the reasons for each finding of fact and conclusion of law, and (3) other provisions which effectuate the purposes of the Architectural Barriers Act and section 502 of the Rehabilitation Act. The decision may direct the parties to take specific action or may order the suspension or withholding of Federal funds.

(c) The decision shall be served on all parties and participants to the proceedings.

§ 1150.103 PER: Posthearing briefs, decision

(a) No briefs or posthearing statements of position shall be required in proceedings seeking PER unless specifically ordered by the judge.

(b) In proceedings seeking PER the decision may be given orally at the close of the hearing and shall be made in writing within three (3) days after the hearing.

§ 1150.104 Judicial review.

Any complainant or participant in a proceeding may obtain judicial review of a final order issued in a compliance proceeding.

§ 1150.105 Court enforcement.

The Executive Director, at the direction of the Board, shall bring a civil action in any appropriate United States district court to enforce, in whole or in part, any final compliance order. No member of the A&TBCB shall participate in any decision of the A&TBCB concerning a proceeding relating to the member, his/her Federal agency, or organization to which he/she is a member or in which he/she is otherwise interested.

Subpart K—Miscellaneous Provisions

§ 1150.111 Ex parte communications.

(a) No party, participant or other person having an interest in the case shall make or cause to be made an ex parte communication to the judge with respect to the case.

(b) A request for information directed to the judge which merely inquires about the status of a proceeding without discussing issues or expressing points of view is not deemed an ex parte communication. Communications with respect to minor procedural matters or inquiries or emergency requests for extensions of time are not deemed ex parte communications prohibited by paragraph (a) of this section. Where feasible, however, such communications should be by letter, with copies delivered to all parties. Ex parte communications between a party or participant and the Executive Director with respect to securing compliance are not prohibited.

(c) In the event an ex parte communication occurs, the judge shall issue orders and take action as fairness requires. A prohibited communication in writing received by the judge shall be

made public by placing it in the correspondence file of the docket in the case and will not be considered as part of the record for decision. If the prohibited communication is received orally, a memorandum setting forth its substance shall be made and filed in the correspondence section of the docket in the case. A person referred to in this memorandum may file a comment for inclusion in the docket if he/she considers the memorandum to be incorrect.

§ 1150.112 Post-order proceedings.

(a) Any party adversely affected by the compliance order issued by a judge may make a motion to the judge to have such order vacated upon a showing that the building or facility complies with the order.

(b) Notice of motions and copies of all pleadings shall be served on all parties and participants to the original proceeding. Responses to the motion to vacate shall be filed within ten (10) days after receipt of the motion unless the judge for good cause shown grants additional time to respond.

(c) Oral arguments on the motion may be ordered by the judge. The judge shall fix the terms of the argument so that they are consistent with the objective of securing a prompt, just, and inexpensive determination of the motion.

(d) Within ten (10) days after receipt of all answers to the motion, the judge shall issue his/her decision in accordance with § 1150.102(b) and (c).

§ 1150.113 Amicable resolution.

(a) Amicable resolution is encouraged at any stage of proceedings where such resolution is consistent with the provisions and objectives of the Architectural Barriers Act and section 502 of the Rehabilitation Act.

(b) Agreements to amicably resolve pending proceedings shall be submitted by the parties and shall be accompanied by an appropriate proposed order.

(c) The Executive Director is authorized to resolve any proceeding on behalf of the A&TBCB unless otherwise specifically directed by the A&TBCB and afterwards may file appropriate stipulations or notice that the proceeding is doscontinued.

§ 1150.114 Effect of partial invalidity.

If any section, subsection, paragraph, sentence, clause or phrase of these regulations is declared invalid for any reason, the remaining portions of these regulations that are severable from the invalid part shall remain in full force and effect. If a part of these regulations is invalid in one or more of its applications, the part shall remain in effect in all valid applications that are severable from the invalid applications.

Issued in Washington, D.C. on April 18, 1980.

Max Cleland,

Chairperson, Architectural and Transportation Barriers Compliance Board.

[FR Doc. 80-13173 Filed 4-29-80; 8:45 am]

BILLING CODE 4110-92-M

federal register

Wednesday
April 30, 1980

Part VI

Department of Agriculture

Federal Grain Inspection Service

Official Agency Geographic Area; Applications Being Accepted for Designation in Toledo, Ohio, Area

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

Official Agency Geographic Area; Applications Being Accepted for Designation in the Toledo, Ohio, Area

AGENCY: Federal Grain Inspection Service.

ACTION: Notice and request for applications.

SUMMARY: On January 16, 1977, the designation of the Toledo Board of Trade (TBOT) was terminated. On that date the Federal Grain Inspection Service (FGIS) began providing official services at export and nonexport locations previously serviced by the TBOT. This notice is to announce that the nonexport area previously serviced by the TBOT remains open for assignment to an official agency. Persons interested in applying to service this area as an official agency can obtain the necessary information and application forms from the Compliance Division of FGIS.

DATE: Applications by June 30, 1980.

FOR APPLICATION AND ADDITIONAL INFORMATION CONTACT: J. T. Abshier, Director, Compliance Division, Federal Grain Inspection Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447–8262.

SUPPLEMENTARY INFORMATION: The Toledo Board of Trade (TBOT) provided official inspection services at several export facilities situated in a localized area along the Maumee River in Lucas County, Ohio, and interior locations in all or parts of the following Ohio counties: Lucas, Fulton and Ottawa; and parts of Monroe, Jackson, and Lenawee Counties in Michigan. The TBOT ceased providing official services at their export port locations and at interior (nonexport) locations on midnight, January 15, 1977.

Pursuant to Sections 7(e)(1) and 7A(c)(1) of the U.S. Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*) (the "Act"), the Federal Grain Inspection Service (FGIS) is required to provide official inspection and weighing services for all grains required or authorized to be inspected and weighed under the Act, at those export port locations where a State is not delegated to perform these official services. The State of Ohio did not qualify for delegation.

At the time of FGIS's assumption of responsibility for providing export services in the Toledo area, adjacent agencies were contacted in an effort to provide interim service for the interior locations until an official agency could be designated. No official agencies were willing or able to provide official services for the interior locations previously serviced by the TBOT. In accordance with Section 7(h) of the Act, the FGIS commenced, effective January 16, 1977, providing official services for the entire area previously serviced by TBOT. Section 7(h) of the Act provides FGIS authority to perform official services at any location other than export port locations where the Administrator determines such services are needed and there is no official agency available or willing to provide these services. FGIS can provide official services at such locations only until such time as the services can be provided on a regular basis by a designated official agency.

This notice announces that the area previously serviced by the TBOT remains open for interested persons to apply for designation as an official agency to service the locations in this area, other than the export port locations.

In accordance with provisions of the Act, all official agencies designated under the Act were assigned a geographic area within which they must operate (7 U.S.C. 79(f)(2)). The Fostoria Grain Inspection Service, Fostoria, Ohio (Fostoria), was inadvertently assigned, on January 14, 1980 (45 FR 2670), several counties in Ohio (Lucas, Fulton and Ottawa) which were previously serviced by TBOT. Fostoria only recently began to provide service to Metamora Elevator, Metamora, Ohio 43540 in Fulton County. FGIS has been and is currently servicing the remainder of the affected area. The inadvertent assignment of counties to Fostoria which were previously serviced by TBOT, is hereby declared null and void. These counties are included in the description of geographic area open for assignment as indicated below. Fostoria will continue to provide service to Metamora Elevator in Fulton County under an interim authorization in accordance with Section 7(h) of the Act pending final determination of this matter (7 U.S.C. 79(h)).

Interested parties seeking further information or who are interested in applying for designation for all or any portion of the area are invited to contact the Compliance Division of FGIS at the aforementioned address.

The description of the geographic area open for assignment, excluding export port locations, is as follows:

In Michigan: Portions of the following Michigan Counties which are east of Michigan State Route 127 and south of Michigan State Route 50; Jackson, Lenawee and Monroe.

In Ohio: All of the following Ohio Counties; Lucas, Fulton and Ottawa.

It should be noted that in accordance with Section 7(f)(2) of the Act, not more than one official agency shall be operative at one time for any geographic area.

Interested persons may obtain a map of the geographic area by contacting the Compliance Division at the previously mentioned address.

(Sections 8, 9, Pub. L. 94–582, 90 Stat. 2870, 2875, (7 U.S.C. 79, 79a))

Done in Washington, D.C., on April 24, 1980.

David C. Mangum,

Acting Administrator.

[FR Doc. 80-13198 Filed 4-29-80; 8:45 am]

BILLING CODE 3410-02-M

federal register

Wednesday
April 30, 1980

Part VII

Department of Health, Education, and Welfare

Office of Education

Basic Educational Opportunity Grant Program; Family Contribution Schedules

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

45 CFR Parts 174, 175, 176, and 190

Basic Educational Opportunity Grant Program—Family Contribution Schedules

AGENCY: Office of Education, HEW.

ACTION: Final regulations.

SUMMARY: These final regulations establish the 1980-81 Family Contribution Schedules—the formulas used in determining student eligibility on the basis of financial need for the Basic Educational Opportunity Grant Program. They include a number of revisions to the 1979–80 Family Contribution Schedules. These revisions are intended to accomplish a number of objectives. Several of the changes are necessitated by the adoption of the common student aid application form for 1980–81. Others reflect a change in the assessment rate of income for independent students with dependents and in the treatment of income and assets of dependent students. Another revises the conditions under which a student may file a Basic Grant Supplemental Form using estimated data for the first calendar year of the award period instead of base year data. Additionally, these regulations also revise the definition of an "independent student" for the three campus-based programs (National Direct Student Loan, College Work-Study, and Supplemental Educational Opportunity Grant) as well as for the Basic Grant Program.

EFFECTIVE DATE: These regulations are expected to take effect 45 days after they are transmitted to Congress. Regulations are usually transmitted to Congress several days before they are published in the **Federal Register**. The effective date is changed by statute if the Congress disapproves the regulations or takes certain adjournments. It should be noted, however, that these regulations apply only to Basic Educational Opportunity Grants made for the period of July 1, 1980 through June 30, 1981. If you want to know the effective date of these regulations, call or write the Office of Education contact person.

FOR FURTHER INFORMATION CONTACT: William Moran, Chief, Basic Grants Policy Section, or Brian Kerrigan, Basic Grant Program Specialist, Division of Policy and Program Development, ROB-3, Room 4318, 400 Maryland Avenue, SW., Washington, D.C. 20202. (202) 472-4300.

SUPPLEMENTARY INFORMATION:

General Background

The proposed Family Contribution Schedules for 1980–81 were published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on July 26, 1979. Copies of the NPRM were mailed to participating post-secondary institutions and to various education organizations, and public comment was solicited. Additionally, a Congressional hearing was held on the proposed regulations.

The public comments that were received on the NPRM and the Office of Education responses to those comments are summarized in the appendix to this **Federal Register** document.

Summary of Major Issues

I. Changes Relating to the Adoption of a Common Student Aid Application Form

In an effort to simplify the student aid application process, the Office of Education will adopt, beginning with the 1980–81 award period, a common form on which students may apply for a Basic Grant and for aid under the three campus-based programs. The common form has been developed by staff members of the Bureau of Student Financial Assistance working closely with the Coalition for the Coordination of Student Financial Aid.

The draft form has been reviewed by financial aid administrators, representatives from State agencies, students, and Congressional staff. The form will include data elements necessary to compute the Basic Grant Eligibility Index and the expected family contribution under Uniform Methodology (UM). It will also include a minimal number of additional data elements considered essential for a financial aid officer to have in determining whether adjustments should be made in the UM expected family contribution in individual cases. Three of the changes in the Family Contribution Schedules for 1980–81 relate to the adoption of the common form.

1. *Replacement of the unusual expense offset with an unusual medical expense offset and elimination of Casualty and Theft Losses as a line item on the form.* Section 411(a)(3)(B)(ii)(V) of the Higher Education Act of 1965 provides that one criterion which shall be used in determining Basic Grant eligiblity will be: "Any unusual expenses of the student or his family, such as unusual medical expenses, and those which may arise from a catastrophe." In the 1979–80 application, lines 25 and 44 reflect medical and dental expenses (for dependent and independent applicants respectively). And, casualty and theft losses are reported on lines 26 and 45.

In the 1980–81 form we have deleted the casualty and theft losses line item. These losses generally will still be reflected without the need for an offset and a separate line item on the application. Losses which affect investments and real estate will be reflected through lower amounts reported in those two line items. Losses affecting other family possessions which have been replaced through cash purchases will be reflected through a lower amount reported in the line item for cash, savings, and checking accounts. Additionally, if after an application has been submitted, the student or the student's parents suffer a loss of, or damage to, assets because of a natural disaster in an area declared a National Disaster Area by the President, asset amounts on the SER may be corrected to reflect the loss. Also, if a student qualifies under any of the conditions for filling a Supplemental Form, asset amounts will be adjusted to reflect current value at the time of filing the Supplemental Form. We feel that the number of students having casualty and theft losses which are not reflected through these other means is not of sufficient size to warrant a line item on the form. The line item for reporting medical and dental expenses—the other item included in computing the unusual expense offset—will remain on the form for 1980–81.

In the 1980–81 Family Contribution Schedules, we are replacing the unusual expense offset by an unusual medical expense offset. For dependent students this offset will equal the amount by which the sum of unreimbursed medical and dental expenses exceeds 20 percent of the effective income of the parents. For independent students the offset will equal the amount by which the sum of unreimbursed medical and dental expenses exceeds 20 percent of the student's effective family income.

2. *Elimination of "custody" from the criteria for determining which parent's income should be reported for a student whose parents are divorced or separated.* Previous regulations provided that in the case of a dependent student whose parents were separated or divorced, income information was to be provided by the parent who had custody of the student. If custody was not awarded, or if parents had equal custody, the income to be reported was to be that of the parent with whom the

applicant resided for the greater portion of the 12 month period preceding the date of the application. If neither of those criteria applied, the income to be reported was to be that of the parent who was providing or had most recently provided the greater portion of the student's support.

In most instances, the question of which parent had custody was irrelevant for applicants over seventeen years of age—approximately 99% of the dependent applicant population. Thus, for 1980–81, as part of the effort to simplify the application and the instructions, we have eliminated this criterion. Section 190.33 of the Family Contribution Schedule regulations is, thus, revised to provide that if the parents are divorced or separated, income information shall be provided by the parent with whom the student resided for the greater portion of the 12 month period preceding the date of application. If the student did not live with either parent during that period or lived with each for an equal amount of time, the income to be reported will be that of the parent who has provided the greater portion of the student's support during that period. If neither of the above criteria apply, the income to be reported will be that of the parent who provided the greater portion of the student's support during the period beginning January 1, 1979 and ending twelve months prior to the date of the application.

3. *Elimination of the third year in the criteria for determining "independent student" status, and addition of criteria for determining which parent shall be considered in determining that status in cases of divorce, separation, and death.* Under previous regulations, the three criteria of the independent student definition had to be met for the base year and both of the calendar years in which the award period occurred.

For 1979–80, the questions were as follows:

Section C.—*Applicant's Status*

	1978?		1979?		1980?	
	Yes	No	Yes	No	Yes	No
Did or will applicant live with parents for more than 6 weeks during						
Did or will parents claim applicant as a U.S. income tax exemption for						
Did or will applicant receive assistance worth more than $750 from parents during						

The third calendar year of the 1979–80 definition required a projection from all applicants concerning residence with parents until at least mid-February in the second calendar year of the award period. The third year income tax criterion was a projection for all applicants. And, the answer to the question about parental financial support in the third calendar year could also have been a projection throughout the remainder of the period when an application could have been filed. Thus, in the vast majority of cases the answers to the questions pertaining to the third year of the definition were projections.

Many students simply did not know at the time they filed the application what their status would be in the third year. If a student had answered "NO" to all three questions for the first two years, it was highly unlikely that he or she would have projected a "YES" for the third year. Thus, it was only in rare cases that a student's status was determined solely on the basis of what he or she answered for the third year. In any event, since the student's projection for the third year was usually a guess based on his or her status for the first two years, the question for the third year was generally not a valid means for determining his or her dependency status. Thus, we have deleted the third year from the definition of an "independent student" in § 190.42 of the Family Contribution Schedules for 1980–81. In the common student aid application form for 1980–81, the questions on the student's status will cite only the years 1979 and 1980. In addition, in cases of parental divorce, separation, and death, the student will only consider the "responsible" or surviving parent when he or she answers the six questions which determine dependency. The "responsible" parent will be determined by using the criteria in § 190.33 that indicates which parent's income is to be reported in various situations. For example, in the case of a divorce where it has been determined by § 190.33 that the mother's income will be the only parental income reported, the student will answer the six dependency questions solely with respect to his or her mother. Or, if one of the student's parents is dead, § 190.33 will direct the student to report the income of the surviving parent. Thus, in that case, the dependency questions will be asked with respect to that surviving parent. In similar fashion, if both of the student's parents are dead, he or she will answer no to all dependency questions regardless of whether there existed a previous dependency relationship since neither parent's income is to be reported in such a situation and, thus, there will be no one with respect to whom the dependency questions can be asked. Similar changes in the independent student definition are being made for the regulations governing each of the three campus-based programs (National Direct Student Loan, College Work-Study, and Supplemental Educational Opportunity Grants) with the publication of this regulation.

II. Changes in Income Treatment

1. *Adjustment of family size offsets.* The family-size offsets included in the family contribution schedules are intended to provide for basic family expenses which must be met before any contribution toward a student's educational costs can be expected. In order to establish a standard for determining the amount of these expenses, the Basic Grant program adopted, during its initial year of operation, the "Weighted Average Thresholds at Low Income Level" developed by the Social Security Administration and published by the Bureau of the Census. These expenses are based on the food costs of families of given sizes, and make certain assumptions about additional expenses of shelter and other family needs. These base-line data have been updated annually to accommodate the increases in the Consumer Price Index published by the Bureau of Labor Statistics of the Department of Labor.

In applying for Basic Grants for the 1980–81 award period, applicants report actual financial data for the calendar year 1979, i.e., the "base year" for the 1980–81 award period. To derive the family size offsets for the 1979 base year, those used for 1978 have been adjusted to correspond to the actual increase in the Consumer Price Index published by the Bureau of Labor Statistics at the end of the year.

2. *Inclusion of income and assets for dependent student and spouse.* Under previous regulations, the income of a dependent student and the dependent student's spouse was not assessed in computing a student's Basic Grant eligibility index. Section 190.37 of the 1979–80 Family Contribution Schedule regulations provided that the dependent applicant's assets would be assessed at 33 percent. However, no assessment was made of the assets of the dependent student's spouse. The program had received considerable criticism for ignoring those potential resources.

In the 1980–81 Family Contribution Schedules we have revised § 190.37 to include the assets of the dependent student's spouse as well as those of the dependent student. The assessment rate for the assets of single dependent students has remained at 33 percent. For married dependent students, as assets reserve of $25,000 has been established, and any assets in excess of the reserve will be assessed at a rate of five percent. This procedure will parallel the asset treatment which was adopted, beginning with the 1979–80 award period, for married independent students, except that there will not be an additional asset reserve for farm and business assets.

A recent analysis of a representative sample of 1977 dependent student income reported by students and parents filing the Financial Aid Form (FAF) of the College Scholarship Service showed that:

- 65.4 percent of dependent students had annual earnings less than $1,000
- 92.3 percent of dependent students had annual earnings less than $3,000
- 98.5 percent of dependent students had annual earnings less than $6,000
- 99.95 percent of dependent students had annual earnings less than $15,000.

These data support the conclusion that, in general, dependent student income will probably not be a significant factor for most students in determining their Basic Grant eligibility index. However, they also support the criticism that in some instances the Basic Grant Program had ignored substantial resources for dependent students.

Consequently, we have incorporated into the formula the base year taxable and nontaxable income of the dependent student and his or her spouse. In assessing the income of the dependent student and spouse, an offset has been established in the same way that offsets have been established for independent students and dependent students' parents. However, the dependent student's offset has been reduced to account for the parental share of maintenance expenses for that student which is already included in the family size offset for that dependent student's parents. This adjustment will avoid double counting of allowances for maintenance expenses in the formula.

In many instances a married dependent student will be considered dependent because he or she has answered "Yes" for the base year to one of the three questions which determine a student's status. That is, the student may have lived with his or her parents for six weeks in the base year and, thus, for Basic Grant purposes he or she will be categorized as a dependent student. But since that period of residence with the parents, the student has married and established a separate household. In this situation the dependent student's spouse would not be included in the family size of the dependent student's parents and, thus, would not be included in the regular family size offset. Since the income of the dependent student's spouse is being assessed, there should be an offset against that income. Thus, an offset for the married dependent student has been established which has been derived by adding to the single dependent's offset an amount equivalent to the average amount allowed for each additional family member in the household of the dependent student's parents.

The dependent student offset will be subtracted from the income of the dependent student and spouse. For single dependent students, 75 percent of the remainder will be included in computing the student's eligibility index. For married dependent students, 25 percent of the remainder will be included. These assessment rates are identical to those which are used for assessing the income of single independent students and independents with a spouse, respectively. This is consistent with our philosophy that the student, as direct beneficiary of his or her post-secondary education, should be required to contribute a larger portion of his or her resources for that education than would be expected from the parents of the student.

For 1980–81 the amount of the offset against income for the single dependent student has been set at $2,650, which is equal to the offset for the single independent student ($3,850) minus the parental share of maintenance expenses for the dependent student that is already included in the parental family size offset ($1,200). For the married dependent student the offset is $3,850.

3. *Reduction in the rates of assessing the discretionary income of independent students with dependants.* In the 1979–80 Family Contribution Schedules, several changes were made which were intended to provide more equity for independent students. One of these changes was a revision in the method of treating assets of independent students with dependents in calculating Basic Grant eligibility. Prior to 1979–80 assets of all independent students were assessed at 33 percent with no asset reserve. The 1979–80 schedules revised the asset treatment for independent students with dependents to make it parallel to the asset treatment for dependent student's parents. A personal asset reserve of $25,000 was established—with a reserve of up to $50,000 for applicants with farm and business assets—and an assessment rate of five percent was applied to assets above the level of the reserve. This change was made in recognition of the fact that independent students with dependents have family responsibilities similar to those of the parents of dependent students.

For 1980–81 we have applied the principle of the similarity between dependent students' parents and independent students with dependents to the assessment of discretionary income. In 1979–80, the single independent student's effective family income was assessed at 75 percent. The income of a married independent student with no dependents other than a spouse was assessed at 50 percent. And the income of an independent student who had dependents other than a spouse was assessed at 40 percent. For 1980–81 we have reduced the assessment rate of discretionary income for independent students with no dependents other than a spouse from 50 percent to 25 percent, and the rate for independent students with dependents other than a spouse from 40 percent also to 25 percent. These two reductions in the assessment rates of discretionary income diminish the gap between the treatment of the discretionary income of independent students with dependents and the treatment of the discretionary income of dependent students' parents, which is assessed at a rate of 10½ percent.

III. Revision in the Conditions Under Which a Student May File a Supplemental Form

1. *Addition of "loss of any nontaxable benefits."* The Supplemental Form is used to report drastic changes in family financial circumstances by using estimated data for the first year of the award period when base year data would be an inappropriate measurement for determining Basic Grant eligibility.

A student may file a Supplemental Form only if he or she meets one of several specific conditions set forth in

§ 190.39 of the Family Contribution Schedule for dependent students or § 190.48 of the Family Contribution Schedule for independent students. Several of the conditions under which a Supplemental Form may be filed concern the loss of employment. A dependent student may file a Supplemental Form if a parent whose base year income is reported on the original application has been unemployed for ten weeks or more during the calendar year following the base year or has been unable to pursue normal income producing activities for a similar period of time because of a disability or loss of, or damage to, income producing property caused by a natural disaster. An independent student may file a Supplemental Form if the spouse whose base year income is reported has been unemployed for ten weeks or more during the year following the base year. Additionally, an independent student also qualifies to file a Supplemental Form if he or she was employed full-time for at least thirty weeks during the base year and is no longer employed full-time.

In 1979–80, these criteria in the Family Contribution Schedules allowing a student to have his or her eligibility index recomputed because of a loss of earnings were not paralleled by similar criteria for reporting a loss of nontaxable benefits. For that award period, the loss of unemployment benefits was the only instance in which the loss of nontaxable income qualified as a condition for filing a Supplemental Form. The 1979–80 Family Contribution Schedules provided that the Supplemental Form could be filed if someone whose base year income was reported had had his or her unemployment benefits expire during the base year or the calendar year after the base year.

For 1980–81 we have revised the conditions for filing a Supplemental Form so that the loss of earned income and the loss of nontaxable benefits will be treated similarly in Basic Grant eligibility index computations. The 1979–80 condition for reporting the expiration of unemployment benefits will be replaced by a broader condition which will permit the filing of a Supplemental Form if the parent of a dependent student, or an independent student whose base year income is reported, has had unemployment benefits or any type of nontaxable benefits expire during the base year or the calendar year following the base year. (The one exception to this condition will be the loss of the student's veterans benefits (from Chapter 34 or 35 of Title 38), since these are reported on the original application as a projected figure for the award period.)

2. *Modification of the Supplemental Condition that is used in conjunction with a change from dependent to independent status.* Section 190.48 of the 1979–80 Family Contribution Schedules allowed a student who had been dependent to file a Supplemental Form as an independent student when his or her last surviving parent for whom financial information was reported on an earlier application had died. This meant that if the parents of the student were divorced and the student had filed an application based on his or her mother's income only (according to § 190.33), and his or her mother subsequently died, the student could file a Supplemental Form as an independent student. This could have been done, even if the student had established or would establish a dependent relationship with his or her father.

Since such a student should not be considered to be an independent student if he or she has established a dependent relationship with the surviving parent, we are modifying that section of the regulations. For 1980–81, the concept behind that Supplemental condition will be changed to ensure such a student will have to consider his or her other parent before a determination of independency is made. In other words, the regulation will address the "last surviving parent with whom the student has or will have a dependency relationship according to § 190.42."

(Catalog of Federal Domestic Assistance No. 13.539, Basic Educational Opportunity Grant Program.)

Dated: April 23, 1980.

William Smith,

Commissioner of Education.

PART 190—BASIC EDUCATIONAL OPPORTUNITY GRANT PROGRAM

1. Subparts C and D of Part 190 of Title 45 of the Code of Federal Regulations are revised to read as follows:

Subpart C—Expected Family Contribution for a Dependent Student

Sec.

190.31 Indicators of financial strength.
190.32 Special definitions.
190.33 Effective family income.
190.33a Effective student income.
190.34 Computation of the expected family contribution for a dependent student from the effective family income.
190.34a Computation of the expected family contribution for a dependent student from the effective student income.
190.35 Computation of the expected contribution from parental assets.
190.36 Computation of the expected contribution from effective family income and parental assets, adjusted for the number of family members enrolled in programs of postsecondary education.
190.37 Computation of the expected contribution from the assets of the dependent student (and spouse).
190.38 Computation of the total expected family contribution.
190.39 Extraordinary circumstances affecting the expected family contribution determination for a dependent student.

Subpart D—Expected Family Contribution for an Independent Student

190.41 Indicators of financial strength.
190.42 Special definitions.
190.43 Effective family income.
190.44 Computation of the expected family contribution for a independent student from the effective family income.
190.45 Computation of the expected contribution from the assets of the independent student (and spouse).
190.46 Computation of the total expected contribution from the income and assets of the independent student (and spouse), adjusted for the number of family members enrolled in programs of postsecondary education.
190.47 [Reserved]
190.48 Extraordinary circumstances affecting the expected family contribution determination for an independent student.

Subpart C—Expected Family Contribution for a Dependent Student

§ 190.31 Indicators of financial strength.

"Expected family contribution" for a dependent student means the amount that the student and his or her family may reasonably be expected to contribute toward the cost of his or her education for an award period. Each of the following elements of financial strength will be considered in determining the family contribution for a dependent student:

(a) The effective incomes of (1) the student and his or her spouse, and (2) the student's parent(s).

(b) The number of family members in the household of the student's parent(s).

(c) The number of family members in the household of the student's parent(s) who are enrolled in, on at least a half-time basis, a program of postsecondary education.

(d) The assets of (1) the student and his or her spouse, and (2) the student's parent(s).

(e) The marital status of the student.

(f) The unusual medical expenses of the student's parent(s).

(g) The additional expenses incurred when both parents of the student are employed or when a family is headed by a single parent who is employed.

(h) The tuition paid by the student's parents for dependent children, other than the student, who were enrolled in an elementary or secondary school.

(20 U.S.C. 1070a(a)(3)(B)(ii))

§ 190.32 Special definitions.

For purposes of this subpart:

"Assets" means cash on hand including amounts in checking and savings accounts, trusts, stocks, bonds, other securities, real estate, home (if owned), income producing property, business equipment, and business inventory.

However, for Native American students, the following shall not be considered as an asset of the student or his or her family in determining the expected family contribution:

(a) Any property received under the Distribution of Judgment Funds Act (25 U.S.C. 1401, et seq.) or the Alaska Native Claims Settlement Act (43 U.S.C. 1601, et seq.),

(b) Any property that may not be sold or encumbered without the consent of the Secretary of the Interior, or

(c) Any other property held in trust for the student or his family by the United States Government.

"Business assets" means property that is used in the operation of a trade or business, including real estate, inventories, buildings, machinery and other equipment, patents, franchise rights, and copyrights.

"Dependent of the student's parents" means (a) the student, (b) any of the student's siblings who qualify as dependent students (with respect to the same parent(s) as the student is dependent on) and are attending an institution of higher education on at least a half-time basis, and (c) any of the following persons for whom the parents provide or will provide more than one-half support during the 1980–81 award period:

(1) Other children of the student's parents, or

(2) Other persons living with the parents.

"Dependent student" means any student who does not qualify as an independent student as defined in § 190.42(a).

"Dependent student offset" means an offset from the effective income of a dependent student and his or her spouse to meet the basic needs of the student and spouse. For a single dependent student, this offset is derived by subtracting from the family size offset for a single independent student the "average" parental share for maintenance expenses for the student which is already a part of the parents' family size offset. The "average" parental share is the average increase in the family size offset for each family member above one in the family size. For a married dependent student, the dependent student offset equals the family size offset for a single independent student.

"Effective family income" and "effective income of the student and spouse" are described in §§ 190.33 and 190.33a respectively.

(20 U.S.C. 1070a(a)(3)(B)(iii))

"Employment expense offset" means an allowance to meet expenses relating to employment when both parents are employed or when one parent qualifies as a surviving spouse or as head of a household under section 2 of the Internal Revenue Code.

(20 U.S.C. 1070a(a)(3)(B)(ii)(V))

"Family size offset" means an allowance to meet the subsistence expenses of a family, including food, shelter, clothing, and other basic needs. This offset is derived from the "Weighted Average Thresholds at the Low Income Level," as developed by the Social Security Administration.

"Farm assets" means any property owned and used in the operation of a farm for profit, including real estate, livestock, livestock products, crops, farm machinery, and other equipment inventories. A farm is not considered to be operated for profit if crops or livestock are raised mainly for the use of the family, even if some income is derived from incidental sales.

"Federal income tax" means (a) the tax on income paid to the U.S. Government under chapter 2 of the Internal Revenue Code, or (b) the tax on income paid to the Governments of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands under the laws applicable to those jurisdictions, or (c) the comparable taxes paid to the central government of a foreign country.

(20 U.S.C. 1070a(a)(3)(B)(iii))

"Medical expenses" means unreimbursed medical and dental expenses, except premiums for medical insurance, that may be deducted under section 213 of the Internal Revenue Code that were paid in 1979 by the parents of the student unless the student files an application with the Commissioner under the provisions of § 190.39. In that case the expenses reported are those paid in 1980.

"Net assets" means the current market value at the time of application of the assets included in the definition of "assets" minus the outstanding liabilities (indebtedness) against those assets.

"Parent" means the student's mother or father. An adoptive parent is considered to be the student's mother or father.

(20 U.S.C. 1070a(a)(3)(B) unless otherwise noted)

§ 190.33 Effective family income.

(a) Effective family income is the annual adjusted family income minus the Federal income tax paid or payable for the year that adjusted gross income is used in the calculation of the student's Basic Grant.

(b) "Annual adjusted family income" means, except as provided in paragraphs (c), (d), (e), (f), and (g) of this secton, and § 190.39—

(1) The sum received in 1979 by the student's parents from—

(i) Adjusted gross income, as defined in section 62 of the Internal Revenue Code, regardless of whether the parent filed an income tax return;

(ii) Investment income upon which no Federal income tax need be paid. An example of such income is the interest on municipal bonds; and

(iii) Other income upon which no Federal income tax need be paid. Examples of such income include child support payments, income from income maintenance programs such as welfare benefits, and Social Security benefits;

(2) Any Social Security benefits paid to the student in 1979; and

(3) One-half of any veteran's benefits to be paid to the student under chapters 34 and 35 of the United States Code for the 1980–81 award period.

(c) For a Native American student, the annual adjusted family income does not include the income received by the student's parents under the Distribution of Judgment Funds Act (25 U.S.C. 1401, et seq.) or the Alaska Native Claims Settlement Act (43 U.S.C. 1601, et seq.).

(d) For a student whose parents are divorced or separated, the following procedures apply for reporting a parent's income to determine the annual adjusted family income—

(1) Report only the income, as described in paragraph (b) of this section, of the parent with whom the student resided for the greater portion of the 12 month period preceding the date of the application.

(2) If the preceding criterion does not apply, report only the income of the parent who provided the greater portion of the student's support for the 12 month period preceding the date of application.

(3) If neither of the preceding criteria apply, report only the income of the parent who provided the greater support

for the period commencing January 1, 1979 and ending 12 months prior to the date of application.

(e) If either of the parents have died, the student shall report only the income of the surviving parent. If both parents have died, the student shall not report any parental income.

(f) The following rule applies if either a parent whose income is taken into account under paragraph (d), or a parent who is a widow or widower and whose income is taken into account under paragraph (e), has remarried. The income of that parent's spouse shall be included in determining the student's annual adjusted family income if, in either 1979 or 1980, the student—

(1) Has received or will receive financial assistance of more than $750 in either of those years from that spouse, or

(2) Has lived or will live for more than six weeks in either of those years in the home of the parent and that spouse.

(g) The annual adjusted family income does not include any student financial assistance except those veteran's benefits cited in subparagraph (b)(3).

(20 U.S.C. 1070a(a)(3)(B))

§ 190.33a Effective student income.

(a) Effective student income is the annual adjusted income of the student (and spouse for a married student) minus the Federal income tax paid or payable for the year that adjusted gross income is used in the calculation of the student's Basic Grant.

(b) "Annual adjusted income of the student and spouse" means, except as provided in paragraphs (c), (d) and (e) of this section, and § 190.39—

(1) The sum received in 1979 by the student and spouse from—

(i) Adjusted gross income, as defined in section 62 of the Internal Revenue Code, regardless of whether the student or spouse filed an income tax return.

(ii) Investment income upon which no income tax need be paid. An example of such income is the interest on municipal bonds; and

(iii) With the exception of Social Security benefits for the student, other income upon which no Federal income tax need be aid. Examples of such income include child support payments, and income from income maintenance programs such as welfare benefits.

(c) For a Native American student, the annual adjusted income of the student and spouse does not include the income received by the student or spouse under the Distribution of Judgment Funds Act (25 U.S.C. 1401, et seq.) or the Alaska Native Claims Settlement Act (43 U.S.C. 1601, et seq.).

(d) In the case of a student who is divorced, separated, or whose spouse has died, the spouse's income shall not be considered in determining the "annual adjusted income of the student and spouse".

(e) The annual adjusted income of the student and spouse does not include any student financial assistance.

(20 U.S.C. 1070a(a)(3)(B))

§ 190.34 Computation of the expected family contribution for a dependent student from the effective family income.

The expected family contribution for a dependent student from effective family income is calculated as follows:

(a) Determine the parents' discretionary income by deducting the following offsets from the effective family income:

(1) A family size offset in the amount specified in the following table:

Family size offsets

Family members:	*Amount*
2	$5,000
3	6,050
4	7,700
5	9,050
6	10,250
7	11,350
8	12,550
9	13,750
10	14,850

Plus $1,150 for each additional family member over 10.

In determing the family size, the following rules apply—

(i) If the parents are not divorced or separated, family members include the student's parents, and the dependents of the student's parents.

(ii) If the parents are divorced or separated and not remarried, family members include the parent whose income is included in computing the effective family income and that parent's dependents.

(iii) If the parents are divorced and the parent whose income is included in computing the effective family income has remarried, or if the parent was a widow or widower who has remarried, family members also include, in addition to those people referenced in paragraph (a)(1)(ii) of this section, the new spouse and any dependents of the new spouse if that spouse's income is included in determining the effective family income.

(2) An unusual expense offset equal to the amount by which the sum of unreimbursed medical and dental expenses exceeds 20 percent of the effective income of the parents. The expenses that may be reported are those expenses paid by the student's parents during 1979, unless the student files an application with the Commissioner under the provisions of § 190.39. In that case, the expenses reported will be those paid in 1980. The expenses of both parents are included only if the incomes of both are subject to inclusion in determining the effective family income. Similarly, a stepparent's expenses are included only if his or her income was subject to inclusion.

(3) An employment expense offset in the amount specified as follows—

(i) If both parents were employed in the year for which their income is reported and both have their incomes reported in determining the expected family contribution, use the lesser of $1,500 or 50 percent of the earned income (income earned by work) of the parent with the lesser earned income.

(ii) If a parent qualifies as a head of household as defined in section 2 of the Internal Revenue Code, use the lesser of $1,500 or 50 percent of his or her earned income.

The earned income figure to be used in all cases is that figure for 1979 unless the student files an application with the Commissioner under the provisions of § 190.39. In that case, the figure to be used is the one for 1980.

(4) An educational expense offset equal to the tuition paid by the student's parents for dependent children, other than the student, enrolled in elementary or secondary school. The tuition which may be reported is the tuition paid in 1979 unless the student files an application with the Commissioner under the provisions of § 190.39. In that case, the tuition reported will be that paid in 1980.

(b) If the parents' discretionary income is a positive amount, multiply it by 10.5 percent to determine the expected contribution from the effective family income. If the parents' discretionary income is negative, there is no expected contribution from the effective family income.

(20 U.S.C. 1070a(a)(3)(B))

§ 190.34a Computation of the expected family contribution for a dependent student from the effective student income.

(a) Determine the student's discretionary income by deducting from the effective student income the relevant dependent student offset.

Dependent student offset

Single student	$2,650
Married student	3,850

(b) If the student's discretionary income is a positive amount, multiply it by one of the following figures to determine the expected contribution from effective student income:

(1) 75 percent for the single dependent student, or

(2) 25 percent for the married dependent student.

If the student's discretionary income is negative, there is no expected contribution from the effective student income.

(20 U.S.C. 1070a(a)(3)(B))

§ 190.35 Computation of the expected contribution from parental assets.

The expected contribution from parental assets is determined in the following manner:

(a) If the net assets do not include farm or business assets, deduct an asset reserve of $25,000 from the net assets.

(b) If the net assets include farm or business assets as defined in § 190.32, deduct an asset reserve from the net assets as follows—

(1) If farm or business assets are less than farm or business debts, deduct an asset reserve of $25,000 from the net value of all assets.

(2) If farm or business assets exceed farm or business debts, and the net value of non-farm and non-business assets is *$25,000 or more,* deduct an asset reserve of,

(i) $25,000 from non-farm and non-business assets, and

(ii) $25,000 from farm and business assets.

(3) If farm or business assets exceed farm or business debts and the net value of non-farm and non-business assets is *less than $25,000,* deduct an asset reserve of $50,000 from the net value of all assets.

(4) If the result obtained in (1), (2)(ii), or (3) is a negative amount, it shall be changed to zero.

(c) Normally the expected contribution from parental assets equals five percent of the remainder obtained in subparagraph (a) or (b).

(d) However, if the calculation of discretionary income required by § 190.34(a) produces a negative number, the expected contribution from parental assets, calculated under paragraph (c), shall be reduced by the amount of that negative discretionary income, or by the amount obtained in paragraph (c), whichever is less.

(e)(1) If the student's parents are separated, or divorced and not remarried, only the assets of the parent whose income is included in computing annual adjusted family income shall be considered.

(2) However, if that parent has remarried, or if the parent was a widow or widower who has remarried, and the parent's spouse's income is also included under § 190.33, the assets of that parent's spouse shall also be included.

(20 U.S.C. 1070a(a)(3)(B))

§ 190.36 Computation of the expected contribution from effective family income and parental assets, adjusted for the number of family members enrolled in programs of postsecondary education.

(a) For each grant, the amount expected from effective family income as determined in § 190.34(b) is added to the amount expected from parental assets as determined in § 190.35.

(b)(1) For each grant, the combined expectation determined in paragraph (a) is adjusted in the following manner for the number of family members who will be attending, on at least a half-time basis, a program of postsecondary eduction during the award period for which Basic Grant assistance is requested:

Number of family members enrolled in programs of postsecondary education	Expected contribution per student from combined contribution
1	100 percent of the contribution determined in paragraph (a).
2	70 percent of the contribution determined in paragraph (a).
3	50 percent of the contribution determined in paragraph (a).
4 or more	40 percent of the contribution determined in paragraph (a).

(2) Family members are those persons referenced in § 190.34(a)(1).

(20 U.S.C. 1070a(a)(3)(B))

§ 190.37 Computation of the expected contribution from the assets of the dependent student (and spouse).

(a) The expected contribution from the net assets of a single dependent student equals 33 percent of the amount of those assets.

(b) The expected contribution from the net assets of the married dependent student and spouse is determined in the following manner.

(1) Deduct an asset reserve of $25,000 from the net assets. If the result is negative, it shall be changed to zero.

(2) The expected contribution from the net assets of the dependent student and spouse equals five percent of the remainder obtained in subparagraph (1).

(3) If the married dependent student is separated, only his or her assets shall be considered.

(20 U.S.C. 1070a(a)(3)(B))

§ 190.38 Computation of the total expected family contribution.

For each grant the total expected family contibution is the sum of—

(a) The expected contribution from the effective family income and parental assets as determined in § 190.36,

(b) The expected contribution from effective student income as determined in § 190.34a, and

(c) The expected contribution from the student's (and spouse's) assets as determined in § 190.37

(20 U.S.C. 1070a(a)(3)(B))

§ 190.39 Extraordinary circumstances affecting the expected family contribution determination for a dependent student.

(a) A student may submit an application to the Commissioner for determination of his or her expected family contribution using income data from 1980 instead of 1979 if—

(1) A parent or stepparent whose 1979 income from work must be reported under § 190.33 has lost his or her job for at least 10 weeks during 1980,

(2) A parent or stepparent whose 1979 income from work must be reported under § 190.33 has been unable to pursue normal income-producing activities for at least 10 weeks during 1980 because of the occurrence—in 1979 or 1980—of (i) a disability, or (ii) a natural disaster,

(3) A parent or stepparent who received unemployment compensation or nontaxable income in 1979 which must be reported under § 190.33 has had a complete loss for at least 10 weeks in 1980 of one of those benefits. A nontaxable benefit, for purposes of this paragraph, must be from a public or private agency, from a company, or from a person because of a court order. Types of nontaxable benefits for purposes of this section would include Social Security benefits, welfare, court ordered child support, etc.

(4) The parent(s) of the student have become separated or divorced after the student submitted his or her application. If such a separation or divorce is between a parent and a stepparent, the stepparent's income must have been reportable on the previous application under § 190.33 for this condition to apply, or

(5) A parent or stepparent whose 1979 income must be reported under § 190.33 has died after the submission of an earlier application for 1980–81. However, if the parent referred to in this paragraph is the last surviving parent with whom the student has or will have a dependency relationship according to § 190.42, the student must file an application under § 190.48(a)(7) if he or she wishes to use income data from 1980.

(b) An application submitted under paragraph (a) shall include the effective family income and the effective income of the student and spouse already recevied for 1980 and an estimate of

those effective incomes to be received for the remainder of that year.

(c) A student may submit a revised application to reflect changes in asset amounts reported on the previously submitted application if the student or his or her family has suffered a loss of or damage to assets resulting from a natural disaster in an area that has been declared a national disaster area by the President of the United States.

(20 U.S.C. 1070a(a)(3)(B)(i)(V))

Subpart D—Expected Family Contribution for an Independent Student

§ 190.41 Indicators of financial strength.

"Expected family contribution" for an independent student means the amount that the student and his or her spouse may reasonably be expected to contribute toward the cost of his or her education for an award period. Each of the following elements of financial strength will be considered in determining the family contribution for an independent student:

(a) The effective family income of the independent student and spouse.

(b) The number of family members in the household of the student and spouse.

(c) The number of family members in the household of the student and spouse who are enrolled in, on at least a half-time basis, a program of postsecondary education.

(d) The assets of the student and spouse.

(e) The unusual medical expenses of the student and spouse.

(f) The additional expenses incurred when both the student and spouse are employed or when the employed student qualifies as a surviving spouse or as head of a household under section 2 of the Internal Revenue Code.

(g) The tuition paid by the student or spouse for dependent children enrolled in an elementary or secondary school.

(20 U.S.C. 1070a(a)(3)(C))

§ 190.42 Special definitions.

The definitions of "assets", "business assets", "farm assets", "family size offset", "Federal income tax", "medical expenses", "net assets", and "parent" are set forth in § 190.32.

"Dependent" means (a) the student's spouse (unless separated or divorced from the student), (b) any of the student's or spouse's children who qualify as dependent students (with respect to the student or spouse) and are attending an institution of higher education on at least a half-time basis, and (c) any of the following persons for whom the student or spouse provides or will provide more than one-half support during the 1980–81 award period:

(1) Other children of the student or spouse; or

(2) Other persons living with the student and spouse.

"Effective family income" is described in § 190.43.

"Employment expense offset" means an allowance to meet expenses relating to employment when both the independent student and his or her spouse are employed or when the independent student qualifies as a surviving spouse or as head of a household under section 2 of the Internal Revenue Code.

"Independent student" means:

(a) A student who for 1979 or 1980—

(1) Has not been claimed and will not be claimed as an exemption for Federal income tax purposes by the parent(s) for whom income must be reported according to § 190.33 for either of these years;

(2) Has not received and will not receive financial assistance of more than $750 from the parent(s) for whom income must be reported according to § 190.33 in either of these years; and

(3) Has not lived and will not live for more than six weeks in the home of the parent(s) for whom income must be reported according to § 190.33 in either of these years.

(20 U.S.C. 1070a(a)(3)(B)(iii))

§ 190.43 Effective family income.

(a) Effective family income is the annual adjusted family income minus the Federal income tax paid or payable for the year that adjusted gross income is used in the calculation of the student's Basic Grant.

(b) "Annual adjusted family income" means, except as provided in paragraphs (c)(d), and (e) of this section and § 190.48—

(1) The sum received in 1979 by the student and spouse from—

(i) Adjusted gross income, as defined in section 62 of the Internal Revenue Code, regardless of whether the student or spouse filed an income tax return;

(ii) Investment income upon which no Federal income tax need be paid. An example of such income is the interest on municipal bonds; and

(iii) Other income upon which no Federal income tax need be paid. Examples of such income include child support payments, and income from income maintenance programs such as welfare benefits and Social Security benefits.

(2) One-half of any veteran's benefits to be paid to a student under Chapters 34 and 35 of the United States Code for the 1980–81 award period.

(c) For a Native American student, the annual adjusted family income does not include the income received by the student or spouse under the Distribution of Judgment Funds Act (25 U.S.C. 1401, et seq.) or the Alaska Native Claims Settlement Act (43 U.S.C. 1601, et seq.).

(d) In the case of a student who is divorced or separated, or whose spouse has died, the spouse's income shall not be considered in determining the annual adjusted family income.

(e) The annual adjusted family income does not include any student financial assistance except those veteran's benefits cited in subparagraph (b)(2).

(20 U.S.C. 1070a(a)(3) (B) and (C))

§ 190.44 Computation of the expected family contribution for an independent student from the effective family income.

The expected family contribution for the independent student from effective family income is calculated as follows:

(a) Determine discretionary income by deducting the following offsets from the effective family income.

(1) A family size offset in the amount specified in the following table.

Family size offsets

Family members:	*Amount*
1	$3,850
2	5,000
3	6,050
4	7,700
5	9,050
6	10,250
7	11,350
8	12,550
9	13,750
10	14,850

Plus $1,150 for each additional family member over 10.

In determining the family size, the following rules apply—

(i) Family members normally include the student and spouse and their dependents.

(ii) However, if the student is divorced or separated, the spouse (ex-spouse) and his or her dependents are not counted in the family size.

(2) An unusual expense offset equal to the amount by which the sum of unreimbursed medical and dental expenses exceeds 20 percent of effective family income. The expenses that may be reported are those expenses paid by the student and spouse in 1979, unless the student files an application with the Commissioner under the provisions of § 190.48. In that case, the expenses reported will be those paid in 1980. The expenses of both the student and spouse are included only if the incomes of both are subject to inclusion in determining the effective family income.

(3) An employment expense offset in the amount specified as follows—

(i) If both the student and spouse were employed in the year for which their

income is reported and both have their incomes reported in determining the expected family contribution, use the lesser of $1,500 or 50 percent of the earned income (income earned by work) of the person with the lesser earned income.

(ii) If a student qualifies as a head of household as defined in section 2 of the Internal Revenue Code, use the lesser of $1,500 or 50 percent of his or her earned income.

The earned income figure to be used in all cases is that figure for 1979, unless the student files an application with the Commissioner under the provisions of § 190.48. In that case the figure to be used is the one for 1980.

(4) An educational expense offset equal to the tuition paid by the student and spouse for dependent children enrolled in elementary or secondary school. The tuition that may be reported is the tuition paid in 1979, unless the student files an application with the Commissioner under the provisions of § 190.48. In that case the tuition reported will be that paid in 1980.

(20 U.S.C. 1070a(a)(3)(B))

(b) If the discretionary income is a positive amount, multiply it by one of the following figures to determine the expected family contribution from the effective family income of the student and spouse:

(1) 75 percent for the single independent student with no dependents; or

(2) 25 percent for the independent student with one or more dependents (including a spouse).

If the discretionary income is negative, there is no expected family contribution from effective family income.

(20 U.S.C. 1070a(a)(3)(C))

§ 190.45 Computation of the expected contribution from the assets of the independent student (and spouse).

(a)(1) Normally, the expected contribution from the net assets of the single independent student with no dependents equals 33 percent of the amount of those assets.

(2) However, if the calculation of discretionary income required by § 190.44(a) produces a negative number, the expected contribution from the student's assets calculated under paragraph (a)(1) shall be reduced by the amount of that negative discretionary income, or the amount obtained in paragraph (a)(1), whichever is less.

(b) For an independent student with dependents, the expected contribution from the assets of the student (and spouse) is determined in the following manner:

(1) If the net assets do not include farm or business assets, deduct an asset reserve of $25,000 from the net assets.

(2) If the net assets include farm or business assets as defined in § 190.32, deduct an asset reserve from the net assets as follows—

(i) If farm or business assets are less than farm or business debts, deduct an asset reserve of $25,000 from the net value of all assets.

(ii) If farm or business assets exceed farm or business debts, and the net value of non-farm and non-business assets is *$25,000 or more,* deduct an asset reserve of,

(A) $25,000 from non-farm and non-business assets, and

(B) $25,000 from farm and business assets.

(iii) If farm or business assets exceed farm or business debts and the net value of non-farm and non-business assets is *less than $25,000,* deduct an asset reserve of $50,000 from the net value of all assets.

(iv) If the result obtained in paragraphs (b)(2)(i), (2)(ii)(B), or 2(iii) of this section is a negative amount, it shall be changed to zero.

(3) Normally, the expected contribution from the net assets of the independent student with dependents equals five percent of the remainder obtained in paragraph (b) (1) or (2) of this section.

(4) However, if the calculation of discretionary income required by § 190.44(a) produces a negative number, the expected contribution from the student's (and spouse's) assets calculated under paragraph (b)(3) of this section shall be reduced by the amount of that negative discretionary income, or the amount obtained in paragraph (b)(3) of this section, whichever is less.

(5) If the married independent student with dependents is separated, only his or her assets shall be considered.

(20 U.S.C. 1070a(a)(3) (B) and (C))

§ 190.46 Computation of the total expected contribution from the income and assets of the independent student (and spouse), adjusted for the number of family members enrolled in programs of postsecondary education.

(a) For each grant, the amount expected from family income as determined in § 190.44 is added to the amount expected from assets as determined in § 190.45.

(b) For each grant, the combined expectation determined in paragraph (a) is adjusted in the following manner for the number of family members who will be attending, on at least a half-time basis, a program of postsecondary education during the award period for which Basic Grant assistance is requested.

Number of family members enrolled in institutions of postsecondary education:	Expected contribution per student from combined contribution:
1	100 percent of the contribution determined in paragraph (a).
2	70 percent of the contribution determined in paragraph (a).
3	50 percent of the contribution determined in paragraph (a).
4 or more	40 percent of the contribution determined in paragraph (a).

Family members are those persons referenced in § 190.44(a)(1).

(20 U.S.C. 1070a(a)(3)(C))

§ 190.47 [Reserved]

§ 190.48 Extraordinary circumstances affecting the expected family contribution determination for an independent student.

(a) A student may submit an application to the Commissioner for determination of his or her expected family contribution using income data from 1980 instead of 1979 if—

(1) The student was employed full-time in 1979 (at least 35 hours per week for a minimum of 30 weeks during 1979) and is no longer employed full-time,

(2) A spouse whose 1979 income from work must be reported under § 190.43 has lost his or her job for at least 10 weeks during 1980,

(3) The student or spouse whose 1979 income from work must be reported under § 190.43 has been unable to pursue normal income-producing activities for at least 10 weeks during 1980 because of the occurrence—in 1979 or 1980—of (i) a disability or (ii) a natural disaster,

(4) The student or spouse who received unemployment compensation or nontaxable income in 1979 which must be reported under § 190.43 has had a complete loss for at least 10 weeks in 1980 of one of those benefits. A nontaxable benefit, for purposes of this paragraph, must be from a public or private agency, from a company, or from a person because of a court order. Types of nontaxable benefits for purposes of this section would include Social Security benefits, welfare, court ordered child support, etc. They would not, however, include Veterans educational benefits under chapters 34 and 35 of the United States Code,

(5) The student has become separated or divorced after he or she submitted his or her application,

(6) A spouse whose 1979 income must be reported under § 190.43 has died after the submission of an earlier application for 1980–81, or

(7) The student's last surviving parent with whom the student has or will have

a dependency relationship according to § 190.42 has died.

(b) An application submitted under paragraph (a) shall include the effective family income already received for 1980 and an estimate of the effective family income to be received for the remainder of that year.

(c) The student may submit a revised application to reflect changes in asset amounts reported on the previously submitted application if the student or his or her spouse has suffered a loss of or damage to assets resulting from a natural disaster in an area that has been declared a national disaster area by the President of the United States.

(20 U.S.C. 1070a(a)(3)(B)(i)(V) and (a)(3)(C))

PART 174—NATIONAL DIRECT STUDENT LOAN PROGRAM

2. Section 174.2 of Part 174 of Title 45 of the Code of Federal Regulations is amended by adding the definition of "independent student (effective July 1, 1980)," to read as follows:

§ 174.2 Definitions.

* * * * *

Independent student (effective July 1, 1980):

(a) This term means a student—

(1) Who is a veteran; or

(2) Who for the first calendar year of the award period for which aid is requested or the calendar year immediately before the first calendar year of that award period—

(i) Has not been claimed and will not be claimed as an exemption for Federal income tax purposes by his or her parent(s) for either of these years;

(ii) Has not received and will not receive financial assistance of more than $750 from his or her parent(s) in either of these years; and

(iii) Has not lived and will not live for more than six weeks in the home of his or her parent(s) in either of these years.

(b)(1) For purposes of this section, the term "parent" only refers to the student's mother or father. An adoptive parent is considered the student's mother or father.

(2) Further, for a student whose parents are divorced or separated, only one parent will be considered to be the parent of the student for purposes of applying the criteria in paragraph (a)(2) of this section. The following procedures apply in determining which parent that will be—

(i) Consider the parent with whom the student resided for the greater portion of the 12 month period preceding the date of application to have an expected family contribution determined under an approved need analysis system.

(ii) If the preceding criterion does not apply, consider the parent who provided the greater portion of the student's support for the 12 month period preceding the date of application to have an expected family contribution determined under an approved need analysis system.

(iii) If neither of the preceding criteria apply, consider the parent who provided the greater support for the period commencing January 1 of the calendar year which immediately precedes the first calendar year of the award period and ending 12 months prior to the date of application to have an expected family contribution determined under an approved need analysis system.

(3) If either of the parents have died, the institution shall consider only the surviving parent as the parent for purposes of applying the criteria in paragraph (a)(2) of this section. If both parents have died, the institution shall not consider either parent.

(20 U.S.C. 1087 aa–ff; 20 U.S.C. 1087dd(e).)

PART 175—COLLEGE WORK-STUDY PROGRAM

3. Section 175.2 of Part 175 of Title 45 of the Code of Federal Regulations is amended by adding the definition of "independent student (effective July 1, 1980)," to read as follows:

§ 175.2 Definitions.

* * * * *

Independent student (effective July 1, 1980):

(a) This term means a student who for the first calendar year of the award period for which aid is requested or the calendar year immediately before the first calendar year of that award period—

(1) Has not been claimed and will not be claimed as an exemption for Federal income tax purposes, by his or her parent(s) for either of these years;

(2) Has not received and will not receive financial assistance of more than $750 from his or her parent(s) in either of these years; and

(3) Has not lived and will not live for more than six weeks in the home of his or her parent(s) in either of these years.

(b)(1) For purposes of this section, the term "parent" only refers to the student's mother or father. An adoptive parent is considered the student's mother or father.

(2) Further, for a student whose parents are divorced or separated, only one parent will be considered to be the parent of the student for purposes of applying the criteria in paragraph (a) of this section. The following procedures apply in determining which parent that will be—

(i) Consider the parent with whom the student resided for the greater portion of the 12 month period preceding the date of application to have an expected family contribution determined under an approved need analysis system.

(ii) If the preceding criterion does not apply, consider the parent who provided the greater portion of the student's support for the 12 month period preceding the date of application to have an expected family contribution determined under an approved need analysis system.

(iii) If neither of the preceding criteria apply, consider the parent who provided the greater support for the period commencing January 1 of the calendar year which immediately precedes the first calendar year of the award period and ending 12 months prior to the date of application to have an expected family contribution determined under an approved need analysis system.

(3) If either of the parents have died, the institution shall consider only the surviving parent as the parent for purposes of applying the criteria in paragraph (a) of this section. If both parents have died, the institution shall not consider either parent.

(42 U.S.C. 2751–2756.)

PART 176—SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

4. Section 176.2 of Part 176 of Title 45 of the Code of Federal Regulations is amended by adding the definition of "independent student (effective July 1, 1980)," to read as follows:

§ 176.2 Definitions.

* * * * *

Independent student (effective July 1, 1980):

(a) This term means a student who for the first calendar year of the award period for which aid is requested or the calendar year immediately before the first calendar year of that award period—

(1) Has not been claimed and will not be claimed as an exemption for Federal income tax purposes, by his or her parent(s) for either of these years;

(2) Has not received and will not receive financial assistance of more than $750 from his or her parent(s) in either of these years; and

(3) Has not lived and will not live for more than six weeks in the home of his or her parent(s) in either of these years.

(b)(1) For purposes of this section, the term "parent" only refers to the student's mother or father. An adoptive

parent is considered the student's mother or father.

(2) Further, for a student whose parents are divorced or separated, only one parent will be considered to be the parent of the student for purposes of applying the criteria in paragraph (a) of this section. The following procedures apply in determining which parent that will be—

(i) Consider the parent with whom the student resided for the greater portion of the 12 month period preceding the date of application to have an expected family contribution determined under an approved need analysis system.

(ii) If the preceding criterion does not apply, consider the parent who provided the greater portion of the student's support for the 12 month period preceding the date of application to have an expected family contribution determined under an approved need analysis system.

(iii) If neither of the preceding criteria apply, consider the parent who provided the greater support for the period commencing January 1 of the calendar year which immediately precedes the first calendar year of the award period and ending 12 months prior to the date of application to have an expected family contribution determined under an approved need analysis system.

(3) If either of the parents have died, the institution shall consider only the surviving parent as the parent of the student for purposes of applying the criteria in paragraph (a) of this section. If both parents have died, the institution shall not consider either parent.

(20 U.S.C. 1070b.)

Appendix—Summary of Comments and Responses

A summary of the public comments on the proposed Family Contribution Schedules (FCS) published on July 26, 1979, and the Office of Education's responses to those comments appear below. Generally, the comments and responses to specific sections of the regulations appear in the same sequence as the regulations themselves. However, some general comments about the overall scope or thrust of the FCS and comments about some aspects of the Basic Grant Program other than those related to the FCS have been briefly addressed first.

Comment. Most commenters expressed general support for the proposed 1980–81 FCS. Specifically, several of them indicated their support for the overall greater equity that is provided for independent students. They urged the Basic Grant Program to continue with the implementation of such policies.

Comment. Several commenters objected to the forthcoming adoption of a common form on which students will be able to apply for a Basic Grant as well as aid from the three campus-based programs. One of the commenters indicated that the use of the common form would make the detection of abuse of the aid programs more difficult for the financial aid administrator.

Response. Consistent with his overall concern with the proper administration of federal financial aid programs, the Commissioner believes that the adoption of the common form will, first of all, greatly simplify the aid application process for the student. Further, great care has been taken to ensure that the instructions to the common form are as clear and simple as possible in order that the financial and other data that is collected and used in a student's need analysis is as accurate as possible. The fact that there will be a simplified common aid form in 1980–81 does not preclude schools from collecting additional information that they feel they need to detect any abuse of the programs. In fact, three of the four approved forms (not counting the Basic Grant form itself) with which a student may apply for a Basic Grant will have, in addition to the common core form, supplemental questions that are designed to provide the additional data that some aid officers desire. Thus, if a school chooses to use one of those forms, it will have the additional data it feels is necessary. (For additional information on the common form, the reader should consult page 3 of the April 1979 issue of the BSFA Bulletin, and page 12 of the November 1979 issue.

Comment. One commenter suggested that an institution not be held liable for overpayments made to a student based on inaccurate information on the student's SER when the institution had knowledge of such a discrepancy based on a comparison of the SER and other documents that it had collected.

Response. The Commissioner, in authorizing an institution to disburse Basic Grants, enters into an agreement not with the financial aid office of an institution, but with the institution as a whole. Through various regulations (including sections 190.61, 190.75, and 190.80), the Commissioner outlines the procedures to be followed by an institution, and that institution's responsibility when disbursing Basic Grants. Further, § 168.16(f) of the Fiscal and Administrative Standards regulations requires that an institution have the capability of verifying the consistency of information it receives from various sources pertaining to title IV aid. Thus, the institution would be liable for overpayments resulting from the situation described in the comment above.

Comment. Two commenters, while supportive of making the Basic Grant Supplemental Form a "stand alone" document, suggested that the various Multiple Data Entry (MDE) processors be allowed to put out a Supplemental Form. Currently, for regular applications, a student may file for a Basic Grant on either a Basic Grant application or on one of the MDE forms. However, if the student files for a Basic Grant using estimated data, i.e., he or she qualifies to file a Supplemental Form, a Basic Grant Supplemental Form must be used. One of these commenters also suggested that all Supplemental Applications be verified to ensure the accuracy of the Applicant's estimated data.

Response. The suggestion that each MDE processor have its own Supplemental Form has been studied since the inception of the MDE process in the 1978–79 award period. If such a suggestion were to be implemented, each processor would have to create its own form and establish a subsystem to handle the processing of it. The application of each MDE processor is used to apply for aid from a number of other programs as well as Basic Grants. It would be prohibitively costly for the MDE processors to develop a separate form and processing subsystem considering the relatively small portion of each processor's total number of applicants who would be eligible to file a Supplemental Form. Concerning the verification of all (or a good portion) of the Supplemental Applications that are filed, the Commissioner is studying both the feasibility and desirability of such a course of action. It is possible that Supplemental Forms may be subject to a verification process for the 1980–81 award period.

Comment. One commenter suggested that the common form include an affidavit of educational purpose, since all potential aid recipients must submit an affidavit before they are eligible to receive federal student financial aid.

Response. Since the student generally does not know at the time of application whether he or she will be eligible for the aid that is being applied for, the Commissioner does not think it appropriate to incorporate the affidavit into the application process itself. Only when it has been determined that the student is eligible for funds, should he or she have to incur the responsibility of submitting an affidavit attesting to his or her intent as to the use of those funds.

Comment. One commenter suggested that eligible students receive Basic Grants (or portions of them) based on their exact enrollment status. In other words, a student who is carrying 11 semester hours in a semester when the full-time requirement is 12 hours per semester should receive 11/12 of the semester's award, rather than the current 3/4 of the award. (Under current regulations, students at such institutions are categorized as either one-half, three-quarter, or full-time students.)

Response. This aspect of the Program is addressed in § 190.2 of the administrative and technical regulations (definition of enrollment status) which were published separately on January 25, 1979. The commenter's suggestion was proposed in the notice of proposed rulemaking (May 15, 1978) which preceded those final regulations. However, based on the comments of the majority of the commenters on that proposal, the concept was dropped from the final regulations.

§ 190.31 Indicators of financial strength

Comment. In responding to the proposal to assess the income of the dependent student and his or her spouse, several commenters suggested that § 190.31 should include in its list of elements of financial strength the number of family members in the dependent *student's* household, and the number of those members in postsecondary education. Further, the unusual expenses which are considered should include those expenses of the dependent student and spouse. And, the employment expense which should be considered should also include expenses incurred by the dependent student and spouse if both of them are working. According to the commenters, these criteria should be considered in addition to the related criteria pertaining to the dependent student's parent's household.

Response. These suggestions have not been incorporated in the final regulation. Because of the small number of dependent students who would be affected by the inclusion of these data elements, they have not been incorporated on the application form. To do so would unnecessarily complicate the forms for the benefit of a very small number of students. For the most part, the Commissioner feels that the general offset allowed for the dependent student against his or her income will provide for these types of expenses, if they are indeed separate expenses from the expenses that the parents will report. In addition, in some cases, dependents of a dependent student will also be dependents of the dependent student's parents, and as such will be counted in the household size.

§ 190.33 Effective family income

Comment. Numerous comments were received which addressed the subject of which parent's income should be reported when there is a divorce or separation. With those who specifically mentioned it, there was almost unanimous agreement that custody of the student is irrelevant in this matter. Only one commenter favored retention of the custody criterion. On the other hand, one commenter suggested that the receipt of child support or the claiming of the student as a tax exemption should replace custody as the determining factor. However, most people simply agreed that the criterion pertaining to custody should be dropped. While most people supported the concept that only the "responsible" parent should have his or her income reported, one commenter stated that regardless of divorce or separation, both parents have the responsibility to educate their child. This commenter suggested that while the Basic Grant Program might not be able to collect the financial information from both parents, the application form should instruct students that the financial aid administrator at his or her school might ask for information about both parents as a factor to be considered in awarding aid from other programs.

Response. Suggestions for changes in this area have not been incorporated into the final regulation. Using only the two suggested criteria of "receipt of child support" and "the claiming of the student as a tax exemption" does not address all cases. Many divorced families neither receive child support nor file income tax returns. On the other hand, at least one of the three criteria in the final regulation will be met if the student is a dependent student.

Concerning the suggestion that both divorced or separated parents are responsible, the Commissioner agrees with the commenter that it would not be practical to try to collect the financial information of both parents. While aid administrators may collect this information for campus-based aid, the Commissioner does not feel that we should request that information on the common aid application. Such an addition would only make the application form more complex for a limited benefit in terms of service to the majority of students.

§ 190.33a Effective student income

§ 190.34a Computation of the expected family contribution for a dependent student from effective student income

Comment. Numerous comments were received concerning the concept and use of a dependent student's income in the calculation of eligibility for a Basic Grant. Those people who wanted these sections deleted completely cited as their reasons the following beliefs: First, they felt that dependent students who earned considerable income of their own often came from impoverished families and, thus, many times gave a good portion of that income to their parents for general family support. Second, they felt that it was illegal for the Program to use such income in a dependent student's calculation. Third, they felt that there would exist a certain amount of double counting of the dependent student's income (both the base year income and the currently available cash saved from the income would be counted in certain circumstances). And fourth, they felt that it would stifle a dependent student's desire to work. Further, one commenter indicated that working dependent students tended not to save their money for college, but rather tended to spend that money on "fancy clothes, cars, and dates." On the other hand, those who favored the concept stressed that it was only fair that the dependent student's income should be assessed since it very definitely represented a resource to the student.

Some commenters who "conditionally" favored the general concept of this proposal did so in conjunction with suggested modifications. Also, some who did not favor it suggested modifications that should be considered if the decision were to be made to keep the concept. For example, several commenters suggested that additional supplemental conditions be incorporated into the regulations to allow for the loss of the dependent student's income in much the same fashion that there are allowances for such a loss of a parent's income. Another commenter suggested that with this assessment of the student's base year income, we should not assess as assets that portion of the base year earnings which was saved.

And, while one commenter wanted to soften the impact of this regulation by lowering the assessment rate of the student's income from 75 percent to 50 percent, another wanted the regulation made more stringent by the removal of the offset for the single dependent student. This second commenter stressed that enough of an offset for

living expenses for the student was already provided with the family size offset against the parent's income. Other commenters wanted to subtract additional offsets from the student's income under certain circumstances. For example, an employment expense offset for a dependent student and spouse who are both working, and a larger offset when the dependent student has dependent children of his or her own were suggested.

Another commenter suggested that the entire treatment of the dependent student's income should be intertwined with the treatment of the parent's income. That is, the incomes should be added together and assessed at the parental rate. Besides lowering the proposed assessment rate for dependent student incomes, this would allow a negative parental income to offset a positive student income. Finally, one commenter suggested that we not consider the dependent student's spouse's income.

Response. Neither the suggested deletion nor the modifications of § 190.33a and § 190.34a were incorporated into the final regulation. While many of the suggestions represent viable alternative solutions to the problem addressed by these regulations, the Commissioner does not believe that they represent an improvement to the solution advocated in the notice of proposed rulemaking. With some suggestions, greater equity is achieved in some cases at the expense of that equity in others. The question to be answered, of course, is, what is the "usual" effect on the dependent student population in general? For example, the suggestion to delete the entire concept of dependent student income on the grounds that some dependent students do not really have access to all (or even any) of their income for college expenses because they come from impoverished families and must contribute that income to their parents for the general support of the family does provide for a fair treatment for such students' income. That is, no assessment whatever should be expected in those cases. However, it obviously ignores the situation where dependent students do not part with any (or very much) of their income for such a purpose (the general support of the family). Thus, it does not provide for a fair treatment of those students' income. In those cases, resources that are available for postsecondary expenses are ignored and aid is given when it is not needed.

In a formula based program, it is not usually possible to have the formula apply to each individual in such a way that the formula will result in a completely fair determination for all individual situations that will invariably be encountered. In recognition of that fact, the Office of Education attempts to achieve as much equity in the treatment of the aid application population as possible by doing two things. First, the formula of the Basic Grant Program is designed to consider, to as great a degree as possible, the "usual" situation. Second, with the built in concept of discretionary judgment in the campus-based programs, alternative sources of aid are available for those students whose circumstances are not fully taken into account by the Basic Grant formula, but who nevertheless have need. It is the Commissioner's opinion that the treatment of dependent student income contained in this final regulation will fairly assess a portion of that income as a resource for postsecondary expenses for the vast majority of students affected by § 190.34a.

We have been advised by the Office of General Counsel that the Commissioner is authorized to assess a portion of dependent student's income when calculating that student's effective family contribution.

Concerning the perceived problem of "double counting" for a dependent student when he or she has income, it is true that money that is saved from base year earnings will be counted as assets if it is available at the time of application for a Basic Grant in addition to the fact that the base year earnings themselves will be reported on the application. The assessment of the base year earnings represents a belief in the theory that the student will have the same or similar earnings in the current year. And, assessment of the current year's assets (whether or not they came from the base year earnings) represents the fact that the student has a given amount available in assets. If the theory about base year income is true, and the student has current assets, then he or she really will have all of the amount of the base year's earnings plus the money saved from the base year (as well as any other assets) available to him or her in the current year.

This, of course, is no different from the treatment of the parents' base year income and their current year's assets. Along the same lines, it is also no different from the treatment of the independent student.

Concerning the fourth point in the composite comment, the Commissioner does not believe that this regulation will stifle the desire to work in any student. If the student does seek work and, thus, possibly qualifies for a smaller grant because of that, he or she will still be in a better financial situation overall. This will be true since—because of the offset—not all of the student's income will be assessed. And, for the portion that is assessed, the assessment rate will be either 25 percent or 75 percent depending on whether the student is married or not. The same situation would, of course, be equally true for independent students. The real question is whether or not personal resources exist which should be considered for educational expenses before Federal aid is disbursed. Otherwise, aid is likely to be disbursed in an amount which is not needed. A student who has such resources—whether he or she is dependent or independent—should have those resources considered in determining his or her need, regardless of how he or she uses those resources.

The Commissioner agrees with those commenters who expressed the opinion that it is only fair that the dependent student's income should be assessed since it very definitely represents a resource to that student. The question then is, in what way should such an assessment be made in order that the greatest equity is provided to the greatest number of such students in the assessment of their income? Again, in not adopting the suggested modifications to this section, the Commissioner is stating his belief that the regulation as written provides the best solution in view of the various related complexities of the Program.

For example, additional supplemental conditions related to this area were not incorporated into the regulations, as a number of commenters had suggested, because it was felt that it would be extremely unlikely that a dependent student's income would drop from the base year to the current year by more than the amount of the offset. The vast majority of dependent students who work in the base year will only have part-time employment earnings to report. Most of those students can be expected to earn as much or more in part-time earnings in the current year. For those who do have a drop in their part-time earnings, that drop is likely to be less than the offset. In both of these cases, of course, the use of the base year income data provides a fair assessment of the student's ability to help pay his or her educational expenses.

In a very small number of cases, the dependent student will be working full-time in the base year, but will not be working in the current year. For this type of student, the theory of the use of base year income data will not hold true, and he or she may have an

inaccurate assessment of need. While it would be possible to rectify such an untrue assessment of the student's need by incorporating another supplemental condition in the regulations, other situations which represent a change from the base year to the current year in the financial situation of the applicant or his or her family are also possible which are not correctable with the Supplemental Form because they affect relatively few applicants.

The basic principle here is that base year income must be used in filing for a Basic Grant except in those specific situations for which the Office of Education has established conditions for filing for a Basic Grant on estimated data. These conditions are not intended to cover every possible situation. Rather, they are designed to account only for the most frequently occurring situations which usually result in a drastic reduction in income. Since it is not expected that dependent students will often have large incomes in the base year and lose them in the subsequent year, a supplemental condition was not drafted related to such an area, in the same fashion that other potential supplemental conditions are not addressed because they too are infrequently occurring situations.

Concerning the suggested changes related to (1) an assessment of the dependent student's income and (2) the size of the offset or an increased number of offsets, the Commissioner believes that the differences between them and the current regulation are simply the result of a different perception as to the amount of his or her income that a dependent student should have available for education. Similarly, the choice of whether to include the dependent student's income with the parent's income or to treat it separately as is currently done represents one of two different views on the same general question. That is, how much should the student be expected to contribute from his or her resources?

In these areas, the Commissioner feels that the current approach is the simplest one possible that will provide the most equity for the majority of the students involved.

Finally, concerning the inclusion of the spouse's income, the concept contained in this provision is simply the belief that the family is considered to be a unit. If a student marries, the resources of both partners must be considered before determining that the student needs money from the taxpayers to help pay for his or her education.

§ 190.34 Computation of the expected family contribution for a dependent student from effective family income.

Comment. Other than the annual increases in the Family Size Offsets (FSO) to account for the rise in the Consumer Price Index, the only change in this section of the 1980–81 regulation from the previous year was the elimination of Casualty and Theft losses as a part of the unusual expense offset. On this latter change, comments were about evenly divided between those who favored that action and those who opposed it. The increases in the FSO's were, of course, universally supported. However, some people suggested a number of changes to this section—including even larger FSO's—which would allow more people to qualify for a Basic Grant, and to allow those who did qualify, generally to qualify for a larger grant. Among these suggestions were that (1) a higher amount of the family's unusual medical expenses be allowed to lower the family's expected contribution (the eligibility index); (2) other non-discretionary expenses be accounted for (such as FICA, state and local taxes); (3) other offsets be subtracted from income (such as offsets for child care or day care expenses); and (4) the current offsets for employment expenses be raised.

Response. The suggestions to provide additional offsets or to increase the amounts of the current offsets were not adopted. The Commissioner believes that the current regulation adequately reflects the costs of the basic family expenses that must be met prior to educational expenses, and that the offsets fairly provide for the determination of the amount of a Basic Grant for which a student qualifies. Based on these offsets, the Program is expected to distribute $2.6 billion dollars in assistance to 2.7 million students in the 1980–81 award period for an average award of $954 per student. The elimination of casualty theft losses as a part of the unusual expense offset is not expected to affect the expenditure prediction noted in the previous sentence. The Basic Grant authorizing legislation requires that "any unusual expenses of the student and his family, such as unusual medical expenses, and those which may arise from a catastrophe," should be considered in determining Basic Grant eligibility. However, program experience indicates that the use of a Casualty and Theft Loss line item on the application is superfluous, and in many cases misleading, as a vehicle for reporting expenses "which may arise from a catastrophe." The type of expenses which this clause of the statute intends should be considered are already reflected in Basic Grant eligibility computations through amounts reflected on other line items on the form, revisions in asset amounts reported when a Supplemental Form is filed, and the procedure for revising asset amounts because of National Disasters. Thus, there will not be a specific line item for those losses in 1980–81.

§ 190.35 Computation of the expected contribution from parental assets.

Comment. Several commenters suggested that the $25,000 asset reserve be adjusted upward to reflect more adequately the effects of inflation, particularly in regard to home and property values. In addition to these general comments for such an increase in the reserve, one commenter suggested that money that a family might have from the sale of their home not be counted as an asset if the family plans to put the money into another home. Others suggested that the home itself should not be listed as an asset for Basic Grant purposes.

Response. The basic tenet behind the assessment of assets is simply that families with assets are in a stronger financial position than comparable families without assets. Thus, for a need based program, some form of asset assessment is required. Although equity in a home generally is considered to be a non-liquid asset, it nevertheless contributes to a family's financial strength. Thus, that asset is treated in the same manner as other assets. While both the Commissioner and the Congress are studying the pros and cons of removing home equity from consideration for the 1981–82 award period, that asset will still be considered for the 1980–81 award period.

§ 190.37 Computation of the expected contribution from the assets of the dependent student (and spouse).

Comment. While many commenters indicated that they favored the changes in this area, some of them suggested a few modifications in areas which would relate to the fact that the assets of both the dependent student and his or her spouse are included. For example, concerning marital status, because the income and assets of the dependent student's spouse will have to be reported, one commenter suggested that a dependent student be required to project his or her marital status when filing the application. That is, he or she should indicate whether he or she planned to be married during the award period for which aid is being requested. And, concerning the family size, another

suggested that a married dependent student be allowed to include in his or her (parent's) family size his or her own dependent children, since the student is being asked to report "all family income." On the other hand, other commenters objected to what they viewed as uncalled for liberalizations in the asset reserve and the assessment rates found in this section. One of these commenters thought that $25,000 was too high an asset reserve for most students, whether they had additional dependents or not. However, if it were to be used, he suggested that the assessment rate be 33 percent. Another, somewhat similar comment contained the suggestion that the assessment rate and the asset reserve for married students without additional dependents be the same as those for unmarried students. That is, only married students with additional dependents should have an asset reserve and a 5 percent assessment rate available to them.

Response. These suggestions for modification were not incorporated into the final regulation. Concerning the family's (parent's) household size, it is possible—under certain conditions—that the dependent student's dependent children will legitimately be counted in the household size of the parent of the student. However, they would not automatically be counted. Since it is not likely that very many dependent students will have dependent children of their own, the common aid application form does not collect that data. Thus, no special allowance for that situation can be considered. However, if such a student does have dependent children of his or her own, and those children live with the student's parents and have more than one-half of their support provided for them by the student's parents, then they will appear in the household size.

Concerning the possibility of using a projected marital status, the Commissioner feels that such a step would ultimately provide inaccurate information as often as not. Besides the obvious potential for abuse that would be built into such a situation, a student's plans in such an area could legitimately change after the application was made. While the Program does use some projected data items, the addition of this one would appear to be undesirable.

As was explained in the preamble to the NPRM, the procedures called for in this regulation will basically parallel the asset treatment of married independent students (actually, any independent students with one or more dependents). That treatment for independent students was enacted into law by the Middle Income Student Assistance Act. The more complete parallel of including a farm and business asset reserve has not been incorporated simply because it would be highly unlikely that a married dependent student would have a farm or business of his or her own.

§ 190.38 Computation of the total expected family contribution.

Comment. One commenter suggested that the Commissioner insert the words "(and spouse)" between the words "student" and "income" in § 190.38(b), feeling that we were not calling for the income of the spouse of a married dependent student. A similar comment was addressed to § 190.34a.

Response. The requested words are not needed to indicate that the spouse's income will be considered, since the definition of "effective student income" in § 190.33a spells out the fact that the spouse's income is included.

§ 190.39 Extraordinary circumstances affecting the expected family contribution determination for a dependent student.

Comment. In general, comments were favorable concerning the additional reason for filing a Supplemental Form that was added to this section. However, several commenters suggested a few modifications. Specifically, two people suggested that the loss of child support should be included as a loss of a non-taxable benefit. Another wanted to include a loss of alimony. Another person suggested that a partial loss of non-taxable income should be reason enough to file a Supplemental Form. And, in the same vein, one commenter suggested that overall there should be more flexibility in the conditions under which a person can use estimated income to apply for a Basic Grant. Finally, several commenters suggested that a condition should be added to address the situation where the dependent student loses his or her job. (This last concern has been discussed in the response to similar comments addressing § 190.33a and § 190.34a.)

Response. The Commissioner agrees that child support should be considered a non-taxable benefit. Thus, if a parent experiences a complete loss of court ordered child support for at least ten weeks in 1980, a dependent child of that parent will be able to apply for a Basic Grant with a Supplemental Form, i.e., he or she will apply using estimated 1980 income as opposed to using actual 1979 income. The loss of alimony, however, will not be considered here, since it is not a non-taxable benefit. Further, the Commissioner does not believe that it is as likely that there will be as many intances where a loss of alimony will affect the amount of a Basic Grant as there will be instances where the loss of child support will have such an effect. As one example, child support may in some cases only be ordered until a child reaches the age of 18, thus creating an automatic loss of income for many families at a certain point. Alimony on the other hand will not often have such a built in cessation date, or if it does, it would be expected that, generally, the alimony would cease because of the receipt of some other source of support or benefit.

Since the Supplemental Form is designed to accommodate extraordinary circumstances, the Commissioner does not feel that a partial loss of non-taxable income should be considered sufficient reason for estimating income. For the same reason, an increase in the number of conditions under which a supplemental form may be used is not considered desirable. However, the wording on the "loss of non-taxable benefits" section has been modified to incorporate the concept of a complete loss for ten weeks or more in 1980.

§ 190.42 Special Definitions (Independent Students).

Comment. The majority of commenters wholeheartedly endorsed the elimination of the third (future) year as a criterion for determining the independence of a student. However, it was suggested—in the case of divorce, separation, or death—that a student only apply the dependent criteria for the remaining two years to the "responsible" or surviving parent. The responsible parent would be determined on the basis of which parent's income is to be reported according to § 190.33. In addition, there were several dissenting viewpoints presented. One commenter suggested that the three years be kept, but that they all be moved back one year. That is, for the 1980–81 award period the years in question would be 1978, 1979, and 1980. This commenter also suggested that the Basic Grant application contain a warning that independent students may be required by their institutions to provide evidence that they are indeed self supporting students. Along somewhat similar lines, another commenter suggested that the entire independent student definition be overhauled and that independence should be verifiable. Finally, one commenter wanted to know how the campus-based programs would treat independent students who return home or live with their parents at the beginning of the third year—the January to June period of the award period for

which they will receive campus-based funds as independent students.

Response. As explained in the preamble to the NPRM, the Commissioner feels that the data provided by students for the third year is usually irrelevant in the determination of independence, i.e., students rarely indicate that they have been independent for two years, but will be dependent for the third year. In addition, even if they do project such a situation, it may not ultimately occur. Thus, the third year has been dropped. The Commissioner has incorporated, however, the concept of applying the dependent criteria only to the responsible or surviving parent according to § 190.33. The Commissioner does not believe at this time that it is necessary to tighten the regulations establishing the criteria for independence. Thus, the regulation will not call for three years of criteria, the first of which occurs two years before the year in school. A similar concept, i.e., a suggestion to extend the income tax criterion back one year, was proposed once by us for the Basic Grant and the campus-based programs in a notice of proposed rulemaking published on July 12, 1977 (Part II). Comments received at that time were widely diverse in their content. After reviewing those original comments, we decided to postpone a decision on the matter, opting instead to study the situation further. This information was published with the FCS for 1978–79, on January 30, 1978. After considerable deliberation on the issue, we decided not to use such a criterion to determine whether a student is actually independent or not. That decision was published in the 1979–80 FCS notice of proposed rulemaking dated August 14, 1978. Our position here remains consistent with that decision.

The campus-based programs will, of course, have a similar definition of an independent student. However, the financial aid administrator has sufficient overall flexibility in several areas in the campus-based programs to ameliorate any problems with an independent student who returns home on January 1, 1981. For example, the aid officer can take out of the student's budget the cost of room and board in such a situation. Or, he or she can consider that the student has additional resources available to him or her (board, room and whatever else the student receives from the parent). In any event, even though the student will be an independent student for that year while living at home, the financial aid administrator will still be able to establish a realistic budget based on that student's actual need.

§ 190.43 Effective family income.

Comment. One commenter suggested that the words "(and spouse)" be inserted between the words "student" and "under" in § 190.43(b)(2).

Response. Section 190.43(b)(2) calls for the inclusion of one half of the student's veterans benefits under chapters 34 and 35 of the United States Code in the annual adjusted family income. These veterans benefits are, of course, student financial aid. As such, they would not normally be considered in determining a student's eligibility for a Basic Grant except for the fact that Section 411(a)(3)(B) of the Higher Education Act of 1965, as amended, calls for the inclusion of one half of such benefits in the effective family income. Thus, consistent with the general rule that financial aid is not to be included in the effective family income, none of the financial aid of the student's spouse (including his or her veterans benefits) will be included since there is no legislative requirement to do so.

§ 190.44 Contribution of the expected family contribution for an independent student from effective family income

Comment. There was general support for the more liberalized treatment of the income of the independent student with dependents. However, several commenters suggested that additional reductions in the assessment rates on the income of independent students be provided, e.g., 10.5 percent for independent students with dependents and a "proportionate" reduction in the assessment rate of the single independent student's income. Other commenters suggested similar, although slightly different reductions. Also, one commenter suggested that the Office of Education concentrate on providing equity to independent students by means of changes in the allowable costs of attendance (§ 190.51 of the Basic Grant Administrative and Technical regulations published on January 25, 1979) rather than by means of adjustments to the assessment rates of the discretionary income of students.

Response. The additional reductions suggested were not implemented in this regulation. Independent students are generally expected to contribute a greater share of their income towards educational expenses (since they are the direct beneficiaries) than are the parents of dependent students. The regulation in the assessment rate on the income of independent students with dependents reflects these considerations. While 10.5 percent was considered to be too low an assessment rate for all such students, 40 to 50 percent was considered too high for most of them. Twenty-five percent was determined to be a reasonable assessment rate for the income of independent students with dependents.

While the assessment rate of 75 percent of the discretionary income of single independent students reflects the belief that this group of students should be expected to expend most of their resources on their education before they are eligible for need based financial aid, the ramifications of a reduction in this area are being studied for the 1981–82 award period. At the present time, the rate will remain at 75 percent.

§ 190.48 Extraordinary circumstances affecting the expected family contribution determination for an independent student

Comment. One commenter suggested that the applicant who was expecting to be unemployed for ten weeks or more in 1980 (planned on quitting his or her job to return to school) should be able to file a Basic Grant Supplemental Form before he or she is actually unemployed for ten weeks in 1980. This would speed up the application process in that the student would only have to file once. Now, the student often has to file twice. He or she must file once in the spring of the preceding year because the school wants a Student Eligibility Report early for purposes of establishing the student's total aid package, and once after he or she has been unemployed for the required ten weeks in 1980. Since the second filing will usually qualify the student for a larger Basic Grant, it necessitates a repackaging of other aid.

Response. While the suggested change would certainly alleviate the problem described above, it would also create a different problem. That is, there would certainly be a number of situations where a person expected to be unemployed for ten weeks in 1980 and, thus, filed a Supplemental Form on that account. And, subsequent to that filing for, and possibly receipt of a Basic Grant, the student's expected period of unemployment might not materialize. In this case, there would also be a problem with the student's aid package. In view of the fact that, depending on the particular situation, a problem can occur with either instruction, the Commissioner feels that it is better to require the applicant to wait until he or she has been unemployed for at least ten weeks before he or she files an application based on estimated information.

[FR Doc. 80-13287 Filed 4-29-80; 8:45 am]
BILLING CODE 4110-02-M

Reader Aids

Federal Register

Vol. 45, No. 85

Wednesday, April 30, 1980

INFORMATION AND ASSISTANCE

Questions and requests for specific information may be directed to the following numbers. General inquiries may be made by dialing 202-523-5240.

Federal Register, Daily Issue:

202-783-3238	Subscription orders and problems (GPO)
	"Dial-a-Reg" (recorded summary of highlighted documents appearing in next day's issue):
202-523-5022	Washington, D.C.
312-663-0884	Chicago, Ill.
213-688-6694	Los Angeles, Calif.
202-523-3187	Scheduling of documents for publication
523-5240	Photo copies of documents appearing in the Federal Register
523-5237	Corrections
523-5215	Public Inspection Desk
523-5227	Index and Finding Aids
523-5235	Public Briefings: "How To Use the Federal Register."

Code of Federal Regulations (CFR):

523-3419	
523-3517	
523-5227	Index and Finding Aids

Presidential Documents:

523-5233	Executive Orders and Proclamations
523-5235	Public Papers of the Presidents, and Weekly Compilation of Presidential Documents

Public Laws:

523-5266	Public Law Numbers and Dates, Slip Laws, U.S.
-5282	Statutes at Large, and Index
275-3030	Slip Law Orders (GPO)

Other Publications and Services:

523-5239	TTY for the Deaf
523-5230	U.S. Government Manual
523-3408	Automation
523-4534	Special Projects
523-3517	Privacy Act Compilation

FEDERAL REGISTER PAGES AND DATES, APRIL

21199-21606.....1
21607-22008.....2
22009-22872.....3
22873-23400.....4
23401-23630.....7
23631-24098.....8
24099-24438.....9
24439-24850.....10
24851-25036.....11
25037-25370.....14
25371-25786.....15
25787-26016.....16
26017-26310.....17
26311-26684.....18
26685-26942.....21
26943-27434.....22
27435-27738.....23
27739-27904.....24
27905-28078.....25
28079-28300.....28
28301-28700.....29
28701-29000.....30

CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a list of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

Proposed Rules:

305.....23703, 27451

3 CFR

Executive Orders:

11958 (Amended by EO 12210).....26313
12172 (Amended by EO 12206).....24101
12187 (Amended by EO 12209).....26311
12205.....24099
12205 (Amended by EO 12211).....26685
12206.....24101
12207.....25373
12208.....25789
12209.....26311
12210.....26313
12211.....26685

Administrative Orders:

No 80-15 of April 2, 1980.....26017
No 80-16 of April 14, 1980.....28079

Proclamations:

4667 (See Proc. 4750).....26019
4740.....21199
4741.....21201
4742.....21607
4743.....22009
4744.....22864
4744 (Amended by Proc. 4748).....25371
4744 (Amended by Proc. 4751).....27905
4745.....24851
4746.....24853
4747.....25037
4748.....25371
4749.....25787
4750.....26019
4751.....27905
4752.....27907
4753.....28701

4 CFR

31.....22873
33.....22873
34.....22873

Proposed Rules:

418.....25067

5 CFR

213.....22873, 26315
335.....24855
351.....24855, 28301
432.....24855
531.....27909
733.....27909
752.....24855
771.....24855
831.....22953, 23631, 24856
870.....23631
871.....23631
890.....23631
891.....23631
2500.....22873

Proposed Rules:

410.....24899
2424.....25067
2502.....26714
2504.....22049

6 CFR

705.....21259, 21609
706.....21609
707.....21609

7 CFR

1.....27435
2.....21610, 25039
20.....24103, 24439
25.....23401
271.....21998, 22873, 23288
272.....21998, 22873, 27426
273.....21998, 22873, 23288, 27426
274.....21998, 22873, 23288
275.....23637, 25375
278.....23288
301.....21260, 24856
410.....25791
905.....24440, 27739
907.....22011, 24441, 26021, 27739
908.....22011, 23638, 24442, 26021, 27740
910.....22882, 24858, 26315, 27910
911.....27910
928.....23638, 26943
944.....27910
979.....24105
982.....28081
985.....25039
991.....24441
1004.....23401
1032.....23401
1050.....23401
1062.....23401
1068.....23405
1421.....26308
1446.....24442
1464.....26687
1472.....24858
1701.....22883
1943.....27911
1948.....26943
1960.....27913
2851.....27915

2858.....26944, 27435, 27916
2859.....23639
2900.....27741

Proposed Rules:

28.....26340
414.....25073
415.....25068
422.....28726
760.....24899
925.....26967
946.....28732
971.....24489
999.....24167
1036.....24167
1071.....28734
1073.....28734
1097.....24492
1102.....24492
1104.....28734
1106.....28734
1108.....24492
1124.....25407
1126.....28734
1132.....28734
1260.....25078
1425.....24492
1427.....23449
1446.....28148
1464.....27944
1701.....24900-24901, 26340
1951.....27453
2852.....27944
2900.....25408

8 CFR

212.....24849
214.....23641, 24859, 25791, 26015
242.....27916
244.....27916
245.....26015, 26947
248.....23641, 26015
299.....21610

9 CFR

51.....24860
75.....26316
82.....26316
92.....24860, 26317
303.....27919
309.....26947
331.....24861
381.....27917-27919

Proposed Rules:

51.....26341
73.....26341
83.....22954
92.....26342

10 CFR

0.....26022
205.....21203, 24861, 25375
211.....21204, 22012
212.....21206, 28302
782.....26950

Proposed Rules:

Ch. II.....27964, 28686
Ch. III.....27964, 28686
Ch. V.....27964
Ch. X.....28686
2.....26071
19.....21261
20.....26072, 26717
51.....24168
140.....26973
205.....25780
211.....28148
212.....27767
435.....25097, 27964
455.....26717
461.....24092
477.....24516
1000.....27948

11 CFR

Ch. I.....21209, 23642, 25378
100.....21210, 21211
101.....21211
102.....21211
103.....21211
104.....21211
106.....21211
108.....21211
109.....21211
110.....21210, 21211, 27435
111.....21211
112.....21211
113.....21211
114.....21210, 21211

12 CFR

26.....24384
204.....28305
205.....25379
207.....24106
212.....24384
220.....24106
221.....24106
224.....24106
229.....22883, 23642, 24444, 24842, 26318
265.....24447
304.....22885
328.....23645
330.....23645
331.....23645
348.....24384
523.....21211
533.....24446
545.....24108, 24446
555.....24446
561.....26024
563f.....24384
564.....26024
590.....24112, 28306
701.....22888, 26687
711.....24384

Proposed Rules:

17.....25078
308.....22955
545.....24178
701.....26073

13 CFR

101.....21611
107.....25794
121.....21262, 22950
309.....21611
400.....28703

Proposed Rules:

28.....21261
121.....21649, 23704, 26974
124.....22971

14 CFR

21.....25046
23.....25046
36.....25046
39.....24448-24454, 25047, 26030-26032, 26690, 28082
61.....27745
65.....27745
71.....23406, 24455, 25054, 26033, 26034, 26691, 27746-27747
73.....28084
75.....22013
91.....25046
95.....25055
97.....24456, 26692
121.....25046
135.....25046
139.....25046
159.....21211, 22014
221.....24115
302.....26034
304.....26035
315.....23646
374a.....25795
385.....21612, 26035
387.....26035
399.....24115
1241.....23406

Proposed Rules:

Ch. I.....25350, 26717, 26718
Ch. V.....23465
39.....24493, 25039, 26075, 26078, 27769-27771, 28149
71.....22052, 23457-23465, 26079-26082, 27771-27774, 28150-28152
73.....24498
75.....28153
91.....25355
121.....27775
123.....27775
127.....27775
135.....27775
152.....26091
199.....26091
207.....26083
208.....26083
211.....26084
212.....26083
214.....26083
215.....24494-24498, 25079 26084
221.....25817, 28342
250.....25817, 28342
252.....26976
255.....25817, 28342
298.....25817, 28342
374a.....25824
380.....26084
385.....26084
399.....24178

15 CFR

Ch. III.....27922
7a.....26693
7b.....26693
7c.....26693
369.....24862
371.....21612
377.....21615
379.....21612
385.....21612, 24458
399.....21612, 24458

Proposed Rules:

377.....25034, 27948

16 CFR

2.....21622
3.....21622
13.....21214, 22018, 22020, 22021, 24122
305.....26035
803.....21215
1015.....22022
1026.....27923
1205.....26334
1209.....26333

Proposed Rules:

Ch. I.....22972
13.....23466, 24901, 26344, 27777, 27949, 28154-28158, 28342, 28754
419.....24499
436.....26347, 26356
437.....23705, 24499, 27453
1307.....25409

17 CFR

145.....26952
146.....26952
147.....26952
210.....27747
239.....23651
240.....23651
249.....23651
270.....28307

Proposed Rules:

1.....22974
201.....24499
210.....24499
229.....23470, 24499
230.....23470, 24499, 26366
231.....24499
239.....24499, 26366
240.....23470, 24499, 27781
241.....24499
249.....24499
250.....23470
270.....23470
274.....24500, 26366
275.....25080

18 CFR

0.....21216
1.....21216, 27924, 28085
2.....21216
3.....21623
4.....28085
46.....23413
141.....21623
154.....28092
157.....21216
260.....21623
270.....28092
271.....24123, 28092
272.....24123, 28092
273.....28092
274.....24124, 28092
282.....22891, 22952
284.....21216
292.....23661, 26955
294.....23684
375.....21216, 26694
376.....21216
410.....22892
701.....24459
713.....24863-24864
1307.....22893

Proposed Rules:

Ch. VI.....26718
2.....22053
270.....28345
271.....28345
282.....22110, 22974, 25825
294.....28162

710.....25302
711.....25302
713.....25302
714.....25302
716.....25302

19 CFR

210.....28704
353.....23684, 24126-24127
355.....23685, 27749

Proposed Rules:

210.....24192
211.....24192

20 CFR

348.....28313
349.....28313
350.....28313
351.....28313
352.....28313
353.....28313
354.....28313
355.....28313
356.....28313
357.....28313
358.....28313
359.....28313
360.....28313
361.....28313
362.....28313
363.....28313
364.....28313
365.....28313
366.....28313
367.....28313
368.....28313
369.....28313
370.....28313
371.....28313
372.....28313
373.....28313
374.....28313
375.....28313
404.....22023, 25060, 25383
654.....22901

Proposed Rules:

416.....26719, 27782
655.....24902
675.....23296, 24903
676.....23296, 24903
677.....23296, 24903
678.....23296, 24903
679.....23296, 24903

21 CFR

Ch. I.....26955
Ch. II.....24128
14.....28316
2.....22901
5.....22902, 27924
14.....21225
58.....24865
81.....22904
101.....22904
172.....22914
176.....28316
177.....22915
178.....25388
182.....22914
184.....22914, 26319
186.....22914
201.....25760
207.....25760
314.....25760
436.....22921
440.....22921
442.....22918
510.....22922, 24865, 27925
520.....22920, 27925
522.....26955
540.....22923
548.....27925
558.....22922, 23686, 24865
561.....21227, 26695, 27926, 28317
573.....22920
589.....28318
640.....27926
861.....23686
1020.....27927
1308.....26696

Proposed Rules:

73.....26977
163.....28348
320.....22974
561.....25098
589.....28349
601.....25652
606.....28359
610.....22975, 27952, 28359
630.....25652
640.....22975, 27952, 28358, 28359
866.....27204-27358
1304.....24198
1306.....24199

22 CFR

41.....24849
46.....24436

23 CFR

Proposed Rules:

450.....26091
628.....24505
645.....26280
658.....26091
1204.....26091

24 CFR

115.....24866
200.....27750
201.....23686
203.....27928
205.....26697
213.....23686
234.....23686
510.....24802
570.....27380
803.....23419
880.....22923
888.....23419
3282.....26906

Proposed Rules:

111.....27454
203.....26978
204.....26978
220.....26978
221.....27784
234.....26978
235.....26978
241.....27784
279.....28298
510.....24808
570.....24044, 25827, 26979, 27785
600.....26980, 27786
868.....27786
885.....24903
3280.....26908

25 CFR

Ch. III.....22924
221.....27436
256.....28100
700.....25389

Proposed Rules:

171.....24200
177.....24200
182.....24200
251.....27952

26 CFR

1.....24128, 26319, 28319
7.....26319
31.....24128
150.....23384, 27929
301.....26324
403.....27932

Proposed Rules:

1.....24200-24207, 26092, 26981, 27454, 28360, 28365, 28758
3.....24205
14.....26092
31.....24205, 24207
51.....27953
53.....24205
301.....24207

27 CFR

13.....26956

Proposed Rules:

4.....22977
178.....26982

28 CFR

Ch. I.....28321
0.....22023, 27754
42.....28704
45.....26376
527.....23364
549.....23364
551.....23364

Proposed Rules:

Ch. I.....26098
552.....23367
572.....23364

29 CFR

56.....26414
207.....28322
208.....28322
209.....28322
1440.....28105
1604.....25024
1613.....24130, 25796
1910.....26366
2520.....24866, 25404, 27932
2610.....21228

Proposed Rules:

1.....21263
4.....21263
5.....21264
6.....27400
8.....27410
29.....25410
1405.....24507
1425.....21264
1910.....21265, 22977
1918.....21265
1926.....21265, 22977
1928.....21265

30 CFR

11.....23990
70.....23990
71.....23990
75.....23990
90.....23990
715.....25998
816.....25998, 26001
817.....25998, 26001
926.....21550

Proposed Rules:

Ch. VII.....24210, 26368, 27953-27955, 28164-28169, 28371, 28380
70.....24008
71.....24009
90.....24017
211.....26924
716.....25992
783.....25990
785.....25992
816.....25990
817.....25990
943.....28765

31 CFR

316.....21880, 28712
342.....21988
535.....24408, 24432, 26940

Proposed Rules:

Ch. II.....25827

32 CFR

169a.....22924
199.....28322, 28714
238.....21228
286.....28323
553.....27755
630.....25060
655.....26958
866.....26037
888.....26037
889.....25060
953.....23423, 26958
1700.....21634

33 CFR

147.....26697
175.....22110
207.....24460, 27755
236.....28716
325.....22112

Proposed Rules:

100.....23472
110.....25081, 27786
117.....23473, 24508, 25082
165.....25081
175.....24509
396.....27378

36 CFR

7.....22023
63.....28716
222.....24133
1202.....25796
1204.....28716

Proposed Rules:

1150.....28970

37 CFR

302.....26958

38 CFR

3.....25391, 25392, 27436
4.....26326
14.....21242

36.....21242, 23687, 24138, 26959

Proposed Rules:

14.....22978
17.....22979
21.....21653
36.....25411

39 CFR

111.....26698, 28331

Proposed Rules:

111.....26982

40 CFR

22.....24360
52.....21634, 23424, 24139–24140, 24460, 24869, 26038, 26327, 27756–27760, 27933, 28112
60.....23374
80.....24360
81.....21244, 22929, 24469, 24869, 25063, 27761, 27935, 28337
86.....26044
100.....26046
120.....21246
122.....21635
125.....21635
168.....24360
180.....21247, 22931, 23424, 24877, 26048, 26330, 27761, 27936, 28338
192.....27366
226.....24360
775.....26331
1500.....28339
1501.....28339
1502.....28339
1503.....28339
1504.....28339
1505.....28339
1506.....28339
1507.....28339
1508.....28339

Proposed Rules:

Ch. I.....26722
30.....23706
51.....21592
52.....21266, 21271, 21282, 21290, 21292, 21297, 21592, 22981, 22982, 22987, 23473, 24509, 25087, 26101, 26368, 26721, 26983, 27454, 27787, 27957, 28170, 28371, 28380
58.....21301, 28170
59.....21592
60.....21302, 26304, 26910
61.....25828, 26660
65.....22987, 26902, 28171
81.....24510, 27957, 28171, 28767
86.....27788, 27958, 28922
122.....26984
123.....26984
124.....26984
125.....21303
162.....26370
163.....26373, 27958
169.....27790
180.....25100, 27958, 28172
192.....27380
401.....21655, 26734
419.....26721
425.....24211
446.....23707
712.....23473, 26386, 28172–28176
761.....25828
775.....26386

41 CFR

Ch. 1.....23688, 27762, 28716
Ch. 101.....27436
101–26.....27764
101–42.....27764
101–43.....28113
3–1.....25393, 25394
3–2.....25393
3–3.....25393
3–7.....25394
9–1.....24376
9–3.....24376
9–7.....24376
9–16.....24376
9–50.....24376
101–20.....22932
101–21.....22932
105–61.....28340

Proposed Rules:

Ch. III.....24211
8–4.....28767
14–3.....27793

42 CFR

Subchapter C.....24878
74.....26960
110.....24352
405.....22933, 24838, 26699
442.....22933
489.....22933

Proposed Rules:

74.....25412, 26387, 27456
122.....24511
123.....24511
405.....25412, 25829, 26387, 27456
431.....22988
460.....21657

43 CFR

7.....24471

Proposed Rules:

17.....24074
3800.....27456, 28380

Public Land Orders:

2595 (Amended by PLO 5715).....21248
5653 (Revoked by PLO 5716).....24890
5654 (Revoked by PLO 5716).....24890
5712 (Corrected by PLO 5717).....25064
5715.....21248
5716.....24890
5717.....25064
5718.....25064

44 CFR

64.....22941, 26049, 26331, 28118–28120
65.....22942, 26051, 27937, 28122
67.....22024, 22027, 25798, 27937–27942, 28124
205.....26052

Proposed Rules:

67.....22114, 22116, 22988, 22994, 25831–25834, 26389, 27959–27963

45 CFR

Ch. I.....22494
Ch. XIV.....22494
Ch. XV.....22494
100a.....28666
100b.....22648
100d.....22634
116a.....22654
116d.....22660
119.....22680
120.....22680
123.....23208
123a.....23208
123b.....23208
123c.....23208
123d.....23208
123e.....23208
123f.....23208
123g.....23208
123h.....23208
123i.....23208
134.....23602, 26960
160b.....22690
160c.....22702
160f.....22730
160g.....22742
161b.....22750
161c.....22742
161e.....22758
161f.....22764
161g.....27880
161h.....22770
161l.....27388
161m.....23200, 28341
163.....22702
163a.....22702
163b.....22702
163c.....22702
163d.....22702
166.....22776
166a.....22776
166b.....22776
166c.....22776
170.....28666
174.....28984
175.....28984
176.....28984
182.....22803
184.....24040
190.....28984
193.....26914
195.....22690
195a.....22690
195b.....22690
205.....25397
224.....27420
233.....26960
235.....25397
1050.....25064, 28136
1060.....26712
1063.....28136
1069.....28136
1501.....26705

Proposed Rules:

Ch. XI.....23473
100a.....21303
100b.....21303
104.....28288
105.....22806, 28288
121d.....22806
121e.....22806
121f.....22806
121h.....22806
121k.....22806
131.....22806
132.....22806
133.....22806
136.....22806
146.....22806
146a.....22806
148.....22806
151.....24070
154.....22806
155.....22806
157.....22806
158.....22806
159.....22806
164.....22806
169.....22806
172.....22806
173.....22806
179.....22806
182.....22806
182a.....22806
185.....25028
191.....22806
194.....22806
197.....22806
198.....22806
1076.....26102
1300.....23474, 26390
1480.....21657

46 CFR

30.....23425, 25065
33.....24471
34.....22040
35.....24471
56.....26711
71.....24471
75.....24471
76.....22040
78.....24471
91.....24471
94.....24471
95.....22040
97.....24471
160.....24471
162.....22040
167.....22040
189.....24471
192.....24471
193.....22040
196.....24471
221.....21635
308.....22041
525.....25798
530.....25798
540.....23428

Proposed Rules:

30.....23475, 25083
44.....26722
151.....23475, 25083
160.....22116
536.....23708
538.....23708
541.....27457

47 CFR

0.....22945, 25398, 25399, 28717
2.....24154
15.....24154
22.....25802
64.....26054
73.....21636–21638, 23430–23439, 25400, 25401, 25806, 25808, 26059, 26390, 26707, 28140, 28718, 28720
74.....26059, 28140
76.....23440

81 27765
90 28721
Proposed Rules:
Ch. I 26723
2 ..... 21306, 21661, 25412, 25844
15 23478
22 21306
61 24212
63 26724
67 24212
73 ..... 21661, 23478–234830, 24213–24214, 25414, 27794, 28768–28778
76 28780
81 ..... 21661, 27795, 28781
83 21661
87 25415
90 ..... 25412, 25844
94 27457
97 25418

48 CFR

Proposed Rules:
15 26984
49 21306

49 CFR

1 26068
23 23441
71 25065
192 23441
215 26708
395 ..... 22042, 28142
571 22044
575 ..... 23441, 23442
635 26298
1011 28143
1014 ..... 22945, 28147
1033 ..... 21248–21255, 21639, 21641, 21643, 22945, 23444–23447, 23690–23701, 24487, 24890–24897, 25401, 25402, 25810–25812, 26331, 26962–26966, 27441–27445
1047 22948
1048 28341
1100 26069
1125 27445
1241 28143
Proposed Rules:
Ch. X 26395, 28381
172 25083
173 25083
177 25083
178 25083
179 25083
192 22118
258 26091
260 26091
325 22120
531 24511
571 24517
613 26091
640 22121
1036 28380
1041 25419
1057 ..... 26399, 27796
1100 28176
1307 21662
1310 21662

50 CFR

17 ..... 21828, 24088, 24904, 27716, 28721
21 25065
23 22848
26 ..... 21256, 22047, 25813, 27449
70 28722
230 22948
285 25814
450 23354
451 23354
452 23354
453 23354
611 ..... 21256, 21845, 28146
651 ..... 22949, 25403
652 26966
655 21845
656 21256
671 25815
672 28146
674 28723
Proposed Rules:
Ch. VI 25844
17 ..... 27457, 27723
23 23370
216 23002
601 26402
611 ..... 21307, 22121, 22144, 22121, 25421, 25845
656 22144
657 21307
671 25421

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

FEDERAL COMMUNICATIONS COMMISSION

20830 3–31–80 / Common carrier services; connection of telephone equipment, systems and protective apparatus to certain private line services, and related changes

TRANSPORTATION DEPARTMENT

Federal Aviation Administration—

20772 3–31–80 / Triennial aircraft registration report

Office of the Secretary—

21172 3–31–80 / Participation by minority business enterprise in Department of Transportation Programs

Deadlines for Comments On Proposed Rules for the Week of May 4 Through May 10, 1980

ADMINISTRATION OFFICE, EXECUTIVE OFFICE OF THE PRESIDENT

22049 4–3–80 / Privacy Act of 1974; proposed implementation regulations; comments by 5–5–80

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service—

22954 4–4–80 / Release of certain counties in Texas from designation as screwworm areas; comments by 5–5–80

14050 3–4–80 / Scabies in cattle; proposed revisions; comments by 5–5–80

[Corrected at 45 FR 26341, April 18, 1980]

Rural Electrification Administration—

14047 3–4–80 / Wood telephone pedestal stubs; new bulletin; comments by 5–5–80

CIVIL AERONAUTICS BOARD

25824 4–16–80 / Extension of credit by air carriers to political candidates; comments by 5–10–80

14062 3–4–80 / Insurance requirements for U.S. and foreign air carriers; reply comments by 5–6–80

[*See also* 45 FR 7566, 2–4–80]

COMMERCE DEPARTMENT

Economic Development Administration—

15173 3–10–80 / Public works projects involving industrial parks and sites; comments by 5–9–80

National Oceanic and Atmospheric Administration—

14216 3–5–80 / Commercial tanner crab fishery off the coast of Alaska; amendment to fishery management plan and final regulations; comments by 5–7–80 for northeast section

25845 4–16–80 / Northeast Pacific plan approval and proposed regulations; comments by 5–9–80

25844 4–16–80 / Trawl fisheries of Washington, Oregon, and California; preliminary fishery management plan; comments by 5–9–80

ENERGY DEPARTMENT

Conservation and Solar Energy Office—

14188 3–4–80 / Consumer product test procedures; provisions for waiver; comments by 5–5–80

24517 4–10–80 / Standby Federal Emergency Energy Conservation Plan; extension of comment period from 4–7–80 to 5–7–80

[*See also* 45 FR 8309 and 8462, 2–7–80]

Economic Regulatory Administration—

25780 4–15–80 / Electric power system permits and reports applications; administrative procedures and sanctions; comments by 5–9–80

ENVIRONMENTAL PROTECTION AGENCY

22983 4–4–80 / Availability of proposed revision to Wisconsin's State Implementation Plan; comments by 5–5–80

24211 4–9–80 / Leather tanning and finishing industry point source category; availability of documents; comments by 5–9–80

17997 3–20–80 / National Pollutant Discharge Elimination System (NPDES) Best Management Practices Guidance Document; comments by 5–5–80

13646 2–29–80 / Pesticides and toxic substances; general recordkeeping and reporting requirement; comments by 5–6–80

[Corrected at 45 FR 26386, Apr. 18, 1980]

26386 4–18–80 / Pesticides and toxic substances; general recordkeeping and reporting requirement corrections; comments by 5–14–80

[*See also* 45 FR 13646, Feb. 29, 1980]

25828 4–16–80 / Polychlorinated biphenyls (PCB's); request for information on PCB transformed; comments by 5–5–80

22987 4–4–80 / Proposed approval and disapproval of parts of Administrative Order issued by New Mexico Environmental Improvement Board to Public Service Company of New Mexico; comments by 5–5–80

22981 4–4–80 / Reproposal of revision to Ohio State Implementation plan; comments by 5–5–80

FEDERAL COMMUNICATIONS COMMISSION

21661 4–2–80 / Allocating spectrum for an automated Inland Waterways Communications System (IWCS) along the Mississippi River and connecting waterways; reply comments extended to 5–7–80

7583 2–4–80 / Establishment of disaster radio response program in local government radio service for States, territories, and possessions; reply comments by 5–5–80

13145 2–28–80 / FM broadcast station in Anchorage, Alaska; table of assignments changed; reply comments by 5–5–80

13144 2–28–80 / FM broadcast station assigned to Bettendorf, Iowa; reply comments by 5–5–80

17600 3–19–80 / FM assignments to (proposed) Bountiful, Centerville and West Jordan, Utah; and Rock Springs, Wyo.; comments by 5–6–80

13148 2–28–80 / FM broadcast stations assigned to Lakeport and Williams, Calif.; reply comments by 5–5–80

24212 4–9–80 / Integration of rates and services for the provision of communications by authorized common carriers between the U.S. mainland and Hawaii, Alaska, and Puerto Rico/Virgin Islands; comments by 5–9–80

24212 4–9–80 / Private line rate structure and volume discount practices; reply comments extended to 5–7–80

[*See also* 44 FR 61216, 10–24–79 and 45 FR 16214, 3–13–80]

17598 3–19–80 / Proposed FM assignment to Clintonville, Chilton, and Manitowoc, Wis.; comments by 5–6–80

17597 3–19–80 / Proposed FM assignment to Poughkeepsie, N.Y.; comments by 5–6–80

16222 3–13–80 / Providing optimum conditions for utilization of New Jersey television channel assignments; inquiry; comments by 5–8–80

13139 2–28–80 / Regulatory policies concerning resale and shared use of common carrier domestic public switched network services; comments by 5–9–80

13149 2–28–80 / Television broadcast station assigned to Danville, Ky.; reply comments by 5–5–80

16219 3–13–80 / Television Broadcast Stations in Dover and Seaford, Del.; Asbury Park, Atlantic City, New Brunswick, Newton, Vineland, West Milford and Wildwood, N.J.; Kingston and Syracuse, N.Y.; and Bethlehem, Lebanon and State College, Pa.; Proposed Changes in Table of Assignments; comments by 5–8–80

13152 2–28–80 / Television broadcast stations in El Paso, Tex.; reply comments by 5–5–80

13150 2–28–80 / Television broadcast station reassigned to Mansfield, Ohio from Marion, Ohio; reply comments by 5–5–80

FEDERAL EMERGENCY MANAGEMENT AGENCY

14902 3–7–80 / Criteria for land management and use in the National Flood Insurance Program; comments by 5–6–80

FEDERAL HOME LOAN BANK BOARD

24178 4–9–80 / Proposed amendments regarding investments in service corporations; comments by 5–9–80

FEDERAL MARITIME COMMISSION

23708 4–8–80 / Requirements for filing currency adjustment factors reflecting changes in exchange rate of tariff currencies; comments by 5–8–80

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

17596 3–19–80 / Procedural rule; proposed amendment; comments by 5–5–80

FEDERAL TRADE COMMISSION

14870 3–7–80 / General Motors Corp., et al. consent agreement with analysis to aid public comment; comments by 5–5–80

14880 3–7–80 / General Motors Corp., et al. consent agreement with analysis to aid public comment; comments by 5–6–80

HEALTH, EDUCATION, AND WELFARE DEPARTMENT

Food and Drug Administration—

14063 3–4–80 / Vitamin K-type coagulants; bioequivalence requirements; comments by 5–5–80

Public Health Service—

26387 4–18–80 / Clinical laboratories; personnel standards; comments by 5–9–80

[*See also* 44 FR 58923, Oct. 12, 1979; 44 FR 61059, Oct. 23, 1980]

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Community Planning and Development, Office of Assistant Secretary—

24044 4–8–80 / Community Development Block Grants; Small Cities Program; comments by 5–8–80

Federal Housing Commissioner, Office of Assistant Secretary for Housing—

14826 3–6–80 / Housing programs; previous participation review and clearance; comments by 5–5–80

Neighborhood, Voluntary Associations and Consumer Protection, Office of Assistant Secretary—

14068 3–4–80 / Reimbursement for expenses for public participation; need for regulations; comments by 5–5–80

Office of the Secretary—

14068 3–4–80 / Siting of HUD supported projects in high risk areas around airports and airfields; comments by 5–5–80

INTERIOR DEPARTMENT

Fish and Wildlife Service—

8029 2–6–80 / Review of status of Uncompahgre Fritillary Butterfly; comments by 5–6–80

Land Management Bureau—

14607 3–6–80 / Wild and scenic river system; prohibited acts; comments by 5–5–80

LABOR DEPARTMENT

Employment and Training Administration—

24903 4–11–80 / Changes in preamble to proposed Comprehensive Employment and Training Act provisions; comments by 5–5–80

23296 4–4–80 / Provisions for programs under Titles I, II, VI, and VII of the Comprehensive Employment and Training Act; comments by 5–5–80

NUCLEAR REGULATORY COMMISSION

14589 3–6–80 / Deletion of source material medicinals from the general quantities of source material; comments 5–6–80

15184 3–10–80 / Protection of employees who provide information; comments by 5–9–80

TRANSPORTATION DEPARTMENT

Federal Aviation Administration—

14802 3–6–80 / Takeoff and landing minimums; comments by 5–6–80

National Highway Traffic Safety Administration—

8324 2–7–80 / Motor vehicle safety standards, Federal; controls and displays; comments by 5–7–80

Research and Special Programs Administration—

9220 2–11–80 / Liquefied natural gas (LNG) facilities; Federal safety standards; comments by 5–9–80

VETERANS ADMINISTRATION

22978 4–4–80 / Clarification of provision on termination of recognition of representatives, agents or attorneys; comments by 5–5–80

24138 4–9–80 / Loans for the acquisition of a mobile home and a suitable lot and/or necessary site improvements; comments by 5–9–80

22979 4–4–80 / Provisions for readjustment counseling for Vietnam era veterans; comments by 5–5–80

Deadlines for Comments on Proposed Rules for the Week of May 11 through May 17, 1980

AGRICULTURE DEPARTMENT

Agricultural Stabilization and Conservation Service—

16493 3–14–80 / Policy and guidelines for floodplain management and wetland protection; comment by 5–13–80

Animal and Plant Health Inspection Service—

15505 3–11–80 / Gypsy moth and browntail moth quarantine; regulations; comments by 5–12–80

Rural Electrification Administration—

24900 4–11–80 / Proposed revision of REA Bulletin 181–3, Accounting Interpretation for Rural Electric Borrower; comments by 5–12–80 (4 documents)

CIVIL AERONAUTICS BOARD

24178 4–9–80 / Statements of general policy; comments by 5–12–80

COMMERCE DEPARTMENT

International Trade Administration—

24458 4–10–80 / Policy concerning the export of phosphate rock, phosphoric acid of all concentrations and phosphatic fertilizer of all concentrations to the U.S.S.R.; comments by 5–12–80

National Oceanic and Atmospheric Administration—

15955 3–12–80 / Atlantic herring; approval of amendment of the Fishery Management Plan, proposed regulations; comments by 5–12–80

22144 4–3–80 / Atlantic Mackerel Fishery Management Plan; comments by 5–16–80

15600 3–11–80 / Grant of petition to amend guidelines for development of fishing management plans; comments by 5–15–80

[*See also* 45 FR 8686, 2–8–80 and 42 FR 34458, 7–5–77]

ENERGY DEPARTMENT

Federal Energy Regulatory Commission—

28100 4–28–80 / High-cost natural gas produced from tight formations; interim rule; comments by 5–15–80

[*See also* 45 FR 13414, 2–28–80]

ENVIRONMENTAL PROTECTION AGENCY

15566 3–11–80 / Air quality State implementation plans; California Plan revision; Fresno County and Kern County Air Pollution Control Districts; comment by 5–12–80

16502 3–14–80 / Approval of external emission offset for Prefinished Metals Inc. of Ohio; comments by 5–13–80

24510 4–10–80 / Designation of areas for air quality planning purposes; attainment status designations—Calif.; comments by 5–12–80

25087 4–14–80 / Michigan implementation plan; carbon monoxide and ozone; comments by 5–14–80

25093 4–14–80 / Michigan implementation plan; carbon monoxide and ozone; comments by 5–14–80

28172 4–28–80 / Pesticides and toxic substances; general recordkeeping and reporting requirements; preliminary assessment information; clarification; comments by 5–14–80

[*See also* 45 FR 13646, 2–29–80 and 45 FR 23473, 4–7–80]

15952 3–12–80 / Pulp, paper and paperboard point source categories; effluent limitations guidelines; comments by 5–12–80

24509 4–10–80 / Submittal schedules for New Mexico; approval and promulgation of implementation plans; comments by 5–12–80

FEDERAL COMMUNICATIONS COMMISSION

19578 3–26–80 / Adding frequency channeling requirements and restrictions and requiring monitoring for signal leakage from cable television systems; reply comments by 5–12–80

25844 4–16–80 / Authorizing the use of low power radio transmitters by police radio service licensees in the 30–50 MHz, 150–174 MHz, and 450–470 MHz bands; reply comments extended to 5–16–80

25412 4–15–80 / Continued assignment of frequencies in the 420–450 MHz band for non-Government radiolocation usage; comments by 5–16–80

19575 3–26–80 / FM broadcast station in Cableskill, N.Y.; proposed changes in table of assignments; comments by 5–12–80

19574 3–26–80 / FM broadcast station in Livingston, Mont.; proposed changes in table of assignments; comments by 5–12–80

19576 3–26–80 / FM broadcast station in Milbank, S. Dak.; proposed changes in table of assignments; comments by 5–12–80

20142 3–27–80 / FM broadcast station, Snowmass Village, Colo.; reply comments by 5–14–80

14076 3–4–80 / FM table of assignments; Columbia, Jamestown, and Smiths Grove, Ky.; reply comments by 5–12–80

14078 3–4–80 / FM table of assignments; Marshall and Robinson, Ill.; reply comments by 5–12–80

19583 3–26–80 / Implementing a provision of the New (1974) Safety Convention regarding compulsory carriage of radar on board vessels of 1,600 tons gross tonnage and over; reply comments by 5–12–80

25415 4–15–80 / Operation of automatic digital communications systems in the aeronautical enroute service; comments by 5–16–80

23478 4–7–80 / Television receiver performance standards; comments by 5–16–80

FEDERAL TRADE COMMISSION

24499 4–10–80 / Games of chance in food retailing and gasoline industries; comments by 5–12–80

17019 3–17–80 / Open-panel medical prepayment plans; medical participation in control; comments by 5–16–80

HEALTH, EDUCATION, AND WELFARE DEPARTMENT

Education Office—

16142 3–12–80 / Commissioners discretionary program; proposed grant regulations; comments by 5–12–80

Food and Drug Administration—

9287 2–12–80 / Cholecystokinetic drug products for over-the-counterhuman use; establishment of a monograph; comments by 5–12–80

25652 4–15–80 / Viral and Rickettsial Vaccines; confidentiality of data submitted for review by Panel; comments by 5–15–80

16505 3–14–80 / Requirements for certification of medicare and medicaid long term care facilities with repeat deficiencies; comments by 5–13–80

Office of the Secretary—

10622 2–15–80 / Model State Adoption Act and Model State Adoption Procedures; recommendations; comments by 5–16–80

Social Security Administration—

15566 3–11–80 / Family relationships under the Supplemental Security Income (SSI) program; explanation of spouse, child, and parent; comments by 5–12–80

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

24903 4–11–80 / Cost limits on loans for housing for the elderly or handicapped; comments by 5–12–80

INTERIOR DEPARTMENT

Fish and Wildlife Service—

13630 2–29–80 / 1980–81 migratory game bird hunting regulations (preliminary); comments by 5–16–80

Land Management Bureau—

15876 3–11–80 / Trespass; payment for mineral resources damage and reclamation; comments by 5–12–80

Surface Mining Reclamation and Enforcement Office—

25990 4–16–80 / Permanent regulatory program; comments by 5–16–80

INTERSTATE COMMERCE COMMISSION

13159 2–28–80 / Lease and interchange of vehicle (leases involving carrier agents); comments by 5–14–80

19588 3–26–80 / Railroads performing depreciation studies; comments by 5–12–80

JUSTICE DEPARTMENT

Drug Enforcement Administration—

24128 4–9–80 / Controlled substances in emergency kits for long term care facilities; comments by 5–12–80

LABOR DEPARTMENT

Employment and Training Administration—

24902 4–11–80 / Labor certification process for the temporary employment of aliens in agriculture; adverse effect wage rate methodologies; comment period extended to 5–12–80

[Originally published at 45 FR 15914, March 11, 1980]

MANAGEMENT AND BUDGET OFFICE

15954 3–12–80 / Leasing of motor vehicles, make or buy programs, and notation and change of name agreements; comments by 5–16–80

NUCLEAR REGULATORY COMMISSION

15937 3–12–80 / Access controls to nuclear powerplant vital areas; comments by 5–12–80

15936 3–12–80 / General license requirements for any person who possesses irradiated special nuclear material (SNM) in transit; comments by 5–12–80

19564 3–26–80 / Informal conference during inspection; comments by 5–12–80

[Corrected at 45 FR 21261, 4–1–80]

Personnel Management Office—

16493 3–14–80 / Extension of retirement coverage to certain employees and members of congress; comments by 5–13–80

SECURITIES AND EXCHANGE COMMISSION

24499 4–10–80 / Business combination transactions—proposed short form for registration and proposed amendments for related rules; comment period extended to 5–15–80

[Originally published at 45 FR 5934, 1–24–80]

16498 3–14–80 / Ratios of earnings to fixed charges; presentation requirements; comments by 5–15–80

TRANSPORTATION DEPARTMENT

Coast Guard—

24471 4–10–80 / Lifesaving equipment for Great Lakes vessels; exposure suits for vessels operating on the Great Lakes; comments by 5–12–80

Federal Aviation Administration—

20424 3–27–80 / Solicitation and leafletting procedures at National and Dulles International Airports; comments by 5–12–80

Federal Highway Administration—

10236 2–14–80 / Design standards for highways; comments by 5–14–80

National Highway Traffic Safety Administration—

24515 4–10–80 / Federal motor vehicle safety standards; motorcycle controls and displays; comments by 5–12–80

24511 4–10–80 / Passenger automobile average fuel economy standards; proposed decision to grant exemption; comments by 5–12–80

TREASURY DEPARTMENT

Alcohol, Tabacco, and Firearms Bureau—

17026 3–17–80 / Napa Valley agricultural area, Calif.; establishment; comments by 5–16–80

17027 3–17–80 / Pennacles Viticultural Area, Calif.; proposed establishment; comments by 5–16–80

17025 3–17–80 / Wine; standards of fill; miniature wine size; comments by 5–13–80

Internal Revenue Service—

15945 3–12–80 / Reductions in value for blockage or similar factors; comments by 5–12–80

VETERANS ADMINISTRATION

25411 4–15–80 / Guaranteed home and mobile home lot loans; allowable easements for drainage and irrigation purposes; comments by 5–15–80

Next Week's Meetings

AGRICULTURE DEPARTMENT

Forest Service—

20507 3–28–80 / Gospel-Hump Advisory Committee, Grangeville, Idaho (open), 5–5–80

26107 4–17–80 / National Forest System Advisory Committee, Asheville, N.C. (open), 5–8, 5–9 and 5–10–80

ARMS CONTROL AND DISARMAMENT AGENCY

25440 4–15–80 / General Advisory Committee, Washington, D.C. (closed), 5–8 and 5–9–80

ARTS AND HUMANITIES, NATIONAL FOUNDATION

27075 4–22–80 / Federal Council on the Arts and the Humanities, Arts and Artifacts Indemnity Panel Advisory Committee, Washington, D.C. (closed), 5–7–80

27076 4–22–80 / National Council on Arts, Washington, D.C. (closed), 5–9 and 5–10–80

26854 4–21–80 / National Council on the Humanities Advisory Committee, Washington, D.C. (partially open), 5–8 and 5–9–80

CIVIL RIGHTS COMMISSION

24906 4–11–80 / Missouri Advisory Committee, St. Louis, Missouri (open), 5–6–80

24907 4–11–80 / New Mexico Advisory Committee, San Antonio, Texas (open), 5–6–80

26108 4–17–80 / Wisconsin Advisory Committee, Milwaukee, Wisc. (open), 5–9–80

COMMERCE DEPARTMENT

International Trade Administration—

26986 4–22–80 / Computer Systems Technical Advisory Committee, Washington, D.C. (partially open), 5–8–80

26987 4–22–80 / Computer Systems Technical Advisory Committee, Licensing Procedures Subcommittee, Washington, D.C. (open), 5–7–80

26746 4–21–80 / Electronic Instrumentation Technical Advisory Committee, Washington, D.C. (partially open), 5–6–80

26987 4–22–80 / Hardware Subcommittee of the Computer Systems Technical Advisory Committee, Washington, D.C. (partially open), 5–7–80

National Oceanic and Atmospheric Administration—

25111 4–14–80 / Mid-Atlantic Fishery Management Council's Scientific and Statistical Committee, Philadelphia, Pa. (open), 5–8–80

DEFENSE DEPARTMENT

Army Department—

25112 4–14–80 / Medical Research and Development Advisory Panel Ad Hoc Study Group on Parasitic Diseases, Washington, D.C. (partially open), 5–2–80

Navy Department—

17630 3–19–80 / Academic Advisory Board to the Superintendent, U.S. Naval Academy, Annapolis, Md., 5–5–80

Office of the Secretary—

21676 4–2–80 / Defense Science Board Task Force on Cruise Missiles, Fort Meade, Md. (closed), 5–8 and 5–9–80

19296 3–25–80 / Wage Committee, Washington, D.C. (partially open), 5–6–80

ENERGY DEPARTMENT

Energy Research Office—

21699 4–2–80 / High Energy Physics Advisory Panel, Germantown, Md. (open), 5–6 and 5–7–80

Federal Energy Regulatory Commission—

24224 4–9–80 / Advisory Committee on Revision of Rules of Practice and Procedure, Subcommittee on Review of Commission Decisional Process, Washington, D.C. (open), 5–6–80

ENVIRONMENTAL PROTECTION AGENCY

26804 4–21–80 / Science Advisory Board, Ecology Committee, Washington, D.C. (open), 5–8 and 5–9–80

26804 4–21–80 / Science Advisory Board, Environmental Pollutant Movement and Transformation Committee, Falls Church, Va. (open), 5–8 and 5–9–80

26819 4–21–80 / Fifth Meeting of the Advisory Committee on AM Broadcasting in Region 2, Washington, D.C. (open), 5–6–80

25946 4–16–80 / Radio Technical Commission for Marine Services, Washington, D.C. (open), 5–7 and 5–8–80

FEDERAL HOME LOAN BANK BOARD

21038 3–31–80 / Federal Savings and Loan Advisory Council, Washington, D.C. (open), 5–5, 5–6, and 5–7–80

HEALTH, EDUCATION, AND WELFARE DEPARTMENT

Center for Disease Control—

25141 4–14–80 / Immunization Practices Advisory Committee, Atlanta, Ga. (open), 5–5 and 5–6–80

Education Office—

26824 4–21–80 / Adult Education Advisory Committee, Washington, D.C. (open), 5–8–80

26467 4–18–80 / National Advisory Council on Extension and Continuing Education, Washington, D.C. (open), 5–6 and 5–7–80

Food and Drug Administration—

23745 4–8–80 / Platelet Workshop, Bethesda, Md. (open), 5–8 and 5–9–80

Health Care Financing Administration—

14900 3–7–80 / Consideration of Changes in Medicare and Medicaid participant certification requirements: Philadelphia, Pa. (open), 5–6 and 5–7–80; Atlanta, Ga. (open), 5–7 and 5–8–80

Human Development Services Office—

19618 3–26–80 / Model State Adoption Act and Model Adoption Procedures, Philadelphia, Pa. (open), 5–8–80

National Institutes of Health—

15679 3–11–80 / Cancer Research Manpower Review Committee, Bethesda, Md. (closed), 5–8 through 5–10–80

20566 3–28–80 / Clinical Trails Committee, Bethesda, Md. (partially open), 5–13 and 5–14–80 rescheduled to 5–8 and 5–9–80

(See 45 FR 25150; 4–14–80)

21044 3–31–80 / National Heart, Lung, and Blood Institute; Arteriosclerosis, Hypertension, and Lipia Metabolism Advisory Committee, Bethesda, Md. (open), 5–5–80

11196 2–20–80 / New and Useful Techniques in Rapid Viral Diagnosis, Bethesda, Md. (open), 5–8 and 5–9–80

Public Health Service—

26135 4–17–80 / National Council on Health Care Technology, Washington, D.C. (open), 5–9–80

INTERIOR DEPARTMENT

Land Management Bureau—

20165 3–27–80 / California Desert Conservation Area, Barstow, Calif., (open), 5–7–80

20165 3–27–80 / California Desert Conservation Area, Bishop, Calif., (open), 5–5–80

20165 3–27–80 / California Desert Conservation Area, Blythe, Calif., (open), 5–6–80

20165 3–27–80 / California Desert Conservation Area, El Centro, Calif., (open), 5–5–80

20165 3–27–80 / California Desert Conservation Area, Needles, Calif., (open), 5–7–80

20165 3–27–80 / California Desert Conservation Area, Ridgecrest, Calif., (open), 5–6–80

23072 4–4–80 / Las Cruces District Grazing Advisory Board, Las Cruces, N.M. (open) 5–6–80

National Park Service—

24255 4–9–80 / Appalachian National Scenic Trail Advisory Council, Bethel, Penn. (open), 5–9–80

LABOR DEPARTMENT

Occupational Safety and Health Administration—

26488 4–18–80 / Federal Advisory Council on Occupational Safety and Health, Washington, D.C. (open), 5–6–80

MANAGEMENT AND BUDGET OFFICE

27596 4–23–80 / President's Commission for a National Agenda for the Eighties, Boston, Mass. (open), 5–9–80

27596 4–23–80 / President's Commission for a National Agenda for the Eighties, Washington, D.C. (open), 5–9–80

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

26500 4–18–80 / NASA Advisory Council Aeronautics Advisory Committee, Cleveland, Ohio (open), 5–5 and 5–6–80

25556 4–15–80 / NASA Advisory Council (NAC), Informal Handling Unconventional Ideas, Washington, D.C. (open), 5–5–80

24950 4–11–80 / NASA Advisory Council (NAC) Life Sciences Advisory Committee, Washington, D.C. (open), 5–5–80

NATIONAL SCIENCE FOUNDATION

26501 4–18–80 / Advisory Committee for International Programs, Washington, D.C. (closed), 5–8 and 5–9–80

26501 4–18–80 / Subcommittee for Sensory Physiology and Perception of the Advisory Committee for Behavioral and Neural Sciences, Sarasota, Fla. (closed), 5–4 and 5–5–80

26501 4–18–80 / Subcommittee for Psychobiology of the Advisory Committee for Behavioral and Neural Sciences, Washington, D.C. (partially open), 5–5 and 5–6–80

26501 4–18–80 / Subcommittee on Regulatory Biology of the Advisory Committee for Physiology, Cellular and Molecular Biology (closed), 5–7 through 5–9–80

NUCLEAR REGULATORY COMMISSION

27853 4–24–80 / Reactor Safeguards Advisory Committee, Ad Hoc Subcommittee on Class 9 Accidents, Chicago, Ill. (partially open), 5–9–80

[*See also* 44 FR 56408, 10–1–79]

OCEANS AND ATMOSPHERE, NATIONAL ADVISORY COMMITTEE

26500 4–18–80 / Meeting, Governors Island, N.Y. (partially open), 5–5 and 5–6–80

SMALL BUSINESS ADMINISTRATION

27599 4–23–80 / Region VIII (Helena, Montana) Advisory Council, Helena, Mont. (open), 5–8–80

17708 3–19–80 / Region III Advisory Council, Frederick, Md. (open), 5–9–80

23843 4–8–80 / Region III (Pittsburgh, Pa.) Advisory Council, Pittsburgh, Pa. (open), 5–7–80

27078 4–22–80 / Region V (Detroit, Mich.) Advisory Council, Detroit, Mich. (open), 5–9–80

27078 4–22–80 / Region V (Chicago, Ill.) Advisory Council, Chicago, Ill. (open), 5–6–80

25563 4–15–80 / Region VI Advisory Council, Albuquerque, N.M. (open), 5–9–80

25564 4–15–80 / Region VI Advisory Council, Houston, Texas (open), 5–8–80

23842 4–8–80 / Region VI (Lower Rio Grande Valley, Texas) Advisory Council, McAllen, Tex. (open), 5–6–80

23844 4–8–80 / Region VIII (Casper, Wyo.) Advisory Council, Casper, Wyo. (open), 5–6–80

25564 4–15–80 / Region VIII Advisory Council, Helena, Montana (open), 5–8–80

STATE DEPARTMENT

Office of the Secretary—

27078 4–22–80 / Shipping Coordinating Committee, Safety of Life at Sea Subcommittee, Washington, D.C. (open), 5–7–80

24751 4–10–80 / Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea, Washington, D.C. (open), 5–6–80

25564 4–15–80 / Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea, Washington, D.C. (open), 5–7–80

27079 4–22–80 / Study Group A of the U.S. Organization for the International Telegraph Telephone Consultative Committee (CCITT), Washington, D.C. (open), 5–7–80

TRANSPORTATION DEPARTMENT

Coast Guard—

21071 3–31–80 / Chemical Transportation Advisory Committee, Washington, D.C. (open), 5–8–80

25207 4–14–80 / Chemical Transportation Advisory Committee, Personnel Protection Subcommittee, Washington, D.C. (open), 5–7–80

St. Lawrence Seaway Development Corporation—

27870 4–24–80 / Advisory Board, Washington, D.C. (open), 5–9–80

VETERANS ADMINISTRATION

18549 3–21–80 / Medical Research Service Merit Review Boards, Washington, D.C. (open), 5–5–80

18549 3–21–80 / Medical Research Service Merit Review Boards, Washington, D.C. (open), 5–8 through 5–10–80

24755 4–10–80 / Station Committee on Educational Allowances, Muskogee, Okla. (open), 5–7–80

WAGE AND PRICE STABILITY COUNCIL

27807 4–24–80 / Pay Advisory Committee, Washington, D.C. (open), 5–9–80

Next Week's Public Hearings

CIVIL AERONAUTICS BOARD

24216 4–9–80 / Standard Foreign Fare Level Investigation, Washington, D.C., 5–7–80

24519 4–10–80 / Transcontinental low-fare route proceeding (Air United States, Air Transport Associates, Standard Airways, and United States Overseas Airlines)—remanded, Washington, D.C., 5–6–80

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration—

26409 4–18–80 / Connecticut Coastal Management Program, New London, Conn., 5–7–80; Hartford and New Haven, Conn., 5–8–80

DEFENSE DEPARTMENT

Navy Department—

7279 2–1–80 / Naval Discharge Review Board, San Diego and San Francisco, CA., 5–4 through 5–16–80

ENVIRONMENTAL PROTECTION AGENCY

27788 4–24–80 / Motor vehicle pollution control; waiver of carbon monoxide and oxides of nitrogen emission standards, Washington, D.C., 5–8–80

HEALTH, EDUCATION, AND WELFARE DEPARTMENT

Education Office—

27527 4–23–80 / National Advisory Council on Women's Educational Programs and the National Advisory Council on Vocational Education, Denver, Colo., 5–8 and 5–9–80

Food and Drug Administration—

24918 4–11–80 / Science Advisory Board, Jefferson, Ariz., 5–8 and 5–9–80

24918 4–11–80 / Teratology Subcommittee of the Science Advisory Board, Jefferson, Ariz., 5–6–80

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office—

25990 4–16–80 / Permanent regulatory program, Washington, D.C., 5–6–80

LABOR DEPARTMENT

Occupational Safety and Health Administration—

10375 2–15–80 / Electrical standards, Washington, D.C., 5–6–80

MANAGEMENT AND BUDGET OFFICE

Federal Procurement Policy Office—

24738 4–10–80 / Solicitation of views on development of a uniform procurement system, Washington, D.C., 5–6 and 5–7–80

SMALL BUSINESS ADMINISTRATION

21262 4–1–80 / Review of size standard for Federal timber sales, Atlanta, Ga., 5–6–80

TENNESSEE VALLEY AUTHORITY

24295 4–9–80 / Residential Energy Conservation Plan, Chattanooga, Tenn., 5–5–80

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 April 28, 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

27388 4–22–80 / HEW/OE—Final regulations for Biomedical Sciences Program

26914 4–21–80 / HEW/OE—Grant awards to public and private nonprofit agencies participating in the National Diffusion Network (NDN) Program

Note: Call or write the Education Office for the effective date.

26960 4–22–80 / HEW/OE—Grants to State educational agencies for educational improvement, resources, and support; correction

27880 4–24–80 / HEW/OE—Law-Related Education Program; rules for grant awards; effective 45 days after transmittal to Congress (call 202–426–9303 for more information)

27382 4–22–80 / HUD/CPD—Community Development Block Grants; policies for use of reallocated funds; effective 5–22–80

DEADLINE FOR COMMENTS ON PROPOSED RULES

26717 4–21–80 / DOE/SOLAR—Technical assistance and energy conservation measures for schools, hospitals, buildings owned by units of local governments and public care institutions; third grant program cycle; comments by 5–30–80

26934 4–21–80 / EPA—Participation of Women's Business Enterprises in EPA's Construction Grants Program; intent to issue policy guidance; comments by 6–20–80

26979 4–22–80 / HUD/CPD—Community Development Block Grant Program; small cities; modification of regulations to permit greater State participation; comments by 5–22–80

APPLICATIONS DEADLINES

27973 4–25–80 / DOE/ERA—Grants to States for establishment of offices of consumer services; apply by 6–15–80

27986 4–25–80 / FEMA/USFA—Competitive research grant/cooperative agreement for study to provide optimum methodology for acquiring the lowest fluid friction domestic water meter; apply by 6–1–80

27986 4–25–80 / FEMA/USFA—Competitive research grant/cooperative agreement for development of experimental prototype Nitinol sensor/actuator for automatic residential sprinkler heads; apply by 6–1–80

27986 4–25–80 / FEMA/USFA—Competitive research grant/cooperative agreement for development of experimental prototype low-cost electronic sensor actuator for a residential automatic sprinkler head; apply by 6–1–80

27734 4–23–80 / HEW/HDSO—Availability of grant funds for a rehabilitation research and training center in aging; mental illness; and independent living; apply by 6–30–80

27876 4–24–80 / HEW/HDSO—Hispanic access to service demonstration projects; availability of grant funds; preapplications by 6–6–80; applications by 8–19–80

27730 4–23–80 / HEW/HDSO—International Rehabilitation Research, Information and Training Center; availability of grant funds; apply by 6–15–80

27726 4–23–80 / HEW/HDSO—Rehabilitation Research Training Center Program in the rehabilitation of persons with deafness; availability of grant funds; apply by 6–13–80

28005 4–25–80 / Justice/LEAA—Availability of grants for research by minorities into problems or issues in juvenile justice delinquency prevention and reduction; apply by 6–20–80

MEETINGS

26934 4–21–80 / EPA—Intent to issue policy guidance on participation of Women's Business Enterprises in EPA's Construction Grants Program, open, Chicago, Ill., 5–13–80, and Seattle, Wash., 5–14–80

27075 4–22–80 / NFAH—Museum Panel (Challenge), Washington, D.C. (closed), 5–28 through 5–30–80

27075 4–22–80 / NFAH—Museum Panel (Cooperative Programs; Wider Availability of Museums), Washington, D.C. (closed), 5–12 and 5–13–80

27075 4–22–80 / NFAH—Museum Panel (Special Exhibitions), Washington, D.C. (closed), 5–14 through 5–16–80

27076 4–22–80 / NFAH—National Council on the Arts, Washington, D.C. (closed), 5–9 and 5–10–80

27847 4–24–80 / NSF—Behavioral and Neural Sciences Advisory Committee, Anthropology Subcommittee, Washington, D.C. (partially open), 5–12 through 5–15–80

27848 4–24–80 / NSF—Physiology, Cellular, and Molecular Biology, Molecular Biology Subcommittee, Group A, Washington, D.C. (closed), 5–13 and 5–14–80

OTHER ITEMS OF INTEREST

27996 4–25–80 / HEW/HSA—Establishment of Genetic Diseases Review and Advisory Committee to advise and recommend on genetic disease services grants

27785 4–24–80 / HUD—Community development block grants; energy conservation provisions; transmittal of proposed rule to Congress

27785 4–24–80 / HUD—Community development block grants; Small Cities Program; Energy Criteria; transmittal of proposed rule to Congress

27785 4–24–80 / HUD—Urban Development Action Grant Program; energy conservation changes; transmittal of proposed rule to Congress

27716 4–23–80 / Justice/LEAA—Response to public comment and issuance of LEAA Program Announcement Delinquency Prevention Research and Development

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.
WHO: The Office of the Federal Register.
WHAT: Free public briefings (approximately 2½ hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between Federal Register and the Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them, as part of the General Services Administration's efforts to encourage public participation in Government actions. There will be no discussion of specific agency regulations.

WASHINGTON, D.C.

WHEN: May 16 and 30; June 13 and 27; July 11 and 25; at 9 a.m. (identical sessions).
WHERE: Office of the Federal Register, Room 9409, 1100 L Street NW., Washington, D.C.
RESERVATIONS: Call Mike Smith, Workshop Coordinator, 202–523–5235.
Gwendolyn Henderson, Assistant Coordinator, 202–523–5234.

NEW ORLEANS, LA.

WHEN: May 8 and 9; at 9 a.m. (identical sessions.)
WHERE: Room 125, Hale Boggs Federal Bldg. (identical sessions.)
500 Camp Street, New Orleans, La.
RESERVATIONS: Call Mary Malouse, 504–589–6601.

SALT LAKE CITY, UTAH

WHEN: May 19 and 20; at 9 a.m. (identical sessions.)
WHERE: Room 3421, Federal Bldg., 125 S. State St., Salt Lake City, Utah.
RESERVATIONS: Call Helen Ferderber, Salt Lake City, Federal Information Center, 801–524–5353.

SEATTLE, WASH.

WHEN: May 23; 9 a.m.
WHERE: North Auditorium, Federal Bldg., 915 2nd Avenue, Seattle, Wash.
RESERVATIONS: Call the Seattle Federal Information Center, 206–442–0570.

CHICAGO, ILL.

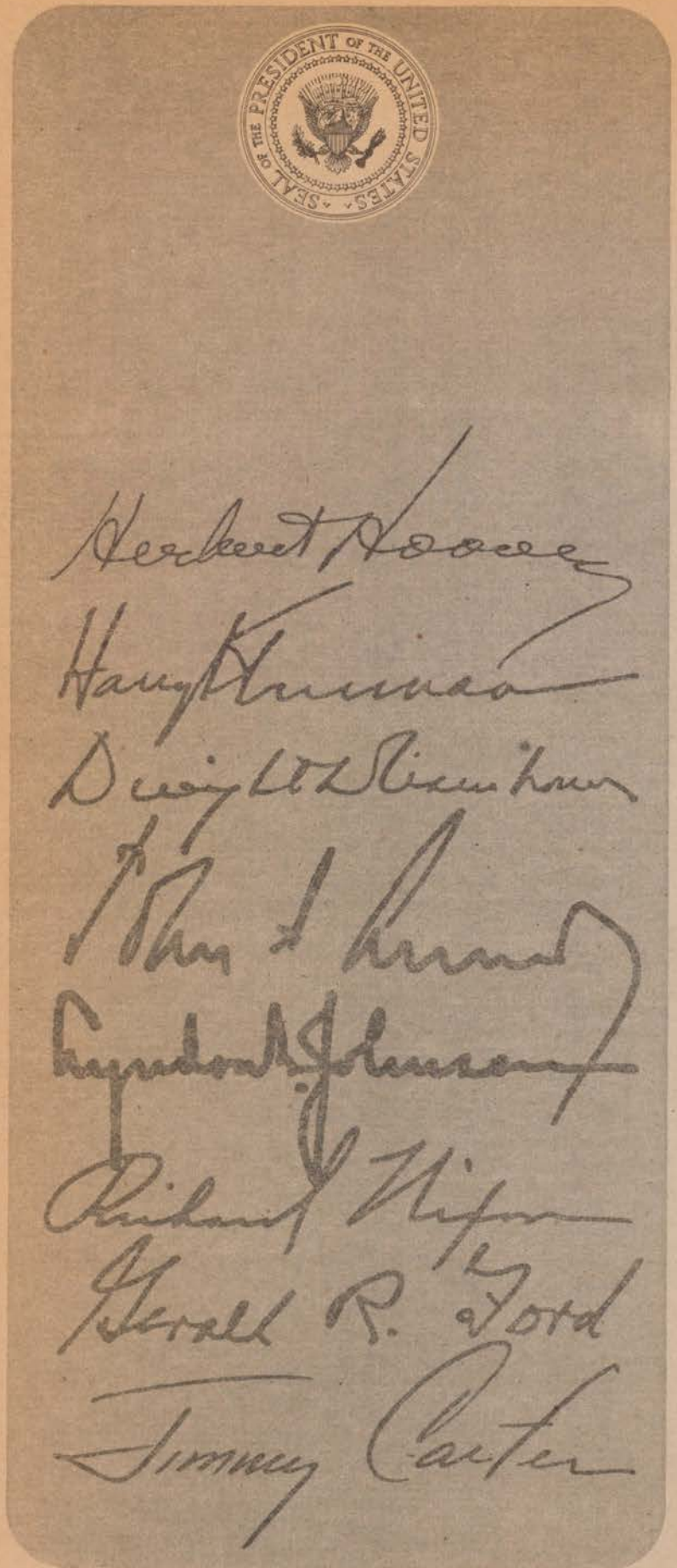
WHEN: May 28 and 29; at 9 a.m. (identical sessions.)
WHERE: Room 204A, Dirksen Federal Bldg., Chicago, Ill.
RESERVATIONS: Call Ardean Merrifield, 312–353–0339.

ST. LOUIS, MO.

WHEN: June 24 and 25; at 9:00 a.m. (identical sessions.)
WHERE: Room 3720, Federal Office Bldg. 1520 Market Street, St. Louis, Mo.
RESERVATIONS: Call Evelyn Wiebusch, Federal Information Center, 314–425–4106.

PITTSBURGH, PA.

WHEN: June 4 at 1:30 p.m. and June 5 at 9 a.m. (identical sessions.)
WHERE: Rooms 2212 and 2214 (both days), Federal Bldg., 1000 Liberty Ave., Pittsburgh, Pa.
RESERVATIONS: Call Mary Silipo, Pittsburgh Federal Information Center, 412–644–3456.



Public Papers of the Presidents of the United States

Annual volumes containing the public messages and statements, news conferences, and other selected papers released by the White House.

Volumes for the following years are now available:

Herbert Hoover

1929 ..... $13.30
1930 ..... $16.00
1931 ..... $14.00
1932-33 ..... $17.25

Proclamations & Executive Orders - March 4, 1929 to March 4, 1933
2 Volume set $24.55

Harry S. Truman

1945 ..... $11.75
1946 ..... $10.80
1947 ..... $11.15
1948 ..... $15.95
1949 ..... $11.80
1950 ..... $13.85
1951 ..... $12.65
1952-53 ..... $18.45

Dwight D. Eisenhower

1953 ..... $14.60
1954 ..... $17.20
1955 ..... $14.50
1956 ..... $17.30
1957 ..... $14.50
1958 ..... $14.70
1959 ..... $14.95
1960-61 ..... $16.85

John F. Kennedy

1961 ..... $17.00
1962 ..... $15.55
1963 ..... $15.35

Lyndon B. Johnson

1963-64
(Book I)..... $15.00

1963-64
(Book II)..... $15.25

1965
(Book I)..... $12.25

1965
(Book II)..... $12.35

1966
(Book I)..... $13.30

1966
(Book II)..... $14.35

1967
(Book I)..... $12.85

1967
(Book II)..... $11.60

1968-69
(Book I)..... $14.05

1968-69
(Book II)..... $12.80

Richard Nixon

1969 ..... $17.15
1970 ..... $18.30
1971 ..... $18.85
1972 ..... $18.55
1973 ..... $16.50
1974 ..... $12.30

Gerald R. Ford

1974 ..... $16.00

1975
(Book I)..... $13.50

1975
(Book II)..... $13.75

1976-77
(Book I)..... $18.00

1976-77
(Book II)..... $18.00

1976-77
(Book III)..... $18.00

Jimmy Carter

1977
(Book I)..... $16.00

1977
(Book II)..... $15.25

1978
(Book I)..... $18.00

1978
(Book II)..... $23.00

Published by Office of the Federal Register, National Archives and Records Service, General Services Administration

Order from Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402