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Highlights

Seminar on Principles of Regulations Writing—For details on seminar in **Washington, D.C.**, see announcement in the **Reader Aids** section at the end of this issue.

69840 **Toxic Shock Syndrome** HHS/FDA proposes requiring a statement in labeling menstrual tampons to warn users; comments by 11–20–80 (Part VII of this issue)

69495 **Aid to Families With Dependent Children** HHS/Office of Child Support Enforcement proposes new "substantial compliance" test to determine effectiveness of a State's Child Support Enforcement Program; comments by 12–22–80

69437 **Civil Rights** State publishes regulations in order to enhance assurance of nondiscrimination in programs to which it extends financial assistance; effective 11–20–80

69469 **Mobile Homes** USDA/FmHA intends to compose regulations for a program to finance mobile homes and mobile home sites; comments and input by 12–22–80

69816 **Soda Water** HHS/FDA amends standard of identity; comments by 12–22–80 (Part VI of this issue)

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

Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

Highlights

69816 **Caffeine** HHS/FDA proposes to delete caffeine used as an added food ingredient from the list of substances that are generally recognized as safe (GRAS); comments by 12–22–80 (Part VI of this issue)

69678 **Medical Devices** HHS/FDA publishes final rules regarding general provisions applicable to the classification of general hospital and personnel use devices; effective 11–20–80 (95 documents) (Part II of this issue)

69740 **Health Care** HHS/PHS requires that planning agencies review and determine need for proposed capital expenditures, institutional health services and major equipment for certain health institutions; effective 10–21–80 (Part III of this issue)

69561 **Medicare** HHS/HCFA invites comments by 12–22–80, on current policy of Medicare reimbursement for provider costs incurred in relation to union activities

69470 **Banks, Banking** FRS extends comment date to 12–22–80, regarding its proposal on equal credit opportunity

69479 **Investments** SEC proposes ruling concerning individualized investment management services; comments by 1–9–81

69542 **Natural Gas** DOE/EIA publishes alternative fuel price ceilings and incremental price threshold

69776 **Government Employees** OPM adopts ruling regarding executive personnel financial disclosure requirements; effective 11–20–80 (Part IV of this issue)

69597 **Owner-Operator and Truckload Traffic** ICC publishes decision to expedite procedures for recovery of fuel costs; effective 10–17–80

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69623 **Sunshine Act Meetings**

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

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revision of Delegations of Authority

AGENCY: Department of Argiculture.

ACTION: Final rule.

SUMMARY: This document revises the delegations of authority from the Secretary of Agriculture and General Officers of the Department to reflect the merger of the Office of the General Sales Manager with the Foreign Agricultural Service, and to make minor editorial changes.

EFFECTIVE DATE: October 15, 1980.

FOR FURTHER INFORMATION CONTACT: Charles E. Soisson, Personnel Programs Branch, Personnel Division, Foreign Agricultural Service, U.S. Department of Agriculture, Washington, D.C., 20250 (202–447–7073).

SUPPLEMENTARY INFORMATION: It has been determined that merger of the General Sales Manager with the Foreign Agricultural Service will strengthen the role of the General Sales Manager as the principal sales spokesman of the Department; and will strengthen participation of the General Sales Manager in on-going international functions involving collection, analysis and dissemination of information on world production and utilization of agricultural commodities and in representation of the Department in international economic and trade matters.

Accordingly, Part 2, Subtitle A, Title 7, Code of Federal Regulations is amended as follows:

Subpart H—Delegations of Authority by the Under Secretary for International Affairs and Commodity Programs

1. Section 2.66 is revoked and reserved as follows:

§ 2.66 [Revoked and Reserved]

2. Section 2.68 is amended to read as follows:

§ 2.68 Administrator, Foreign Agricultural Service.

(a) Delegations. Pursuant to § 2.21(d), subject to reservations in § 2.22(d), the following delegations of authority are made by the Under Secretary for International Affairs and Commodity Programs to the Administrator, Foreign Agricultural Service: *Provided* That, on policy matters relating to activities listed in paragraphs (15) thru (27) the General Sales Manager who reports to the Administrator, FAS, shall report to the Secretary who is Chairman of the Board of Directors of the Commodity Credit Corporation, through the Under Secretary for International Affairs and Commodity Programs, who is president of the Commodity Credit Corporation:

(1) Coordinate the carrying out by Department agencies of their functions involving foreign agriculture policies and programs and their operations and activities in foreign areas (other than those functions assigned to the Director, Office of International Cooperation and Development). Act as liaison agency on these matters and functions relating to foreign agriculture between the Department of Agriculture and the Department of State, the United States Trade Representative, the Trade Expansion Act Advisory Committee, International Development Cooperation Agency and other departments, agencies and committees of the U.S. Government, foreign governments, Organization for Economic Cooperation and Development, European Economic Community, The Food and Agriculture Organization of the United Nations, International Bank for Reconstruction and Development, Inter-American Development Bank, Organization of American States, and other public and private United States and international organizations, and the contracting parties to the General Agreement on Tariffs and Trade.

(2) Conduct functions of the Department relating to the General Agreement of Tariffs and Trade (GATT), the Trade Expansion Act of 1962 (19 U.S.C. 1801 et seq.), and other legislation affecting international agricultural trade including the programs designed to reduce foreign tariffs and other trade barriers.

(3) Provide staff support services to the Office of International Cooperation and Development for participation of the Department of Agriculture in U.S./U.S.S.R. exchange agreements, scientific and technical matters in East European bilateral agreements, and activities of international organizations concerned with food and agricultural development.

(4) Conduct studies of worldwide production, trade, marketing, prices, consumption, and other factors affecting exports and imports of U.S. agricultural commodities and to obtain information on methods used by other countries to move farm commodities in world trade on a competitive basis for use in the development of programs of this Department, provision of information to domestic producers, agricultural trade, the public and other interests, and the promotion of normal commercial markets abroad. This delegation excludes basic and long-range analyses of world conditions and developments affecting supply, demand, and trade in farm products and general economic analyses of the international financial and monetary aspects of agricultural affairs as assigned to the Director of Economics, Policy Analysis and Budget.

(5) Administer Departmental programs concerned with development of foreign markets for agricultural products of the United States except functions relating to export marketing operations under section 32, Pub. L. 320, 74th Congress (7 U.S.C. 612c) delegated to the Assistant Secretary for Food and Consumer Services, and utilization research delegated to the Director of Science and Education. Legal authority for these programs is contained in section 104(b)(1) of the Agricultural Trade Development and Assistance Act of 1954, as amended, hereinafter referred to as "Public Law 480" (7 U.S.C. 1704(b)(1), section 601 of the Agricultural Act of 1954, as amended (7 U.S.C. 1761), section 5(f) of the Commodity Credit Corporation Charter Act, hereinafter referred to as "CCC Charter Act" (15 U.S.C. 714(f)).

(6) Conduct Department activities to carry out the provisions of the

International Coffee Agreement Act of 1968 (19 U.S.C. 1356f–j).

(7) Administer functions of the Department relating to import controls, including, among others, functions under section 22 of the Agricultural Adjustment Act (of 1933), as amended (7 U.S.C. 624), section 2 of Pub. L. 88–482 (19 U.S.C. 1202 note) and section 204 of the Agricultural Act of 1958, as amended (7 U.S.C. 1854), but not including those functions reserved to the Secretary under § 2.22(d), those relating to the Sugar Act of 1948, as amended (7 U.S.C. 1100 et seq.), as specified in § 2.21(a) and those relating to section 8e of the Agricultural Adjustment Act (of 1933), as amended (7 U.S.C. 608e–1), as assigned to the Assistant Secretary for Marketing and Transportation Services.

(8) Represent the Department on the Interdepartmental Committee for Export Control and conduct Departmental activities to carry out the provisions of the Export Administration Act of 1969, as amended (50 U.S.C. App. 2401–2413), except as reserved to the Secretary under § 2.22(d).

(9) Exercise the Department's responsibilities in connection with international negotiations of the International Wheat Agreement and in administration of such agreement.

(10) Provide foreign agricultural intelligence and other foreign agricultural services in support of programs administered by the Department under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 et seq.), and the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2251 et seq.)

(11) Conduct economic analyses pertaining to the foreign sugar situation.

(12) Exercise the Department's functions with respect to the International Sugar Agreement or any such future agreements.

(13) Administer and coordinate, subject to the overall policy guidance of the Department's Executive Steering Group, responsibilities and functions of the Department of Agriculture for carrying out the Large Area Crop Inventory Experiment (LACIE), undertaken by the Department in cooperation with National Oceanic and Atmospheric Administration (NOAA) and National Aeronautics and Space Administration (NASA), to establish utility and cost-effectiveness of using satellite meteorological and climatological data to predict global production of major crops.

(14) Serve as a focal point for handling quality or weight discrepancy inquires from foreign buyers of U.S. agricultural commodities to insure that they are investigated and receive a timely response and that reports thereof are made to appropriate parties and government officials in order that corrective action may be taken.

(15) Administer that program under section 812 of the Agricultural Act of 1970, as added by the Agricultural and Consumer Protection Act of 1973 (7 U.S.C. 612c–3) relating to export sales contract reporting operations.

(16) Formulate policies and administer programs under section 5(f) of the CCC Charter Act (15 U.S.C. 714c(f)) and section 4, Public Law 89–808 (7 U.S.C. 1707a) to finance commercial export credit sales of agricultural commodities by U.S. exporters.

(17) Formulate policies and administer barter programs under which agricultural commodities are exported under sections 4(h) and 5(f) of the CCC Charter Act (15 U.S.C. 714b(h)) and 714c(f) and section 303 of Public Law 480 (7 U.S.C. 1692).

(18) Perform functions of the Department in connection with the development and implementation of basic country agreements to finance the sale and exportation of agricultural commodities on long-term credit or for foreign currencies under Title I of Public Law 480 (7 U.S.C. 1701–1711).

(19) Negotiate and implement agreements between Commodity Credit Corporation and private trade entities to finance the sales and exportation of agricultural commodities for dollars on long-term credit under Title I of Public Law 480, (7 U.S.C. 1707).

(20) Participate in program development, evaluation, and review including related liaison with the International Development Cooperation Agency, private relief agencies, and intergovernmental organizations, and activities involving operational responsibilities with respect to making agricultural commodities available for distribution in foreign countries under Title II, Public Law 480, (7 U.S.C. 1721–1726).

(21) Coordinate within the Department activities arising under Public Law 480 (except as delegated to the Director of Economics, Policy Analysis and Budget in § (2.27(c)), and to represent the Department in its relationships in such matters with the Department of State, the Food-Aid Sub-Committee on Public Law 480, and other departments, agencies and committees of the Government.

(22) Perform functions in connection with the transportation of commodities from point of export under Public Law 480, and under section 5 of the CCC Charter Act (15 U.S.C. 714(c)), except for movement to trust territories or possessions.

(23) Formulate policies for export pricing and price review, in connection with export sales of commodities owned by Commodity Credit Corporation (except for tobacco, peanuts, tung oil, and gum naval stores) and for export sales under Public Law 480.

(24) Formulate and administer programs for sales for export of asgricultural commodities owned by Commodity Credit Corporation (except for tobacco, peanuts, tung oil, and gum naval stores).

(25) Allocate among the various export programs agricultural commodities determined under § 2.21(a)(26) to be available for export.

(26) Formulate policies and administer export payment programs (other than those under section 32, Public Law 320, 74th Congress (7 U.S.C. 612c) and other programs as assigned to encourage or cause the export of U.S. agricultural commodities.

(27) Formulate policies and administer programs to facilitate the exportation of U.S. agricultural commodities under Section 5 (d) and (f) of the CCC Charter Act (15 U.S.C. 714c (d) and (f)).

(28) Maintain a worldwide Agricultural Attache intelligence and reporting system, including provision for foreign agricultural representation abroad to protect and promote U.S. agricultural interests, and to acquire information on demand, competition, marketing and distribution of U.S. agricultural products abroad pursuant to title VI of the Agricultural Act of 1954, as amended (7 U.S.C. 1761–1766).

(29) Plan and carry out programs and activities under the foreign market promotion authority of the Wheat Research and Promotion Act (7 U.S.C. 1292 note); the Cotton Research and Promotion Act (7 U.S.C. 2101–2118); section 610 of the Agricultural Act of 1970 (7 U.S.C. 2119–; the Potato Research and Promotion Act (7 U.S.C. 2611–2627); the Egg Research and Consumer Information Act of 1974 (7 U.S.C. 2701–2718); the National Wool Act of 1954, as amended (7 U.S.C. 1781–1787); the Beef Research and Information Act, as amended (7 U.S.C. 2901–1918); and the Wheat and Wheat Foods Research and Nutrition Education Act (7 U.S.C. 3401–3417). This authority includes determining the programs and activities to be undertaken and assuring that they are coordinated with the overall departmental programs to develop foreign markets for U.S. agricultural products.

(30) Establish and administer regulations relating to foreign travel by employees of the Department. Regulations will include, but not be limited to, obtaining and controlling

passports, obtaining visas, coordinating State Department medical clearances and imposing requirements for itineraries and contacting the Agricultural Attache upon arrival in the Attache's country(ies) of responsibility.

(31) Provide management support services for the Office of International Cooperation and Development as agreed upon by the agencies with authority to take actions required by law or regulation. As used herein, the term management support services includes budget, finance, personnel, procurement, property management, communications, messenger and paperwork management, and related administrative services.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, it is found upon good cause that notice and other public procedures with respect thereto are impractical and contrary to the public interest, and good cause is found for making this rule effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency services management, it is exempt from the provisions of Executive Order 12044, Improving Government Regulations, and thus, does not require the preparation of a regulatory impact statement.

(5 U.S.C. 301 and Reorganization Plan No. 2 of 1953)

Dated: October 15, 1980.

Bob Bergland,

Secretary of Agriculture.

Dated: September 15, 1980.

Dale E. Hathaway,

Under Secretary for International Affairs and Commodity Programs.

[FR Doc. 80-32745 Filed 10-20-80; 8:45 am]

BILLING CODE 3410-01-M

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7 CFR Part 2

Revision of Delegations of Authority

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: This document revises the delegations of authority from the Secretary of Agriculture and General Officers of the Department to reflect a transfer of functions from the Director of Science and Education to the Under Secretary for International Affairs and Commodity Programs.

EFFECTIVE DATE: October 21, 1980.

FOR FURTHER INFORMATION CONTACT: Charles E. Soisson, Chief, Personnel Programs, Personnel Division, Foreign Agricultural Service, U.S. Department of Agriculture, Washington, D.C. 20250 (202-447-7073).

SUPPLEMENTARY INFORMATION: The delegations of authority of the Department of Agriculture are amended to assign to the Under Secretary for International Affairs and Commodity Programs the authority to administer and coordinate a foreign contracts and grants program of market development research in the physical and biological sciences and in agricultural and forestry research, to administer and coordinate assigned international research programs with national and international institutions, and to coordinate policy formulation for USDA international science and technology programs concerning the international agricultural research centers and international organizations.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, it is found upon good cause that notice and other public procedures with respect thereto are impractical and contrary to the public interest, and good cause is found for making this rule effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12044.

Accordingly, Part 2, Subtitle A, Title 7, Code of Federal Regulations is amended as follows:

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, Assistant Secretaries, and the Director of Economics, Policy Analysis and Budget

1. Section 2.21 is amended by revising paragraph (a)(3) and by adding new paragraphs (a)(6) and (a)(7) to read as follows:

§ 2.21 Delegations of authority to the Under Secretary for International Affairs and Commodity Programs.

* * * * *

(a) * * *

(3) Administer and coordinate assigned Departmental programs in international research and scientific and technical cooperation with other governmental agencies, land grant universities, international organizations, international agricultural research centers, and other institutions (7 U.S.C. 1624, 3291).

* * * * * *

(6) Administer and coordinate a foreign contracts and grants program of market development research in the physical and biological sciences under section 104(b)(1) of the Agricultural Trade Development and Assistance Act of 1954, but excluding agricultural economics research; and administer and coordinate a foreign contracts and grants program of agricultural and forestry research under section 104(b)(3) of such Act (7 U.S.C. 1704 (b)(1), (3)).

(7) Coordinate policy formulation for USDA international science and technology programs concerning international agricultural research centers, international organizations, and international agricultural research and extension activities (7 U.S.C. 3291).

Subpart D—Delegation of Authority to Other General Officers and Agency Heads

2. Section 2.39 is amended by revoking and reserving paragraph (a)(18) as follows:

§ 2.39 Delegations of authority to the Director of Science and Education.

* * * * *

(a) * * *

(18) Revoked and Reserved.

* * * * *

Subpart H—Delegations of Authority by the Under Secretary for International Affairs and Commodity Programs

3. Section 2.64 is amended by revising paragraph (a)(3) and by adding new paragraphs (a)(6) and (a)(7) to read as follows:

§ 2.64 Special Assistant for International Scientific and Technical Cooperation/ Director, Office of International Cooperation and Development.

(a) *Delegations* * * *

(3) Administer and coordinate assigned Departmental programs in international research and scientific and technical cooperation with other governmental agencies, land grant universities, international organizations, international agricultural research centers, and other institutions (7 U.S.C. 1624, 3291).

* * * * * *

(6) Administer and coordinate a foreign contracts and grants program of market development research in the physical and biological sciences under section 104(b)(1) of the Agricultural Trade Development and Assistance Act of 1954, but excluding agricultural economics research; and administer and coordinate a foreign contracts and grants program of agricultural and forestry research under section (104)(b)(3) of such Act (7 U.S.C. 1704 (b)(1), (3)).

(7) Coordinate policy formulation for USDA international science and technology programs concerning

international agricultural research centers, international organizations, and international agricultural research and extension activities (7 U.S.C. 3291).

(5 U.S.C. 301 and Reorganization Plan No. 2 of 1953)

For Subparts C & D:

Dated: October 6, 1980.

Bob Bergland,

Secretary of Agriculture.

For Subpart H:

Dated: October 6, 1980.

Dale E. Hathaway,

Under Secretary for International Affairs and Commodity Programs.

[FR Doc. 80-32724 Filed 10-20-80; 8:45 am]

BILLING CODE 3410-01-M

Agricultural Stabilization and Conservation Service

7 CFR Part 730

[Amendment 1]

Rice Program for Crop Years 1978–81

AGENCY: Agricultural Stabilization and Conservation Service.

ACTION: Final rule.

SUMMARY: This rule incorporates previously announced determinations of the set-aside and voluntary diversion, disaster extension, payment limitation, and 1980 target price for rice. It also clarifies program definitions. The action is required and intended to provide a current and complete set of 1980 rice program provisions.

EFFECTIVE DATE: October 21, 1980.

FOR FURTHER INFORMATION CONTACT: Charles J. Riley, Production Adjustment Division, Agricultural Stabilization and Conservation Service, USDA, P.O. Box 2415, Washington, D.C. 20013 (202) 447–7633. Actions of this kind were anticipated under the provisions of the notice of final determination published in the **Federal Register** on March 21, 1980, and were specifically considered in the Final Impact Statement prepared for that action. That Final Impact Statement describing the options considered in developing this final rule and the impact of implementing each option is available on request from George H. Schaefer, (ASCS), (202) 447–8480, at the above address.

SUPPLEMENTARY INFORMATION: The program title and number from the "Catalog of Federal Domestic Assistance" is Rice Production Stabilization, 10.065. This action will not have a significant impact specifically on area and community development. Therefore, review as established by OMB Circular A–95 was not used to assure that units of local government are informed of this action.

This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044 and has been classified as "not significant."

The regulations at 7 CFR Part 730 providing for the rice program are amended to incorporate determinations relating to required set-aside and voluntary diversion. These determinations were initially published in the **Federal Register** in proposed form (44 FR 61047) to allow for public comment and were then published in the **Federal Register** in final form on March 21, 1980 (45 FR 18410).

The established (target) price for 1980-crop rice announced by the Secretary on March 18, 1980, is also set forth in this final rule. The Agricultural Adjustment Act of 1980 (Pub. L. 96–213, 94 Stat. 119 approved March 18, 1980) imposed a limitation on disaster payments under one or more of the annual rice, feed grain, upland cotton, and wheat programs of $100,000, and extended the disaster program for one year. As announced by notice in the **Federal Register** of August 12, 1980 (45 FR 53501), the Secretary has determined that offsetting compliance is not required for 1980. This final rule includes these changes.

In addition to the above, this final rule rewords the definition of "rice acreage" to correspond with the provisions of 7 CFR Parts 713 and 718 for the 1980 crop year. The definition of "planted and considered planted acreage" is reworded for clarity and is expanded to include acreage approved for protection under a water bank agreement as provided for in 7 CFR Part 752. The definition of "annual nonconserving crop" is deleted and replaced by reference to the definition in 7 CFR Part 713. The computation of low yield payments is clarified in accordance with the intent of Congress. Finally, the previously announced 1979 deficiency rate is included.

Farmers are now cultivating and harvesting their 1980 crop. Therefore, it is important that the changes being made in this final rule be announced as soon as possible. Thus, pursuant to the administrative procedure provision in 5 U.S.C. 553 it is found upon good cause that notice and other public procedure with respect to this final rule are impracticable and contrary to the public interest and good cause is found for making this final rule effective less than 30 days after publication of this document in the **Federal Register.**

Accordingly, 7 CFR Part 730 is amended as follows:

Final Rule

1. Section 730.1 is amended by adding the following sentence to the end of paragraph (b):

§ 730.1 Applicability.

* * * * *

(b) * * *

The total amount of disaster payments which a person shall be entitled to receive annually under one or more of the rice, feed grain, upland cotton, and wheat programs for the 1980 and 1981 crops shall not exceed $100,000.

* * * * *

2. Section 730.3 is amended by revising paragraphs (a), (g)(3), and (i) to read as follows:

§ 730.3 Definitions.

* * * * *

(a) "Annual nonconserving crop" is defined in Part 713 of this chapter.

* * * * *

(g) "Rice Acreage" * * *

* * * * *

(3) Disposed of without feed or other benefit and excluded by the operator on the report of acreage. However, the acreage so disposed of will count as rice acreage for the purpose of determining under Part 713 of this chapter whether the farm is within its NCA if either:

(i) The exclusion by the operator occurs after the final reporting date for rice, or

(ii) The acreage report has been determined to be inaccurate because the difference between a reported acreage and a measured acreage exceeded the tolerance allowed in part 718 of this chapter.

* * * * *

(i) "Rice planted and considered planted acreage" means the rice acreage defined in paragraph (g) of this section plus acreage in the following categories, the total of which will not exceed the allotment on the farm or allocated to the farm, as applicable.

(1) Any acreage which the county committee determines was not planted to rice because of drought, flood, or other natural disaster or condition beyond the control of the operator;

(2) Any acreage credited as rice acreage (except for new farms) under the provisions of Part 719 of this chaper, as amended;

(3) Any allotment acreage temporarily transferred from a farm or producer allotment: *Provided,* That the acreage transferred from a producer allotment is allocated to a farm;

(4) Any allotment acreage temporarily released to the county committee;

(5) Any acreage approved for protection under an active water bank program agreement under Part 752 of this chapter; and

(6) Any other acreage (except for new farms) which is planted to annual nonconserving crops (as defined in Part 713 of this chapter, as amended) or which the county committee determines was not planted because of drought, flood, or other natural disaster or conditions beyond the control of the operator.

§ 730.18 [Amended]

3. Section 730.18 is amended by deleting the language appearing in paragraph (c)(1) after the words "in the current year" and inserting a period at the end thereof.

4. Section 730.19 is amended to read as follows:

§ 730.19 Required set-aside.

(a) *1978, 1979, and 1980.* No set-aside required.

(b) *1981.* To be announced by amendment to this subpart.

5. Section 730.20 is amended to read as follows:

§ 730.20 Voluntary diversion.

(a) *1978, 1979, and 1980.* No voluntary diversion for payment is authorized.

(b) *1981.* To be announced by amendment to this subpart.

§ 730.25 [Amended]

6. Section 730.25 is amended:

a. By revising the first sentence to read as follows: "Prevented planting and low yield disaster payments are authorized only for 1978, 1979, and 1980." and

b. By revising the first sentence of paragraph (b)(3) to read as follows: "Low yield payments shall be determined by multiplying the acreage for payment by 75 percent of the established farm yield as provided for in § 730.15, subtracting therefrom the determined production from the farm, and multiplying the result by the low yield payment rate."

7. Section 730.26 is amended by adding a paragraph (c) to read as follows:

§ 730.26 Established (target) prices.

* * * * *

(c) *1980.* The established price for the 1980 crop is $.0949 per pound.

8. Section 730.27 is amended by revising paragraph (a) to read as follows:

§ 730.27 Deficiency payments.

(a) *Payment rate.* The deficiency payment rate shall be the amount by which the established price exceeds the higher of the national weighted average market price received by farmers for rice during the first five months of the marketing year or the national average loan rate established for rice.

(1) *Payment rate for 1979.* $.0000 per pound.

(2) *Payment rate for 1980.* To be announced by amendment to this subpart.

(Secs. 101(h), 408(b), 1001, 91 stat. 940, 91 Stat. 944, 94 Stat. 119 (7 U.S.C. 1441, 1428(b), 1421 note); sec. 352, 52 Stat. 60, 91 Stat. 940 (7 U.S.C. 1352))

Signed at Washington, D.C. on October 10, 1980.

John E. Gibbs,

Acting Administrator.

[FR Doc. 80-32636 Filed 10-20-80; 8:45 am]

BILLING CODE 3410-05-M

Commodity Credit Corporation

7 CFR Part 1421

[CCC Grain Price Support Regulations, 1980-Crop Barley Supplement]

Grains and Similarly Handled Commodities; 1980-Crop Barley Loan and Purchase Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to set forth the (1) final loan and purchase availability dates, (2) maturity dates, and (3) loan and purchase rates and discounts under which Commodity Credit Corporation (CCC) will extend price support on 1980-crop barley. This rule will enable eligible barley producers to obtain loans and purchases on their eligible 1980-crop barley.

EFFECTIVE DATE: October 20, 1980.

ADDRESS: Price Support and Loan Division, ASCS, USDA, P.O. Box 2415, Washington, D.C., 20013.

FOR FURTHER INFORMATION CONTACT: Eloise Mauck, ASCS, (202) 447-7923. With respect to the availability of an impact analysis, the increases in the basic county loan and purchase rates announced by this final rule were considered under the provisions of the "Notice of Determinations of the 1980 Crop Normal Crop Acreages (NCA), Established 'Target Prices,' Loan and Purchase Rates for Feed Grains, Soybeans, Wheat, and Rice, and Loan Rates for Upland and ELS Cotton" published in the **Federal Register** (45 FR 53501) on August 12, 1980, and specifically considered in the Final Impact Statement prepared for that action. Thus, the Final Impact Statement describing the options considered in developing this final rule and the impact of implementing each option is available on request from Bruce R. Weber, Agricultural Program Specialist, Production Adjustment Division, ASCS-USDA, P.O. Box 2415, Washington, D.C., 20013, (202) 447-6688.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified "not significant." Also for "Improving USDA Regulations" (43 FR 50988), initiation of review of the regulations contained in 7 CFR 1421.72-.76 for need, accuracy, clarity, and effectiveness will be made within the next five years. The next review will take into consideration problems, issues, etc., which are experienced in program administration during the intervening period.

A "Notice of Determinations of 1980-Crop Normal Crop Acreages (NCA) Established 'Target' Prices, Loan and Purchase Rates for Feed Grains, Soybeans, Wheat, and Rice, and Loan Rates for Upland and Extra Long Staple (ELS) Cotton" was published in the **Federal Register** on August 12, 1980, (45 FR 53501), effective August 7, 1980. The notice included the Secretary's determination that the 1980 loan and purchase rate for barley was being increased to $1.83 per bushel in accordance with Section 105A of the Agricultural Act of 1949, as amended (7 U.S.C. 1444c). The announcement of this action by the Secretary had to be made immediately so that farmers could indicate their 1980 program participation. Therefore, it was and remains impractical and contrary to the public interest to comply with the public rulemaking requirements of 5 U.S.C. 553 and Executive Order 12044. Thus, this final rule shall become effective upon filing with the Director, Office of the Federal Register.

This rule announces the individual basic county loan and purchase rates to conform with the above notice of determination which increased the national average loan and purchase rate to $1.83 per bushel for the 1980 crop of barley. Producers who wish to secure loans can do so by contacting their local county ASCS office or Agricultural Service Center.

The program title and number from "Catalog of Federal Domestic Assistance" is Commodity Loan and

Purchases, 10.051. This action will not have a significant impact specifically on area and community development. Therefore, review as established by OMB Circular A–95 was not used to assure that units of local government are informed of this action.

Final Rule

The General Regulations Governing Price Support for 1978 and Subsequent Crops and any amendments thereto, and the 1978 and Subsequent Crops Barley Loan and Purchase Regulations and any amendments thereto in this Part 1421 are further supplemented for the 1980 crop of barley. Accordingly, the regulations in 7 CFR 1421.72 through 1421.76 and the title of the subpart are revised to read as provided below effective as to the 1980 crop of barley. The material previously appearing in these sections shall remain in full force and effect as to the crops to which it is applicable.

PART 1421—GRAINS AND OTHER SIMILARLY HANDLED COMMODITIES

Subpart—1980-Crop Barley Loan and Purchase Program

Sec.

1421.72 Purpose.
1421.73 Availability.
1421.74 Maturity of loans.
1421.75 Warehouse charges.
1421.76 Loan and purchase rates and discounts.

Authority: Secs. 4 and 5, 62 Stat. 1070, as amended (15 U.S.C. 714 b and c); Secs. 105 A, 401, 63 Stat. 1051, as amended (7 U.S.C. 1444c 1421).

§ 1421.72 Purpose.

This supplement contains additional program provisions which, together with the provisions of the General Regulations Governing Price Support for the 1978 and Subsequent Crops, the 1978 and Subsequent Crop Barley Loan and Purchase Program regulations and any amendments thereto, apply to loans on and purchases of the 1980 crop of barley.

§ 1421.73 Availability.

(a) Loans. Producers desiring to participate in the program through loans must request a loan on their 1980 crop of eligible barley on or before March 31, 1981.

(b) Purchases. A producer desiring to offer eligible 1980-crop barley not under loan for purchase must execute and deliver to the county ASCS office on or before March 31, 1981, a Purchase Agreement (Form CCC–614) indicating the approximate quantity of 1980-crop barley the producer will sell to CCC.

§ 1421.74 Maturity of loans.

Loans mature on demand but not later than the last day of the ninth calendar month following the month the loan is disbursed.

§ 1421.75 Warehouse charges.

If storage is not provided for through loan maturity, the county ASCS office shall deduct storage charges at the daily storage rate for the storing warehouse times the number of days from the date the commodity was received or date through which storage has been provided for to the maturity date.

§ 1421.76 Loan and purchase rates and discounts.

(a) Basic loan and purchase rates (counties). Basic county rates per bushel (marketing area in the case of Alaska) for loan and settlement purposes for barley grading U.S. No. 2 or better are as follows:

1980—Crop Barley Loan and Purchase Rates

County	Rate per bushel
Alabama	
All counties	$1.81
Alaska	
(In Alaska, loan rates are for marketing areas)	
Delta	1.54
Fairbanks	1.53
Glenallen	1.63
Homer	1.59
Kenai-Soldotna	1.66
Palmer	1.72
Talkeetna	1.72
Wght. St. Avg	1.63
Arizona	
All counties	2.01
Arkansas	
All counties	1.81
California	
Alameda	2.22
Alpine	2.05
Amador	2.18
Butte	2.13
Calaveras	2.18
Colusa	2.17
Contra Costa	2.19
El Dorado	2.17
Fresno	2.16
Glenn	2.14
Humboldt	2.02
Imperial	2.16
Inyo	2.04
Kern	2.17
Kings	2.15
Lake	2.12
Lassen	2.02
Los Angeles	2.22
Madera	2.18
Marin	2.19
Mariposa	2.16
Mendocino	2.06
Merced	2.18
Modoc	2.00
Monterey	2.14
Napa	2.17
Orange	2.22
Placer	2.15
Plumas	2.05
Riverside	2.17
Sacramento	2.22
San Benito	2.14
San Bernardino	2.18
San Diego	2.22
San Francisco	2.22
San Joaquin	2.22
San Luis Obispo	2.14
San Mateo	2.19
Santa Barbara	2.13
Santa Clara	2.18
Santa Cruz	2.15
Shasta	2.02
Sierra	2.04
Siskiyou	2.00
Solano	2.19
Sonoma	2.17
Stanislaus	2.20
Sutter	2.16
Tehama	2.13
Tulare	2.14
Tuolumne	2.16
Ventura	2.17
Yolo	2.19
Yuba	2.16
Wght. St. Avg	2.15
Colorado	
All counties	1.89
Connecticut	
All counties	1.81
Delaware	
All counties	1.81
Florida	
All counties	1.82
Georgia	
All counties	1.82
Idaho	
Ada	1.88
Adams	1.88
Bannock	1.88
Bear Lake	1.85
Benewah	1.94
Bingham	1.87
Blaine	1.88
Boise	1.88
Bonner	1.90
Bonneville	1.85
Boundary	1.89
Butte	1.87
Camas	1.88
Canyon	1.86
Caribou	1.85
Cassia	1.87
Clark	1.84
Clearwater	1.93
Custer	1.88
Elmore	1.88
Franklin	1.89
Fremont	1.85
Gem	1.88
Gooding	1.88
Idaho	1.89
Jefferson	1.85
Jerome	1.88
Kootenai	1.94
Latah	1.94
Lemhi	1.84
Lewis	1.93
Lincoln	1.88
Madison	1.85
Minidoka	1.89
Nez Perce	1.94
Oneida	1.88
Owyhee	1.88
Payette	1.88
Power	1.88
Shoshone	1.82
Teton	1.85
Twin Falls	1.89
Valley	1.88
Washington	1.88
Wght. St. Avg	1.87
Illinois	
Alexander	1.87
Cook	1.82
Madison	1.86
St. Clair	1.86
All other counties	1.77
Wght. St. Avg	1.77
Indiana	
All counties	1.77

1980—Crop Barley Loan and Purchase Rates—Continued

County	Rate per bushel
Iowa	
Pottawattamie	1.83
All other counties	1.79
Wght. St. Avg	1.79
Kansas	
Leavenworth	1.84
Wyandotte	1.84
All other counties	1.80
Wght. St. Avg	1.80
Kentucky	
All counties	1.78
Louisiana	
East Baton Rouge	1.99
Jefferson	1.99
Orleans	1.99
St. Charles	1.99
West Baton Rouge	1.99
All other counties	1.82
Wght. St. Avg	1.82
Maine	
All counties	1.81
Maryland	
Baltimore	1.99
All other counties	1.81
Wght. St. Avg	1.81
Massachusetts	
All counties	1.81
Michigan	
All counties	1.73
Minnesota	
Aitkin	1.93
Anoka	1.96
Becker	1.79
Beltrami	1.82
Benton	1.92
Big Stone	1.83
Blue Earth	1.96
Brown	1.94
Carlton	1.97
Carver	1.97
Cass	1.85
Chippewa	1.90
Chisago	1.96
Clay	1.77
Clearwater	1.77
Cottonwood	1.90
Crow Wing	1.89
Dakota	1.97
Dodge	1.96
Douglas	1.84
Faribault	1.95
Fillmore	1.93
Freeborn	1.96
Goodhue	1.96
Grant	1.82
Hennepin	1.97
Houston	1.92
Hubbard	1.82
Isanti	1.95
Itasca	1.89
Jackson	1.89
Kanabec	1.94
Kandiyohi	1.93
Kittson	1.72
Koochiching	1.86
Lac Qui Parle	1.86
Lake of the Woods	1.81
Le Sueur	1.97
Lincoln	1.84
Lyon	1.88
McLeod	1.96
Mahnomen	1.77
Marshall	1.74
Martin	1.94
Meeker	1.94
Mille Lacs	1.94
Morrison	1.90
Mower	1.95
Murray	1.87
Nicollet	1.96
Nobles	1.85
Norman	1.75
Olmsted	1.96
Otter Tail	1.81
Pennington	1.75
Pine	1.97
Pipestone	1.83
Polk	1.75
Pope	1.87
Ramsey	1.97
Red Lake	1.75
Redwood	1.91
Renville	1.94
Rice	1.97
Rock	1.81
Roseau	1.74
St. Louis	1.97
Scott	1.97
Sherburne	1.96
Sibley	1.96
Stearns	1.92
Steele	1.97
Stevens	1.85
Swift	1.88
Todd	1.87
Traverse	1.81
Wabasha	1.96
Wadena	1.86
Waseca	1.97
Washington	1.97
Wantonwan	1.95
Wilkin	1.79
Winona	1.94
Wright	1.97
Yellow Medicine	1.86
Wght. St. Avg	1.77
Mississippi	
All counties	1.81
Missouri	
Buchanan	1.83
Clay	1.83
Jackson	1.83
St. Louis	1.85
All other counties	1.81
Wght. St. Avg	1.81
Montana	
Beaverhead	1.77
Big Horn	1.71
Blaine	1.67
Broadwater	1.79
Carbon	1.72
Carter	1.60
Cascade	1.75
Chouteau	1.71
Custer	1.62
Daniels	1.61
Dawson	1.62
Deer Lodge	1.83
Fallon	1.60
Fergus	1.71
Flathead	1.88
Gallatin	1.83
Garfield	1.67
Glacier	1.74
Golden Valley	1.72
Granite	1.81
Hill	1.70
Jefferson	1.83
Judith Basin	1.72
Lake	1.81
Lewis and Clark	1.73
Liberty	1.72
Lincoln	1.88
McCone	1.64
Madison	1.83
Meagher	1.76
Mineral	1.85
Missoula	1.85
Musselshell	1.71
Park	1.80
Petroleum	1.69
Phillips	1.64
Pondera	1.73
Powder River	1.62
Powell	1.83
Prairie	1.62
Ravalli	1.81
Richland	1.61
Roosevelt	1.59
Rosebud	1.65
Sanders	1.85
Sheridan	1.59
Silver Bow	1.83
Stillwater	1.72
Sweet Grass	1.75
Teton	1.73
Toole	1.73
Treasure	1.66
Valley	1.64
Wheatland	1.73
Wibaux	1.60
Yellowstone	1.71
Wght. St. Avg	1.72
Nebraska	
Douglas	1.84
All other counties	1.76
Wght. St. Avg	1.76
Nevada	
All counties	2.01
New Hampshire	
All counties	1.81
New Jersey	
All counties	1.81
New Mexico	
All counties	1.91
New York	
Albany	1.99
New York City	1.99
All other counties	1.81
Wght. St. Avg	1.81
North Carolina	
All counties	1.82
North Dakota	
Adams	1.59
Barnes	1.72
Benson	1.64
Billings	1.57
Bottineau	1.59
Bowman	1.57
Burke	1.57
Burleigh	1.63
Cass	1.75
Cavalier	1.66
Dickey	1.70
Divide	1.57
Dunn	1.57
Eddy	1.67
Emmons	1.62
Foster	1.68
Golden Valley	1.57
Grand Forks	1.72
Grant	1.58
Griggs	1.69
Hettinger	1.57
Kidder	1.66
La Moure	1.69
Logan	1.66
McHenry	1.62
McIntosh	1.67
McKenzie	1.59
McLean	1.61
Mercer	1.60
Morton	1.60
Mountrail	1.57
Nelson	1.69
Oliver	1.61
Pembina	1.70
Pierce	1.63
Ramsey	1.66
Ransom	1.72
Renville	1.58
Richland	1.75
Rolette	1.62
Sargent	1.74
Sheridan	1.63
Sioux	1.60
Slope	1.57
Stark	1.57
Steele	1.71
Stutsman	1.70
Towner	1.64
Traill	1.72
Walsh	1.70
Ward	1.59
Wells	1.66
Williams	1.57
Wght. St. Avg	1.68
Ohio	
All counties	1.75

1980—Crop Barley Loan and Purchase Rates—Continued

County	Rate per bushel
Oklahoma	
All counties	1.82
Oregon	
Baker	1.93
Benton	1.98
Clackamas	2.02
Clatsop	2.08
Columbia	2.08
Coos	1.89
Crook	1.97
Curry	1.87
Deschutes	1.97
Douglas	1.91
Gilliam	2.02
Grant	1.97
Harney	1.84
Hood River	2.04
Jackson	1.90
Jefferson	2.00
Josephine	1.90
Klamath	1.90
Lake	1.89
Lane	1.97
Lincoln	1.97
Linn	1.99
Malheur	1.87
Marion	2.00
Morrow	2.01
Multnomah	2.08
Polk	2.00
Sherman	2.03
Tillamook	2.03
Umatilla	1.98
Union	1.96
Wallowa	1.93
Wasco	2.04
Washington	2.04
Wheeler	1.99
Yamhill	2.02
Wght. St. Avg	1.94
Pennsylvania	
Philadelphia	1.99
All other counties	1.81
Wght. St. Avg	1.81
Rhode Island	
All counties	1.81
South Carolina	
Charleston	1.97
All other counties	1.82
Wght. St. Avg	1.82
South Dakota	
Aurora	1.70
Beadle	1.74
Bennett	1.64
Bon Homme	1.73
Brookings	1.80
Brown	1.73
Brule	1.68
Buffalo	1.70
Butte	1.57
Campbell	1.67
Charles Mix	1.71
Clark	1.75
Clay	1.75
Codington	1.76
Corson	1.62
Custer	1.62
Davison	1.70
Day	1.76
Deuel	1.82
Dewey	1.64
Douglas	1.71
Edmunds	1.70
Fall River	1.62
Faulk	1.71
Grant	1.82
Gregory	1.70
Haakon	1.64
Hamlin	1.78
Hand	1.72
Hanson	1.71
Harding	1.57
Hughes	1.68
Hutchinson	1.72
Hyde	1.70
Jackson	1.64
Jerauld	1.70

1980—Crop Barley Loan and Purchase Rates—Continued

County	Rate per bushel
Jones	1.67
Kingsbury	1.77
Lake	1.76
Lawrence	1.57
Lincoln	1.75
Lyman	1.68
McCook	1.73
McPherson	1.70
Marshall	1.75
Meade	1.60
Mellette	1.66
Miner	1.72
Minnehaha	1.76
Moody	1.78
Pennington	1.62
Perkins	1.59
Roberts	1.80
Potter	1.69
Sanborn	1.70
Shannon	1.62
Spink	1.73
Stanley	1.67
Sully	1.69
Todd	1.66
Tripp	1.68
Turner	1.75
Union	1.76
Walworth	1.67
Yankton	1.75
Ziebach	1.62
Wght. St. Avg	1.73
Tennessee	
Shelby	1.87
All other counties	1.81
Wght. St. Avg	1.81
Texas	
Chambers	2.01
Galveston	2.01
Harris	2.01
Jefferson	2.01
Nueces	2.01
San Patricio	2.01
All other counties	1.85
Wght. St. Avg	1.85
Utah	
All counties	1.91
Vermont	
All counties	1.81
Virginia	
Chesapeake (Norfolk)	1.91
All other counties	1.81
Wght. St. Avg	1.81
Washington	
Adams	1.97
Asotin	1.97
Benton	1.99
Chelan	2.01
Clallam	1.87
Clark	2.08
Columbia	1.96
Cowlitz	2.08
Douglas	1.96
Ferry	1.92
Franklin	1.96
Garfield	1.98
Grant	1.97
Grays Harbor	1.96
Island	2.00
Jefferson	1.92
King	2.08
Kitsap	2.00
Kittitas	1.99
Klickitat	2.00
Lewis	2.01
Lincoln	1.96
Mason	1.94
Okanogan	1.95
Pacific	1.96
Pend Oreille	1.90
Pierce	2.08
San Juan	1.95
Skagit	1.95
Skamania	2.02
Snohomish	2.00
Spokane	1.94
Stevens	1.91

1980—Crop Barley Loan and Purchase Rates—Continued

County	Rate per bushel
Thurston	2.01
Wahkiakum	2.04
Walla Walla	1.98
Whatcom	1.93
Whitman	1.96
Yakima	1.98
Wght. St. Avg	1.96
West Virginia	
All counties	1.81
Wisconsin	
Douglas	1.88
All other counties	1.78
Wght. St. Avg	1.78
Wyoming	
All counties	1.85

(b) Schedule of discounts.

(1) Grade discounts: U.S. No. 3, cents per bushel: −4; U.S. No. 4, cents per bushel: −8; U.S. No. 5, cents per bushel: −20; Sample—on the factors of Test Weight and Total Damage, cents per bushel: −32.

(2) Sample on Account of Test Weight

Test weight	Cents per bushel
35.0 to 35.9	−1
34.0 to 34.9	−2
33.0 to 33.9	−3
32.0 to 32.9	−4
31.0 to 31.9	−5
30.0 to 30.9	−6
29.0 to 29.9	−7
28.0 to 28.9	−8
27.0 to 27.9	−9
26.0 to 26.9	−10
25.0 to 25.9	−11

(3) Sample on Account of Total Damaged Kernels

Percent—Total damaged kernels	Cents per bushel
10.0 to 11.0	−2
11.1 to 12.0	−4
12.1 to 13.0	−6
13.1 to 14.0	−8
14.1 to 15.0	−10
Each percent over 15	−5

(4) Garlicky discount, cents or pound: −10.

(5) Weed control discount (where required by S 1421.24), cents per pound: −10.

(6) Other. Barley with quality factors exceeding limits shown in foregoing schedule or barley that (1) contains in excess of 14.5 percent moisture, (2) is weevily, (3) is musty, or (4) is sour, shall not be eligible for loan. In the event quantities of barley exceeding limits shown are delivered in satisfaction of loan obligations, such quantities will be discounted on the basis of the schedule

of discounts as provided by the Kansas City Commodity Office for settlement purposes. Such discounts will be established not later than the time delivery of barley to CCC begins and will thereafter be adjusted from time to time as CCC determines appropriate to reflect changes in market conditions. Producers may obtain schedule of such factors and discounts at county ASCS offices approximately one month prior to the loan maturity date.

Note.—Discounts are cumulative except that only one grade discount shall be applied.

Signed at Washington, D.C. on October 14, 1980.

John W. Goodwin,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 80-32791 Filed 10-20-80; 8:45 am]

BILLING CODE 3410-05-M

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7 CFR Part 1421

[CCC Grain Price Support Regulations, 1980-Crop Rye Supplement]

Grains and Similarly Handled Commodities; 1980-Crop Rye Loan and Purchase Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to set forth the (1) final loan and purchase availability dates, (2) maturity dates, and (3) loan and purchase rates and premiums and discounts under which Commodity Credit Corporation, (CCC) will extend price support on 1980-crop rye. This rule will enable eligible rye producers to obtain loans and purchases on their eligible 1980-crop rye.

EFFECTIVE DATE: October 20, 1980.

ADDRESS: Price Support and Loan Division, ASCS, USDA, P.O. Box 2415, Washington, D.C., 20013.

FOR FURTHER INFORMATION CONTACT: Thomas Fink, ASCS, (202) 447-7923. With respect to the availability of an impact analysis, the increases in the basic county loan and purchase rates announced by this final rule were considered under the provisions of the "Notice of Determinations of the 1980-Crop Normal Crop Acreages (NCA), Established 'Target Prices,' Loan and Purchase Rates for Feed Grains, Soybeans, Wheat, and Rice, and Loan Rates for Upland and ELS Cotton" published in the **Federal Register** (45 FR 53501) on August 12, 1980, and specifically considered in the Final Impact Statement prepared for that action. Thus, the Final Impact Statement describing the options considered in developing this final rule and the impact of implementing each option is available on request from Bruce R. Weber, Agricultural Program Specialist, Production Adjustment Division, ASCS-USDA, P.O. Box 2415, Washington, D.C., 20013, (202) 447-6688.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified "not significant." Also for "Improving USDA Regulations" (43 FR 50988), initiation of review of the regulations contained in 7 CFR 1421.350-.354 for need, accuracy, clarity, and effectiveness will be made within the next five years. The next review will take into consideration problems, issues, etc., which are experienced in program administration during the intervening period.

A "Notice of Determinations of 1980-Crop Normal Crop Acreages (NCA) established "Target" Prices, Loan and Purchase Rates for Feed Grains, Soybeans, Wheat, and Rice, and Loan Rates for Upland and Extra Long Staple (ELS) Cotton" was published in the **Federal Register** on August 12, 1980, (45 FR 53501) effective August 7, 1980. The notice included the Secretary's determination that the 1980 loan and purchase rate for rye was being increased to $1.91 per bushel, in accordance with Section 105A of the Agricultural Act of 1949, as amended (7 USC 1444c).

The announcement of this action by the Secretary had to be made immediately so that farmers could indicate their 1980 program participation. Therefore, it was and remains impractical and contrary to the public interest to comply with the public rulemaking requirements of 5 U.S.C. 553 and Executive Order 12044. Thus, this final rule shall become effective upon filing with the Director, Office of the Federal Register.

This rule announces the individual basic county loan and purchase rates to conform with the above notice of determination which increased the national average loan and purchase rate to $1.91 per bushel for the 1980-crop of rye. Producers who wish to secure loans can do so by contacting their local county ASCS office or Agricultural Service Center.

The program title and number from the "Catalog of Federal Domestic Assistance" is Commodity Loan and Purchases, 10.051. This action will not have a significant impact specifically on area and community development. Therefore, review as established by OMB Circular A-95 was not used to assure that units of local government are informed of this action.

Final Rule

The General Regulations Governing Price Support for 1978 and Subsequent Crops and any amendments thereto, and the 1978 and Subsequent Crops Rye Loan and Purchase Regulations and any amendments thereto in this Part 1421 are further supplemented for the 1980-crop of rye. Accordingly, the regulations in 7 CFR § 1421.350 through § 1421.354 and the title of the subpart are revised to read as provided below effective as to the 1980-crop of rye. The material previously appearing in these sections shall remain in full force and effect as to the crops to which it is applicable.

PART 1421—GRAINS AND OTHER SIMILARLY HANDLED COMMODITIES

Subpart—1980-Crop Rye Loan and Purchase Program

Sec.

1421.350 Purpose.
1421.351 Availability.
1421.352 Maturity of loans.
1421.353 Warehouse charges.
1421.354 Loan and purchase rates and premiums and discounts.

Authority: Secs. 4 and 5, 62 Stat. 1070, as amended (15 U.S.C. 714 b and c); Secs. 105 A, 401, 63 Stat. 1051, as amended (7 U.S.C. 1444c 1421).

§ 1421.350 Purpose.

This supplement contains additional program provisions which, together with the provisions of the General Regulations Governing Price Support for the 1978 and Subsequent Crops, the 1978 and Subsequent Crop Rye Loan and Purchase Program regulations and any amendments thereto, apply to loans on and purchases of the 1980-crop of rye.

§ 1421.351 Availability.

(a) Loans. Producers desiring to participate in the program through loans must request a loan on their 1980 crop of eligible rye on or before March 31, 1981.

(b) Purchases. A producer desiring to offer eligible 1980-crop rye not under loan for purchase must execute and deliver to the county ASCS office on or before March 31, 1981, a Purchase Agreement (Form CCC-614) indicating the approximate quantity of 1980-crop rye the producer will sell to CCC.

§ 1421.352 Maturity of loans.

Loans mature on demand but not later than the last day of the ninth calendar month following the month the loan is disbursed.

§ 1421.353 Warehouse charges.

If storage is not provided for through loan maturity, the county ASCS office shall deduct storage charges at the daily storage rate for the storing warehouse times the number of days from the date the commodity was received or date through which storage has been provided for to the maturity date.

§ 1421.354 Loan and purchase rates, premiums and discounts.

(a) Basic loan and purchase rates. Basic county rates per bushel for loan and settlement purposes for rye are established for rye grading No. 2 or better, or No. 3 on the factor of test weight only, are as follows:

1980—Crop Rye Loan and Purchase Rates

County	Rate per Bushel
Alabama	
All counties	$2.02
Arizona	
All counties	1.99
Arkansas	
All counties	1.96
California	
Alameda	2.16
Los Angeles	2.16
Sacramento	2.16
San Diego	2.16
San Francisco	2.16
San Joaquin	2.16
All other counties	2.03
Wght. State avg.	2.03
Colorado	
All counties	1.85
Connecticut	
All counties	2.00
Delaware	
All counties	2.05
Florida	
All counties	2.09
Georgia	
All counties	2.09
Idaho	
All counties	1.94
Illinois	
Cook	2.03
St. Clair	2.03
All other counties	1.97
Wght. State avg.	1.97
Indiana	
All counties	1.95
Iowa	
Pottawattamie	1.96
Woodbury	1.96
All other counties	1.92
Wght. State avg.	1.92
Kansas	
Wyandotte	1.94
All other counties	1.84
Wght. State avg.	1.84
Kentucky	
All counties	2.02
Louisiana	
East Baton Rouge	2.18
Jefferson	2.18
Orleans	2.18
St. Charles	2.18
West Baton Rouge	2.18
All other counties	1.99
Wght. State avg.	1.99
Maine	
All counties	2.00

1980—Crop Rye Loan and Purchase Rates—Continued

County	Rate per Bushel
Maryland	
Baltimore	2.16
All other counties	2.05
Wght. State avg.	2.05
Massachusetts	
All counties	2.00
Michigan	
All counties	1.87
Minnesota	
Hennepin	1.98
St. Louis	1.98
All other counties	1.92
Wght. State avg.	1.92
Mississippi	
All counties	2.04
Missouri	
St. Louis	2.07
All other counties	1.94
Wght. State avg.	1.94
Montana	
All counties	1.75
Nebraska	
All counties	1.84
Nevada	
All counties	1.89
New Hampshire	
All counties	2.00
New Jersey	
All counties	2.02
New Mexico	
All counties	1.89
New York	
Albany	2.16
New York City	2.16
All other counties	2.00
Wght. State avg.	2.00
North Carolina	
All counties	2.09
North Dakota	
All counties	1.79
Ohio	
All counties	1.95
Oklahoma	
All counties	1.92
Oregon	
Clatsop	2.17
Multnomah	2.17
All other counties	2.04
Wght. State avg.	2.04
Pennsylvania	
Philadelphia	2.16
All other counties	2.00
Wght. State avg.	2.00
Rhode Island	
All counties	2.00
South Carolina	
Charleston	2.16
All other counties	2.07
Wght. State avg.	2.07
South Dakota	
All counties	1.84
Tennessee	
Shelby	2.09
All other counties	2.04
Wght. State avg.	2.04
Texas	
Galveston	2.18
Harris	2.18
Jefferson	2.18
Nueces	2.18
San Patricio	2.18
All other counties	1.97
Wght. State avg.	1.97
Utah	
All counties	1.84

1980—Crop Rye Loan and Purchase Rates—Continued

County	Rate per Bushel
Vermont	
All counties	2.00
Virginia	
Chesapeake (Norfolk)	2.16
All other counties	2.05
Wght. State avg.	2.05
Washington	
Clark	2.17
Cowlitz	2.17
King	2.17
Pierce	2.17
All other counties	2.04
Wght. State avg.	2.04
West Virginia	
All counties	2.02
Wisconsin	
Douglas	1.96
Milwaukee	2.04
All other counties	1.95
Wght. State avg.	1.95
Wyoming	
All counties	1.84

(b) *Schedule of Premiums and Discounts for 1980-Crop Rye*

1. *Premiums*

Rye, grading U.S. No. 1, +2

2. *Discounts*

a. Rye, grading U.S. No. 3 on account of "thin" rye:

15.1–17.0 % thins, −3

17.1–19.0 % thins, −5

19.1–21.0 % thins, −7

21.1–23.0 % thins, −9

23.1–25.0 % thins, −11

b. Rye grading U.S. No. 3 for factors other than test weight or % of thins, −5

c. Weed control discount (where required by § 1421.24), −10

3. *Other.* Rye, grading U.S. No. 4 or Sample Grade is not eligible for loan. In the event quantities of rye grading U.S. No. 4 or Sample Grade are delivered in satisfaction of loan obligations, such quantities will be discounted on the basis of the schedule of discounts as provided by the Kansas City ASCS Commodity Office for settlement purposes. The schedule will also provide discounts for certain quality factors not specified above which affect the value of rye, e.g., weevily, ergoty, stones, etc. Such discounts will be established prior to loan maturity and will thereafter be adjusted from time to time as CCC determines appropriate to reflect changes in market conditions. Producers may obtain schedules of such factors, discounts and adjustments at county ASCS offices approximately one month prior to the loan maturity date.

Signed at Washington, D.C. on October 14, 1980.

John W. Goodwin,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 80-32779 Filed 10-20-80; 8:45 am]

BILLING CODE 3410-05-M

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7 CFR Part 1421

[CCC Grain Price Support Regulations, 1980—Crop Wheat Supplement]

Grains and Similarly Handled Commodities; 1980—Crop Wheat Loan and Purchase Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to set forth the (1) final loan and purchase availability dates, (2) maturity dates, and (3) loan and purchase rates and premiums and discounts under which Commodity Credit Corporation (CCC) will extend price support on 1980-crop wheat. This rule will enable eligible wheat producers to obtain loans and purchases on their eligible 1980-crop wheat.

EFFECTIVE DATE: October 20, 1980.

ADDRESS: Price Support and Loan Division, ASCS, USDA, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: W. W. Beesley, ASCS, (202) 447-7923. With respect to the availability of an impact analysis, the increases in the basic county loan and purchase rates announced by this final rule were considered under the provisions of the "Notice of Determinations of the 1980 Crop Normal Crop Acreages (NCA), Established 'Target Prices,' Loan and Purchase Rates for Feed Grains, Soybeans, Wheat, and Rice, and Loan Rates for Upland and ELS Cotton" published in the Federal Register (45 FR 53501) on August 12, 1980, and specifically considered in the Final Impact Statement prepared for that action. Thus, the Final Impact Statement describing the options considered in developing this final rule and the impact of implementing each option is available on request from Bruce R. Weber, Agricultural Program Specialist, Production Adjustment Division, ASCS-USDA, P.O. Box 2415, Washington, D.C. 20013, (202) 447-6688.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified "not significant." Also for "Improving USDA Regulations" (43 FR 50988), initiation of review of the regulations contained in 7 CFR 1421.485-.490 for need, accuracy, clarity, and effectiveness will be made within the next five years. The next review will take into consideration problems, issues, etc., which are experienced in program administration during the intervening period.

A "Notice of Determinations of 1980-Crop Normal Crop Acreages (NCA) Established "Target" Prices, Loan and Purchase Rates for Feed Grains, Soybeans, Wheat, and Rice, and Loan Rates for Upland and Extra Long Staple (ELS) Cotton" was published in the **Federal Register** on August 12, 1980 (45 FR 53501), effective August 7, 1980. The notice included the Secretary's determination that the 1980 loan and purchase rate for wheat was being increased to $3.00 per bushel in accordance with Section 107A of the Agricultural Act of 1949, as amended (7 USC 1445b). The announcement of this action by the Secretary had to be made immediately so that farmers could indicate their 1980 program participation. Therefore, it was and remains impractical and contrary to the public interest to comply with the public rulemaking requirements of 5 U.S.C. 553 and Executive Order 12044. Thus, this final rule shall become effective upon filing with the Director, Office of the Federal Register.

This rule announces the individual basic county loan and purchase rates to conform with the above notice of determination which increased the national average loan and purchase rate to $3.00 per bushel for the 1980 crop of wheat. Producers who wish to secure loans can do so by contacting their local county ASCS office or Agricultural Service Center.

The program title and number from the "Catalog of Federal Domestic Assistance" is Commodity Loan and Purchases, 10.051. This action will not have a significant impact specifically on area and community development. Therefore, review as established by OMB Circular A-95 was not used to assure that units of local government are informed of this action.

Final Rule

The General Regulations Governing Price Support for 1978 and Subsequent Crops and any amendments thereto, and the 1978 and Subsequent Crops Wheat Loan and Purchase Regulations and any amendments thereto in this Part 1421 are further supplemented for the 1980 crop of wheat. Accordingly, the regulations in 7 CFR 1421.485 through 1421.490 and the title of the subpart are revised to read as provided below effective as to the 1980 crop of wheat. The material previously appearing in these sections shall remain in full force and effect as to the crops to which it is applicable.

PART 1421—GRAINS AND OTHER SIMILARLY HANDLED COMMODITIES

Subpart—1980-Crop Wheat Loan and Purchase Program

Sec.

1421.485 Purpose.
1421.486 Availability.
1421.487 Maturity of loans.
1421.488 Ineligible classes.
1421.489 Warehouse charges.
1421.490 Loan and purchase rates and premiums and discounts.

Authority: Secs. 4 and 5, 62 Stat. 1070, as amended (15 U.S.C. 714 b and c); Secs. 107 A, 401, 63 Stat. 1051, as amended (7 U.S.C. 1445b 1421).

§ 1421.485 Purpose

This supplement contains additional program provisions which, together with the provisions of the General Regulations Governing Price Support for the 1978 and Subsequent Crops, the 1978 and Subsequent Crop Wheat Loan and Purchase Program regulations and any amendments thereto, apply to loans on and purchases of the 1980 crop of wheat.

§ 1421.486 Availability.

(a) Loans. Producers desiring to participate in the program through loans must request a loan on their 1980 crop of eligible wheat on or before March 31, 1981.

(b) Purchases. A producer desiring to offer eligible 1980-crop wheat not under loan for purchase must execute and deliver to the county ASCS office on or before March 31, 1981, a Purchase Agreement (Form CCC-614) indicating the approximate quantity of 1980-crop wheat the producer will sell to CCC.

§ 1421.487 Maturity of loans.

Loans mature on demand but not later than the last day of the ninth calendar month following the month the loan is disbursed.

§ 1421.488 Ineligible classes.

Unclassed wheat which includes red durum shall not be eligible for loan or purchases.

§ 1421.489 Warehouse charges.

If storage is not provided for through loan maturity, the county ASCS office shall deduct storage charges at the daily storage rate for the storing warehouse times the number of days from the date the commodity was received or date through which storage has been provided for to the maturity date.

§ 1421.490 Loan and purchase rates, premiums and discounts.

(a) Basic loan and purchase rates (counties). Basic rates per bushel for loan settlement purposes for wheat are established for wheat grading No. 1 and are as follows:

1980—Crop Wheat Loan and Purchase Rates

County	Rate per bushel
Alabama	
Mobile	$3.12
All other counties	2.93
Wght. State Avg	2.93
Arizona	
All counties	3.03
Arkansas	
All counties	2.94
California	
Alameda	3.19
Alpine	3.01
Amador	3.14
Butte	3.06
Calaveras	3.14
Colusa	3.13
Contra Costa	3.14
El Dorado	3.13
Fresno	3.09
Glenn	3.07
Humboldt	2.96
Imperial	3.11
Inyo	3.07
Kern	3.14
Kings	3.11
Lake	3.07
Lassen	2.96
Los Angeles	3.19
Madera	3.12
Marin	3.12
Mariposa	3.12
Mendocino	3.01
Merced	3.15
Modoc	2.96
Monterey	3.09
Napa	3.13
Orange	3.19
Placer	3.13
Plumas	2.96
Riverside	3.11
Sacramento	3.19
San Benito	3.12
San Bernardino	3.20
San Diego	3.19
San Francisco	3.19
San Joaquin	3.19
San Luis Obispo	3.08
San Mateo	3.19
Santa Barbara	3.09
Santa Clara	3.13
Santa Cruz	3.14
Shasta	2.97
Sierra	2.98
Siskiyou	2.96
Solano	3.14
Sonoma	3.11
Stanislaus	3.16
Sutter	3.13
Tehama	3.03
Tulare	3.11
Tuolumne	3.12
Ventura	3.16
Yolo	3.14
Yuba	3.13
Wght. State Avg	3.12
Colorado	
Adams	2.84
Alamosa	2.80
Arapahoe	2.84
Archuleta	2.77
Baca	2.87
Bent	2.83
Boulder	2.84
Chaffee	2.80
Cheyenne	2.84
Conejos	2.80
Costilla	2.80
Crowley	2.83
Custer	2.82
Delta	2.74
Denver	2.87
Dolores	2.74
Douglas	2.84
Eagle	2.77
Elbert	2.83
El Paso	2.83
Fremont	2.82
Garfield	2.77
Grand	2.80
Huerfano	2.84
Jackson	2.80
Jefferson	2.84
Kiowa	2.84
Kit Carson	2.84
La Plata	2.74
Larimer	2.83
Las Animas	2.86
Lincoln	2.83
Logan	2.83
Mesa	2.74
Moffat	2.80
Montezuma	2.74
Montrose	2.74
Morgan	2.83
Otero	2.83
Ouray	2.74
Phillips	2.83
Pitkin	2.74
Prowers	2.85
Pueblo	2.83
Rio Blanco	2.77
Rio Grande	2.80
Routt	2.80
Saguache	2.80
San Miguel	2.74
Sedgwick	2.83
Summit	2.77
Teller	2.82
Washington	2.83
Weld	2.83
Yuma	2.84
Wght. State Avg	2.83
Connecticut	
All counties	2.95
Delaware	
All counties	2.98
Florida	
All counties	2.92
Georgia	
All counties	2.92
Idaho	
Ada	2.97
Adams	2.97
Bannock	2.95
Bear Lake	2.93
Benewah	3.07
Bingham	2.93
Blaine	2.93
Boise	2.97
Bonner	3.00
Bonneville	2.92
Boundary	2.98
Butte	2.92
Camas	2.94
Canyon	2.97
Caribou	2.94
Cassia	2.96
Clark	2.90
Clearwater	3.06
Custer	2.92
Elmore	2.96
Franklin	2.96
Fremont	2.81
Gem	2.97
Gooding	2.97
Idaho	3.05
Jefferson	2.92
Jerome	2.97
Kootenai	3.05
Latah	3.08
Lemhi	2.92
Lewis	3.07
Lincoln	2.96
Madison	2.92
Minidoka	2.96
Nez Perce	3.10
Oneida	2.96
Owyhee	2.96
Payette	2.97
Power	2.96
Shoshone	3.06
Teton	2.91
Twin Falls	2.97
Valley	2.96
Washington	2.97
Wght. State Avg	2.98
Illinois	
Adams	2.96
Alexander	2.99
Bond	3.02
Boone	3.04
Brown	2.96
Bureau	3.02
Calhoun	3.03
Carroll	3.01
Cass	2.98
Champaign	3.02
Christian	3.00
Clark	2.98
Clay	2.98
Clinton	3.02
Coles	2.98
Cook	3.04
Crawford	2.97
Cumberland	2.98
De Kalb	3.04
De Witt	2.98
Douglas	2.99
Du Page	3.04
Edgar	3.00
Edwards	2.98
Effingham	3.00
Fayette	3.01
Ford	3.02
Franklin	3.02
Fulton	3.00
Gallatin	2.85
Greene	3.02
Grundy	3.04
Hamilton	2.96
Hancock	2.96
Hardin	2.95
Henderson	2.98
Henry	3.01
Iroquois	3.04
Jackson	3.01
Jasper	2.97
Jefferson	3.02
Jersey	3.03
Jo Daviess	3.01
Johnson	2.99
Kane	3.04
Kankakee	3.04
Kendall	3.04
Knox	3.00
Lake	3.04
La Salle	3.04
Lawrence	2.97
Lee	3.03
Livingston	3.03
Logan	2.98
McDonough	2.98
McHenry	3.04
McLean	3.00
Macon	2.98
Macoupin	3.02
Madison	3.03
Marion	3.02
Marshall	3.01
Mason	2.96
Massac	2.98
Menard	2.96
Mercer	3.00
Monroe	3.03
Montgomery	3.02
Morgan	3.00
Moultrie	2.99
Ogle	3.02
Peoria	3.00
Perry	3.02
Piatt	2.98
Pike	2.97
Pope	2.96

1980—Crop Wheat Loan and Purchase Rates—Continued

County	Rate per bushel
Pulaski	2.99
Putnam	3.01
Randolph	3.03
Richland	2.97
Rock Island	3.01
St. Clair	3.03
Saline	2.96
Sangamon	3.00
Schuyler	2.96
Scott	2.98
Shelby	3.00
Stark	3.00
Stephenson	3.03
Tazewell	2.98
Union	2.99
Vermilion	3.03
Wabash	2.97
Warren	3.00
Washington	3.02
Wayne	2.98
White	2.95
Whiteside	3.02
Will	3.04
Williamson	3.00
Winnebago	3.03
Woodford	3.00
Wght. State Avg	3.00
Indiana	
Adams	2.97
Allen	2.97
Bartholemew	2.97
Benton	3.02
Blackford	2.97
Boone	2.96
Brown	2.97
Carroll	3.00
Cass	3.00
Clark	3.02
Clay	2.98
Clinton	2.96
Crawford	3.02
Daviess	2.98
Dearborn	2.97
Decatur	2.97
De Kalb	2.97
Delaware	2.97
Dubois	2.99
Elkhart	2.99
Fayette	2.97
Floyd	3.02
Fountain	3.00
Franklin	2.97
Fulton	3.00
Gibson	2.97
Grant	2.96
Greene	2.98
Hamilton	2.97
Hancock	2.97
Harrison	3.02
Hendricks	2.96
Henry	2.97
Howard	2.96
Huntington	2.96
Jackson	2.98
Jasper	3.03
Jay	2.97
Jefferson	3.00
Jennings	2.98
Johnson	2.96
Knox	2.97
Kosciusko	3.00
Lagrange	2.96
Lake	3.04
La Porte	3.04
Lawrence	2.98
Madison	2.97
Marion	2.97
Marshall	3.00
Martin	2.98
Miami	2.96
Monroe	2.97
Montgomery	2.98
Morgan	2.96
Newton	3.03
Noble	2.97
Ohio	2.97
Orange	3.00
Owen	2.97
Parke	3.00

1980—Crop Wheat Loan and Purchase Rates—Continued

County	Rate per bushel
Perry	2.98
Pike	2.98
Porter	3.04
Posey	2.95
Pulaski	3.03
Putnam	2.96
Randolph	2.97
Ripley	2.97
Rush	2.97
St. Joseph	3.02
Scott	3.00
Shelby	2.97
Spencer	2.98
Starke	3.03
Steuben	2.97
Sullivan	2.98
Switzerland	2.98
Tippecanoe	2.99
Tipton	2.96
Union	2.97
Vanderburgh	2.97
Vermillion	3.00
Vigo	2.99
Wabash	2.96
Warren	3.02
Warrick	2.98
Washington	3.00
Wayne	2.97
Wells	2.97
White	3.02
Whitley	2.96
Wght. State Avg	2.98
Iowa	
Pottawattamie	3.07
All other counties	2.96
Wght. State Avg	2.96
Kansas	
Allen	3.02
Anderson	3.05
Atchison	3.07
Barber	2.91
Barton	2.91
Bourbon	3.03
Brown	3.05
Butler	2.95
Chase	2.98
Chautauqua	2.98
Cherokee	3.00
Cheyenne	2.84
Clark	2.88
Clay	2.96
Cloud	2.96
Coffey	3.03
Comanche	2.89
Cowley	2.95
Crawford	3.01
Decatur	2.88
Dickinson	2.95
Doniphan	3.05
Douglas	3.06
Edwards	2.91
Elk	2.98
Ellis	2.91
Ellsworth	2.94
Finney	2.88
Ford	2.89
Franklin	3.06
Geary	2.98
Gove	2.88
Graham	2.90
Grant	2.86
Gray	2.88
Greeley	2.84
Greenwood	2.98
Hamilton	2.85
Harper	2.93
Harvey	2.94
Haskell	2.87
Hodgeman	2.90
Jackson	3.04
Jefferson	3.06
Jewell	2.95
Johnson	3.07
Kearny	2.86
Kingman	2.94
Kiowa	2.91
Labette	3.00
Lane	2.88
Leavenworth	3.07

1980—Crop Wheat Loan and Purchase Rates—Continued

County	Rate per bushel
Lincoln	2.94
Linn	3.05
Logan	2.85
Lyon	3.00
McPherson	2.94
Marion	2.94
Marshall	3.00
Meade	2.88
Miami	3.06
Mitchell	2.94
Montgomery	3.00
Morris	2.98
Morton	2.87
Nemaha	3.02
Neosho	3.01
Ness	2.90
Norton	2.90
Osage	3.03
Osborne	2.94
Ottawa	2.95
Pawnee	2.91
Phillips	2.91
Pottawatomie	3.02
Pratt	2.91
Rawlins	2.86
Reno	2.94
Republic	2.96
Rice	2.94
Riley	3.00
Rooks	2.92
Rush	2.91
Russell	2.92
Saline	2.95
Scott	2.86
Sedgwick	2.94
Seward	2.87
Shawnee	3.04
Sheridan	2.88
Sherman	2.84
Smith	2.94
Stafford	2.91
Stanton	2.85
Stevens	2.87
Sumner	2.94
Thomas	2.86
Trego	2.90
Wabaunsee	3.01
Wallace	2.84
Washington	2.98
Wichita	2.85
Wilson	3.00
Woodson	3.01
Wyandotte	3.07
Wght. State Avg	2.92
Kentucky	
Jefferson	3.03
All other counties	2.95
Wght. State Avg	2.95
Louisiana	
East Baton Rouge	3.13
Jefferson	3.13
Orleans	3.13
St. Charles	3.13
West Baton Rouge	3.13
All other counties	2.98
Wght. State Avg	2.98
Maine	
All counties	2.92
Maryland	
Baltimore	3.11
All other counties	2.98
Wght. State Avg	2.98
Massachusetts	
All Counties	2.94
Michigan	
Alcona	2.87
Alger	2.88
Allegan	2.96
Alpena	2.84
Antrim	2.84
Arenac	2.88
Baraga	2.88
Barry	2.95
Bay	2.92
Benzie	2.87
Berrien	3.00

1980—Crop Wheat Loan and Purchase Rates—Continued

County	Rate per bushel
Branch	2.97
Calhoun	2.96
Cass	2.97
Charlevoix	2.83
Cheboygan	2.83
Chippewa	2.88
Clare	2.90
Clinton	2.93
Crawford	2.87
Delta	2.88
Dickinson	2.88
Eaton	2.95
Emmet	2.81
Genesee	2.95
Gladwin	2.90
Gogebic	2.88
Grand Traverse	2.87
Gratiot	2.93
Hillsdale	2.98
Houghton	2.88
Huron	2.94
Ingham	2.95
Ionia	2.93
Iosco	2.88
Iron	2.88
Isabella	2.92
Jackson	2.96
Kalamazoo	2.96
Kalkaska	2.87
Kent	2.93
Keweenaw	2.88
Lake	2.89
Lapeer	2.95
Leelanau	2.86
Lenawee	2.99
Livingston	2.96
Luce	2.88
Mackinac	2.88
Macomb	2.98
Manistee	2.88
Marquette	2.88
Mason	2.91
Mecosta	2.92
Menominee	2.88
Midland	2.92
Missaukee	2.87
Monroe	3.01
Montcalm	2.93
Montmorency	2.84
Muskegon	2.93
Newaygo	2.91
Oakland	2.98
Oceana	2.91
Ogemaw	2.88
Ontonagon	2.88
Osceola	2.89
Oscoda	2.87
Otsego	2.84
Ottawa	2.93
Presque Isle	2.83
Roscommon	2.87
Saginaw	2.95
St. Clair	2.98
St. Joseph	2.97
Sanilac	2.95
Schoolcraft	2.88
Shiawassee	2.95
Tuscola	2.95
Van Buren	2.96
Washtenaw	2.98
Wayne	2.98
Wexford	2.87
Wght. State Avg	2.95
Minnesota	
Aitkin	3.19
Anoka	3.19
Becker	3.09
Beltrami	3.12
Benton	3.18
Big Stone	3.10
Blue Earth	3.17
Brown	3.17
Carlton	3.19
Carver	3.19
Cass	3.15
Chippewa	3.13
Chisago	3.19
Clay	3.07
Clearwater	3.11
Cottonwood	3.14
Crow Wing	3.17
Dakota	3.19
Dodge	3.19
Douglas	3.14
Faribault	3.16
Fillmore	3.15
Freeborn	3.15
Goodhue	3.19
Grant	3.12
Hennepin	3.19
Houston	3.12
Hubbard	3.12
Isanti	3.19
Itasca	3.17
Jackson	3.13
Kanabec	3.18
Kandiyohi	3.17
Kittson	3.03
Koochiching	3.13
Lac Qui Parle	3.11
Lake of the Woods	3.07
Le Sueur	3.19
Lincoln	3.09
Lyon	3.12
McLeod	3.19
Mahnomen	3.09
Marshall	3.06
Martin	3.15
Meeker	3.19
Mille Lacs	3.18
Morrison	3.17
Mower	3.17
Murray	3.12
Nicollet	3.19
Nobles	3.11
Norman	3.07
Olmsted	3.17
Otter Tail	3.12
Pennington	3.08
Pine	3.18
Pipestone	3.09
Polk	3.08
Pope	3.15
Ramsey	3.19
Red Lake	3.08
Redwood	3.15
Renville	3.17
Rice	3.19
Rock	3.09
Roseau	3.04
St. Louis	3.19
Scott	3.19
Sherburne	3.19
Sibley	3.19
Stearns	3.17
Steele	3.17
Stevens	3.13
Swift	3.13
Todd	3.15
Traverse	3.09
Wabasha	3.18
Wadena	3.13
Waseca	3.18
Washington	3.19
Watonwan	3.16
Wilkin	3.09
Winona	3.16
Wright	3.19
Yellow Medicine	3.13
Wght. State Avg	3.10
Mississippi	
Harrison	3.13
Jackson	3.13
All other counties	2.94
Wght. State Avg	2.94
Missouri	
Adair	2.93
Andrew	3.05
Atchison	3.00
Audrain	2.98
Barry	2.95
Barton	2.99
Bates	3.03
Benton	3.99
Bollinger	2.98
Boone	2.95
Buchanan	3.07
Butler	2.97
Caldwell	3.04
Callaway	2.98
Camden	2.96
Cape Girardeau	2.98
Carroll	3.02
Carter	2.95
Cass	3.05
Cedar	2.98
Chariton	2.99
Christian	2.92
Clark	2.94
Clay	3.05
Clinton	3.05
Cole	2.96
Cooper	2.96
Crawford	2.98
Dade	2.97
Dallas	2.94
Daviess	3.02
De Kalb	3.04
Dent	2.96
Douglas	2.91
Dunklin	2.98
Franklin	3.02
Gasconade	3.00
Gentry	3.01
Greene	2.94
Grundy	2.99
Harrison	3.01
Henry	3.02
Hickory	2.99
Holt	3.03
Howard	2.98
Howell	2.89
Iron	2.98
Jackson	3.07
Jasper	2.96
Jefferson	3.01
Johnson	3.03
Knox	2.93
LaClede	2.93
Lafayette	3.05
Lawrence	2.95
Lewis	2.95
Lincoln	3.02
Linn	2.99
Livingston	3.01
McDonald	2.95
Macon	2.96
Madison	2.98
Maries	2.98
Marion	2.97
Mercer	2.98
Miller	2.95
Mississippi	3.00
Moniteau	2.96
Monroe	2.97
Montgomery	3.00
Morgan	2.97
New Madrid	3.00
Newton	2.95
Nodaway	3.03
Oregon	2.93
Osage	2.97
Ozark	2.90
Pemiscot	2.98
Perry	2.99
Pettis	2.99
Phelps	2.96
Pike	3.00
Platte	3.05
Polk	2.97
Pulaski	2.94
Putnam	2.95
Ralls	2.98
Randolph	2.96
Ray	3.05
Reynolds	2.96
Ripley	2.95
St. Charles	3.03
St. Clair	3.00
St. Francois	2.99
Ste. Genevieve	3.00
St. Louis	3.03
Saline	3.00
Schuyler	2.91
Scotland	2.91
Scott	3.00
Shannon	2.93
Shelby	2.96

1980—Crop Wheat Loan and Purchase Rates—Continued

County	Rate per bushel
Stoddard	2.99
Stone	2.95
Sullivan	2.96
Taney	2.92
Texas	2.92
Vernon	3.01
Warren	3.02
Washington	2.99
Wayne	2.97
Webster	2.93
Worth	3.01
Wright	2.93
Wght. State Avg	3.00
Montana	
Beaverhead	2.89
Big Horn	2.90
Blaine	2.91
Broadwater	2.95
Carbon	2.91
Carter	2.91
Cascade	2.94
Chouteau	2.94
Custer	2.90
Daniels	2.89
Dawson	2.91
Deer Lodge	2.96
Fallon	2.92
Fergus	2.93
Flathead	2.97
Gallatin	2.96
Garfield	2.89
Glacier	2.94
Golden Valley	2.93
Granite	2.96
Hill	2.92
Jefferson	2.96
Judith Basin	2.93
Lake	2.96
Lewis and Clark	2.94
Liberty	2.93
Lincoln	2.97
McCone	2.90
Madison	2.96
Meagher	2.94
Mineral	2.96
Missoula	2.96
Musselshell	2.91
Park	2.95
Petroleum	2.91
Phillips	2.90
Pondera	2.94
Powder River	2.90
Powell	2.96
Prairie	2.91
Ravalli	2.94
Richland	2.91
Roosevelt	2.90
Rosebud	2.89
Sanders	2.96
Sheridan	2.90
Silver Bow	2.96
Stillwater	2.93
Sweet Grass	2.94
Teton	2.94
Toole	2.93
Treasure	2.90
Valley	2.89
Wheatland	2.94
Wibaux	2.92
Yellowstone	2.91
Wght. State Avg	2.92
Nebraska	
Adams	2.94
Antelope	3.02
Arthur	2.85
Banner	2.82
Blaine	2.92
Boone	3.02
Box Butte	2.82
Boyd	2.99
Brown	2.92
Buffalo	2.95
Burt	3.07
Butler	3.04
Cass	3.06
Cedar	3.03
Chase	2.84
Cherry	2.88
Cheyenne	2.82
Clay	2.95
Colfax	3.04
Cuming	3.06
Custer	2.92
Dakota	3.06
Dawes	2.82
Dawson	2.94
Deuel	2.83
Dixon	3.03
Dodge	3.06
Douglas	3.07
Dundy	2.84
Fillmore	2.97
Franklin	2.92
Frontier	2.87
Furnas	2.90
Gage	3.00
Garden	2.83
Garfield	2.96
Gosper	2.90
Grant	2.85
Greeley	2.98
Hall	2.96
Hamilton	2.98
Harlan	2.91
Hayes	2.86
Hitchcock	2.86
Holt	2.99
Hooker	2.86
Howard	2.96
Jefferson	2.99
Johnson	3.00
Kearney	2.92
Keith	2.85
Keya Paha	2.94
Kimball	2.82
Knox	3.02
Lancaster	3.03
Lincoln	2.89
Logan	2.89
Loup	2.92
McPherson	2.88
Madison	3.02
Merrick	2.99
Morrill	2.82
Nance	3.00
Nemaha	3.00
Nuckolls	2.94
Otoe	3.03
Pawnee	3.02
Perkins	2.84
Phelps	2.91
Pierce	3.02
Platte	3.02
Polk	3.01
Red Willow	2.87
Richardson	3.03
Rock	2.95
Saline	2.99
Sarpy	3.07
Saunders	3.06
Scotts Bluff	2.82
Seward	3.02
Sheridan	2.83
Sherman	2.95
Sioux	2.80
Stanton	3.04
Thayer	2.97
Thomas	2.89
Thurston	3.06
Valley	2.95
Washington	3.07
Wayne	3.03
Webster	2.94
Wheeler	2.98
York	2.99
Wght. State. Avg	2.90
Nevada	
All counties	2.97
New Hampshire	
All counties	2.94
New Jersey	
All counties	2.98
New Mexico	
All counties	3.00
New York	
Albany	3.11
New York City	3.11
All other counties	2.96
Wght. State Avg	2.96
North Carolina	
All counties	2.92
North Dakota	
Adams	2.91
Barnes	3.04
Benson	2.97
Billings	2.90
Bottineau	2.91
Bowman	2.91
Burke	2.89
Burleigh	2.95
Cass	3.06
Cavalier	2.98
Dickey	3.04
Divide	2.88
Dunn	2.91
Eddy	3.00
Emmons	2.98
Foster	3.01
Golden Valley	2.90
Grand Forks	3.05
Grant	2.93
Griggs	3.04
Hettinger	2.91
Kidder	2.98
La Moure	3.02
Logan	3.00
McHenry	2.92
McIntosh	3.00
McKenzie	2.89
McLean	2.91
Mercer	2.91
Morton	2.94
Mountrail	2.90
Nelson	3.03
Oliver	2.92
Pembina	3.02
Pierce	2.94
Ramsey	2.99
Ransom	3.07
Renville	2.91
Richland	3.08
Rolette	2.94
Sargent	3.07
Sheridan	2.94
Sioux	2.93
Slope	2.91
Stark	2.91
Steele	3.04
Stutsman	3.02
Towner	2.95
Traill	3.05
Walsh	3.04
Ward	2.90
Wells	2.98
Williams	2.89
Wght. State Avg	2.97
Ohio	
Adams	2.98
Allen	2.99
Ashland	3.02
Ashtabula	3.04
Athens	3.01
Auglaize	2.98
Belmont	3.02
Brown	2.98
Butler	2.98
Carroll	3.02
Champaign	2.98
Clark	2.98
Clermont	2.98
Clinton	2.98
Columbiana	3.03
Coshocton	3.02
Crawford	3.01
Cuyahoga	3.02
Darke	2.98
Defiance	2.98
Delaware	3.01
Erie	3.01
Fairfield	3.01
Fayette	2.98
Franklin	3.01
Fulton	3.00
Gallia	2.98
Geauga	3.04

1980—Crop Wheat Loan and Purchase Rates—Continued

County	Rate per bushel
Greene	2.98
Guernsey	3.02
Hamilton	2.98
Hancock	3.01
Hardin	3.01
Harrison	3.02
Henry	3.00
Highland	2.98
Hocking	3.01
Holmes	3.02
Huron	3.01
Jackson	2.98
Jefferson	3.02
Knox	3.02
Lake	3.04
Lawrence	2.98
Licking	3.02
Logan	2.98
Lorain	3.02
Lucas	3.01
Madison	2.98
Mahoning	3.04
Marion	3.01
Medina	3.02
Meigs	2.98
Mercer	2.98
Miami	2.98
Monroe	3.02
Montgomery	2.98
Morgan	3.02
Morrow	3.02
Muskingum	3.02
Noble	3.02
Ottawa	3.01
Paulding	2.98
Perry	3.01
Pickaway	3.01
Pike	2.98
Portage	3.02
Preble	2.98
Putnam	3.00
Richland	3.02
Ross	3.01
Sandusky	3.01
Scioto	2.98
Seneca	3.01
Shelby	2.98
Stark	3.02
Summit	3.02
Trumbull	3.04
Tuscarawas	3.02
Union	3.01
Van Wert	2.98
Vinton	3.01
Warren	2.98
Washington	3.02
Wayne	3.02
Williams	2.98
Wood	3.01
Wyandot	3.01
Wght. State Avg	3.00
Oklahoma	
Adair	3.01
Alfalfa	2.98
Atoka	3.03
Beaver	2.93
Beckham	3.02
Blaine	3.02
Bryan	3.03
Caddo	3.03
Canadian	3.03
Carter	3.03
Cherokee	3.01
Choctaw	3.03
Cimarron	2.93
Cleveland	3.03
Coal	3.03
Comanche	3.03
Cotton	3.03
Craig	3.00
Creek	3.02
Custer	3.02
Delaware	3.01
Dewey	3.01
Ellis	2.96
Garfield	3.00
Garvin	3.03
Grady	3.03
Grant	2.98
Greer	3.03
Harmon	3.03
Harper	2.93
Haskell	3.03
Hughes	3.03
Jackson	3.03
Jefferson	3.03
Johnston	3.03
Kay	2.99
Kingfisher	3.02
Kiowa	3.03
Latimer	3.03
Le Flore	3.03
Lincoln	3.03
Logan	3.02
Love	3.03
McClain	3.03
McCurtain	3.03
McIntosh	3.03
Major	3.00
Marshall	3.03
Mayes	3.01
Murray	3.03
Muskogee	3.03
Noble	3.00
Nowata	3.00
Okfuskee	3.03
Oklahoma	3.03
Okmulgee	3.03
Osage	3.00
Ottawa	3.00
Pawnee	3.00
Payne	3.02
Pittsburg	3.03
Pontotoc	3.03
Pottawatomie	3.03
Pushmataha	3.03
Roger Mills	3.00
Rogers	3.01
Seminole	3.03
Sequoyah	3.03
Stephens	3.03
Texas	2.93
Tillman	3.03
Tulsa	3.01
Wagoner	3.01
Washington	3.00
Washita	3.02
Woods	2.98
Woodard	2.98
Wght. State Avg	3.00
Oregon	
Baker	3.07
Benton	3.14
Clackamas	3.21
Clatsop	3.28
Columbia	3.28
Coos	2.94
Crook	3.12
Curry	2.93
Deschutes	3.12
Douglas	2.96
Gilliam	3.17
Grant	3.12
Harney	2.98
Hood River	3.23
Jackson	2.98
Jefferson	3.15
Josephine	2.98
Klamath	3.06
Lake	3.03
Lane	3.12
Lincoln	3.04
Linn	3.15
Malheur	2.98
Marion	3.19
Morrow	3.15
Multnomah	3.28
Polk	3.17
Sherman	3.17
Tillamook	3.21
Umatilla	3.14
Union	3.10
Wallowa	3.08
Wasco	3.19
Washington	3.21
Wheeler	3.14
Yamhill	3.19
Wght. State Avg	3.15
Pennsylvania	
Philadelphia	3.11
All other counties	2.96
Wght. State Avg	2.96
Rhode Island	
All counties	2.95
South Carolina	
Charleston	3.11
All other counties	2.92
Wght. State Avg	2.92
South Dakota	
Aurora	3.04
Beadle	3.03
Bennett	2.91
Bon Homme	3.05
Brookings	3.07
Brown	3.03
Brule	3.01
Buffalo	3.01
Butte	2.89
Campbell	2.96
Charles Mix	3.01
Clark	3.03
Clay	3.07
Codington	3.07
Corson	2.93
Custer	2.83
Davison	3.07
Day	3.07
Deuel	3.10
Dewey	2.93
Douglas	3.03
Edmunds	3.00
Fall River	2.81
Faulk	3.02
Grant	3.10
Gregory	2.98
Haakon	2.96
Hamlin	3.06
Hand	3.03
Hanson	3.04
Harding	2.90
Hughes	2.99
Hutchinson	3.06
Hyde	3.01
Jackson	2.95
Jerauld	3.04
Jones	2.97
Kingsbury	3.04
Lake	3.06
Lawrence	2.89
Lincoln	3.09
Lyman	2.98
McCook	3.07
McPherson	3.00
Marshall	3.07
Meade	2.90
Mellette	2.96
Miner	3.05
Minnehaha	3.08
Moody	3.08
Pennington	2.90
Perkins	2.90
Potter	2.98
Roberts	3.09
Sanborn	3.04
Shannon	2.88
Spink	3.03
Stanley	2.97
Sully	2.98
Todd	2.93
Tripp	2.96
Turner	3.08
Union	3.07
Walworth	2.98
Yankton	3.05
Ziebach	2.91
Wght. State Avg	3.00
Tennessee	
Shelby	3.04
All other counties	2.93
Wght. State Avg	2.93
Texas	
Anderson	3.15
Andrews	3.01
Archer	3.06
Armstrong	3.01

1980—Crop Wheat Loan and Purchase Rates—Continued

County	Rate per bushel
Atascosa	3.15
Bailey	3.01
Bandera	3.11
Bastrop	3.15
Baylor	3.05
Bee	3.23
Bell	3.15
Bexar	3.15
Blanco	3.13
Borden	3.01
Bosque	3.12
Bowie	3.08
Brazos	3.20
Briscoe	3.01
Brown	3.09
Burleson	3.20
Burnet	3.13
Caldwell	3.15
Calhoun	3.19
Callahan	3.05
Carson	3.01
Castro	3.01
Chambers	3.25
Cherokee	3.17
Childress	3.03
Clay	3.07
Cochran	3.01
Coke	3.02
Coleman	3.06
Collin	3.10
Collingsworth	3.01
Comal	3.15
Comanche	3.10
Concho	3.07
Cooke	3.08
Coryell	3.14
Cottle	3.01
Crockett	3.03
Crosby	3.01
Culberson	3.01
Dallam	2.98
Dallas	3.12
Dawson	3.01
Deaf Smith	3.01
Delta	3.11
Denton	3.10
DeWitt	3.17
Dickens	3.01
Dimmit	3.09
Donley	3.01
Eastland	3.05
Edwards	3.05
Ellis	3.12
El Paso	3.01
Erath	3.10
Falls	3.14
Fannin	3.08
Fisher	3.02
Floyd	3.01
Foard	3.03
Frio	3.13
Gaines	3.01
Galveston	3.25
Garza	3.01
Gillespie	3.09
Glasscock	3.01
Goliad	3.19
Gonzales	3.17
Gray	3.01
Grayson	3.08
Grimes	3.20
Guadalupe	3.15
Hale	3.01
Hall	3.01
Hamilton	3.12
Hansford	2.96
Hardeman	3.03
Harris	3.25
Hartley	2.98
Haskell	3.03
Hays	3.15
Hemphill	2.98
Henderson	3.13
Hill	3.12
Hockley	3.01
Hood	3.09
Hopkins	3.11
Houston	3.17
Howard	3.01
Hudspeth	3.01
Hunt	3.11
Hutchinson	2.98
Irion	3.03
Jack	3.07
Jackson	3.15
Jeff Davis	3.01
Jefferson	3.21
Johnson	3.11
Jones	3.03
Karnes	3.19
Kaufman	3.13
Kendall	3.13
Kent	3.01
Kerr	3.09
Kimble	3.07
King	3.01
Kinney	3.05
Knox	3.03
Lamar	3.08
Lamb	3.01
Lampasas	3.14
Limestone	3.14
Lipscomb	2.98
Live Oak	3.21
Llano	3.11
Loving	3.01
Lubbock	3.01
Lynn	3.01
McCulloch	3.09
McLennan	3.14
Martin	3.01
Mason	3.09
Maverick	3.05
Medina	3.11
Menard	3.07
Midland	3.01
Milam	3.18
Mills	3.10
Mitchell	3.02
Montague	3.07
Moore	2.98
Motley	3.01
Navarro	3.13
Nolan	3.02
Nueces	3.25
Ochiltree	2.98
Oldham	3.01
Palo Pinto	3.07
Parker	3.09
Parmer	3.01
Pecos	3.01
Potter	3.01
Presidio	3.01
Rains	3.11
Randall	3.01
Real	3.07
Red River	3.08
Reeves	3.01
Refugio	3.22
Roberts	2.98
Robertson	3.17
Rockwall	3.11
Runnels	3.05
San Patricio	3.25
San Saba	3.10
Schleicher	3.03
Scurry	3.02
Shackelford	3.05
Sherman	2.98
Somervell	3.09
Stephens	3.06
Sterling	3.02
Stonewall	3.01
Sutton	3.03
Swisher	3.01
Tarrant	3.12
Taylor	3.03
Terry	3.01
Throckmorton	3.05
Tom Green	3.04
Travis	3.15
Uvalde	3.08
Van Zandt	3.13
Victoria	3.19
Waller	3.20
Ward	3.01
Wharton	3.20
Wheeler	3.01
Wichita	3.05
Wilbarger	3.05
Williamson	3.15
Wilson	3.17
Wise	3.08
Yoakum	3.01
Young	3.06
Zavala	3.09
Wght. State Avg	3.03
Utah	
All counties	2.97
Vermont	
All counties	2.94
Virginia	
Chesapeake (Norfolk)	3.11
All other counties	2.96
Wght. State Avg	2.96
Washington	
Adams	3.12
Asotin	3.11
Benton	3.14
Chelan	3.15
Clallam	3.07
Clark	3.28
Columbia	3.13
Cowlitz	3.28
Douglas	3.13
Ferry	3.05
Franklin	3.14
Garfield	3.13
Grant	3.13
Grays Harbor	3.20
Island	3.09
Jefferson	3.09
King	3.28
Kitsap	3.10
Kittitas	3.17
Klickitat	3.19
Lewis	3.23
Lincoln	3.10
Mason	3.17
Okanogan	3.10
Pacific	3.20
Pend Oreille	3.00
Pierce	3.28
San Juan	3.09
Skagit	3.17
Skamania	3.23
Snohomish	3.22
Spokane	3.09
Stevens	3.05
Thurston	3.22
Wahkiakum	3.22
Walla Walla	3.14
Whatcom	3.14
Whitman	3.12
Yakima	3.15
Wght. State Avg	3.12
West Virginia	
All counties	2.97
Wisconsin	
Douglas	3.14
All other counties	2.92
Wght. State Avg	2.92
Wyoming	
All counties	2.84

(b) Schedule of Premiums and Discounts for 1980—Crop Wheat:

1. *Class Premiums and Discounts:* (i) Premiums—Hard Amber Durum, No. 3 or better, cents per bushel: +7½; (ii) Discounts—Durum, cents per bushel: −10; Mixed wheat (mixes of classes other than contrasting classes), cents per bushel: −3; Mixed wheat (mixtures of contrasting classes), cents per bushel: −10; (iii) Unclassed wheat which includes Red Durum.[1]

2. *Grade Discounts:* (i) Grade Discounts—No. 2, cents per bushel: −2;

No. 3, cents per bushel: −4; No. 4, cents per bushel: −6; No. 5, cents per bushel: −9; sample—on the factors of test weight and total damage,[2] cents per bushel: −11.

Sample on Account of Test Weight

Hard Red Spring/White Club (cents)		All other classes (cents)	
Test weight	Per bushel	Test weight	Per bushel
49	−2	50	−2
48	−4	49	−4
47	−6	48	−6
46	−8	47	−8
45	−10	46	−10
44	−13	45	−12
43	−16	44	−15
42	−19	43	−18
41	−22	42	−21
40	−25	41	−24
		40	−27

Sample on Account of Total Damaged Kernels

Percent—total damaged kernel	Cents per bushel
15.1 to 16	−2
16.1 to 17	−4
17.1 to 18	−6
18.1 to 19	−8
19.1 to 20	−10
20.1 to 21	−12
21.1 to 22	−14
22.1 to 23	−16
23.1 to 24	−18
24.1 to 25	−20
25.1 to 26	−22
26.1 to 27	−24
27.1 to 28	−26
28.1 to 29	−28
29.1 to 30	−30
Each percent over 30	−3

(ii) Special Grade Discounts:

Smut:

Light Smutty, cents per bushel: −6.

Smutty, cents per bushel: −12.

Garlic:

Light Garlicky, cents per bushel: −15.

Garlicky, cents per bushel: −40.

3. Weed Control Discount (where required by § 1421.24), cents per bushel: −15.

4. *Premiums for Protein Content:*

Applicable to wheat grading No. 5 or better of the classes Hard Red Winter and Hard Red Spring.

Hard Red Winter

Percent protein	Cents per bushel
10.50 to 10.99	0
11.00 to 11.49	½
11.50 to 11.99	1
12.00 to 12.49	2
12.50 to 12.99	3
13.00 to 13.49	4½
13.50 to 13.99	6
14.00 to 14.49	8
14.50 to 14.99	10
15.00 and over	12

Hard Red Spring

Percent protein	Cents per bushel
11.50 to 11.99	0
12.00 to 12.49	1
12.50 to 12.99	2
13.00 to 13.49	4
13.50 to 13.99	6
14.00 to 14.49	9
14.50 to 14.99	12
15.00 to 15.49	16
15.50 to 15.99	20
16.00 to 16.49	25
16.50 to 16.99	30
17.00 and over	36

5. *Other.* Wheat with quality factors exceeding limits shown in foregoing schedule or wheat that (1) contains in excess of 13.5 percent moisture, (2) is weevily, (3) is musty, or (4) is sour, and heating shall not be eligible for loan. In the event quantities of wheat exceeding limits shown are delivered in satisfaction of loan obligations, such quantities will be discounted on the basis of the schedule of discounts as provided by the Kansas City Commodity Office for settlement purposes. Such discounts will be established not later than the time delivery of wheat to CCC begins and will thereafter be adjusted from time to time as CCC determines appropriate to reflect changes in market conditions. Producers may obtain schedule of such factors and discounts at county ASCS offices approximately one month prior to the loan maturity date.

Signed at Washington, D.C. on October 14, 1980.

John W. Goodwin,

Acting Executive Vice President, Commodity Credit Corporation.

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BILLING CODE 3410-05-M

[1] Unclassed wheat which includes Red Durum is ineligible for loan.

[2] Wheat grading sample is ineligible for loan except on the factor of test weight and/or total damage. In the event quantities of wheat grading sample are delivered in satisfaction of loan obligations, such quantities will be discounted on the basis of the schedule of discounts as provided by the Kansas City ASCS Commodity Credit Office for settlement purposes.

Food Safety and Quality Service

7 CFR Part 2842

Standards for Condition of Food Containers Including On-Line Sampling Procedures

AGENCY: Food Safety and Quality Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the United States Standards for Condition of Food Containers to include on-line sampling procedures for the condition inspection of food containers. In addition, certain definitions are added for this procedure and several existing definitions in the standards are amended for clarification. The amendments provide procedures to determine the condition of food containers in an on-line production operation.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Ashley R. Gulich, Poultry and Dairy Quality Division, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-3506. The Final Impact Statement describing the options considered in developing this final rule and the impact of implementing each option is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION:

Significance

This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified "not significant."

Background

On June 6, 1980, the Food Safety and Quality Service (FSQS) published in the **Federal Register** (45 FR 38064-38071) a proposed rule to establish on-line sampling procedures for the condition inspection of food containers.

The United States Standards for the Condition of Food Containers currently provide sampling procedures and acceptance criteria for the inspection of stationary lots of filled food containers and also skip lot sampling procedures for the examination of these lots. The standards are concerned only with external defects such as dents in a can or torn areas in fiberboard containers.

Stationary lot sampling is the process of randomly selecting sample units from a lot whose production has been completed. This type of lot is usually stored in a warehouse or in some storage area and is offered "in toto" for inspection.

Skip lot sampling is a special procedure for inspecting stationary lots in which only one-half or one-fourth of the lots offered for inspection are formally inspected. Skip lot inspection can only be instituted when a certain number of lots of essentially the same quality at origin in a plant have been consecutively acceptable.

To be acceptable under the examination criteria in the standards, lots must contain only a limited number of defects classified as minor, major, and critical. Acceptance criteria is based on sampling plans, accompanied by operating characteristic curves, for different lot sizes and levels of inspection such as normal, reduced, or tightened. Defects tables classify the severity of the defect.

Adding procedures for the on-line sampling of food containers to the standards would provide a new dimension for the condition inspection and certification of these containers. On-line sampling and inspection is a procedure in which subgroups of sample units are selected randomly from predesignated portions of production and in which the acceptability of these portions of production is determined by inspecting, at the time of sampling, the subgroups which represent these portions. The advantage of this type of sampling over stationary lot sampling is that only portions of a lot rather than a whole lot may be rejected. It also helps to quickly pinpoint trouble spots in a production cycle, enabling the producer to make timely corrections.

While the standards were developed for the use of Government agencies when requested to certify that filled primary containers or shipping cases or both be certified for condition, they are permissive and may be used by private parties as well.

The addition of on-line sampling procedures to the container standards enables the standards to provide procedures for every conceivable situation for the inspection of food containers. This is a valuable asset for all who need to determine the condition of filled food containers in an on-line production operation. The procedures are especially valuable to processors since problems such as defects in containers caused by such things as packaging machines out of adjustment could be promptly detected and the problem corrected. Under this procedure, rejections can be confined to portions of a lot rather than a whole lot.

Comments

FSQS received four comments in response to the June 6, 1980, proposed rule—two from food manufacturers, one from a container corporation, and one from a trade organization. Three of the commenters supported the proposal. One of the food manufacturers mentioned the desirability of the proposed sampling plan that would pre-empt situations where an entire lot, rather than a portion of a lot, is rejected. Another desirable feature of the proposal was assisting the producers to effect corrective action during the actual production process.

The other food manufacturer objected to the proposal on the basis that the on-line procedure would duplicate inspection made by the manufacturer and would increase the cost of inspection as opposed to stationary lot sampling. The sampling procedures in the United States Standards for Condition of Food Containers are to be used when a Government agency or private user of the inspection or grading services requests that filled food containers be examined for condition. When this is part of a contract, it is mandatory that the examination, using either on-line or stationary lot sampling, be done by official graders or inspectors and not by plant management. The addition of on-line sampling procedures would not change the present situation. The contractor would still have the option to request stationary lot sampling if he prefers. Thus, the on-line procedure adds a new dimension that is particularly desirable for plants with continuous resident inspection or grading service.

Options Considered

Two options were considered by FSQS before proceeding with this rule:

1. Take no regulatory action at this time.

2. Amend the standards to provide on-line sampling procedures for the condition inspection of filled food containers under the United States Standards for Condition of Food Containers.

Option 2 was selected because of reasons previously stated herein.

Final Rule

After consideration of the comments, FSQS has determined to adopt the proposal as published.

Accordingly, the standards are amended to read as follows:

Subpart A—Definitions

1. In § 2842.102 of Subpart A—Definitions, the definitions for "Acceptable Quality Level (AQL)", "Administrator", "Double sampling", "Operating Characteristic Curve (OC Curve)", "Probability of Acceptance", "Random Sampling", "Sampling plan", and "Single sampling" are amended and new definitions for "Basic inspection period", "Cumulative Sum Sampling (CuSum) Plan", "Defect", "Defective", "On-line Sampling", "Secondary Container", and "Subgroup" are added in alphabetical order to read, respectively:

§ 2842.102 Definitions, general.

* * * * *

Acceptable Quality Level (AQL). The maximum number of defects per hundred units (DHU) which is acceptable as a process average. Lots, or portions of production, having a quality level equal to a specified AQL will be accepted approximately 95 percent of the time when using the sampling plans prescribed for the AQL.

* * * * *

Administrator. The Administrator of the Food Safety and Quality Service (FSQS) of the Department or any other officer or employee of the Agency to whom there has heretofore been delegated, or to whom there may hereafter be delegated, the authority to act in his stead.

Basic Inspection Period. A specified period of consecutive production designated for on-line inspection (e.g., one shift's production, one day's production, etc.).

* * * * *

Cumulative Sum Sampling (CuSum) Plan. An on-line sampling plan that accumulates the number of defects which exceed the subgroup tolerance ("T") in a series of consecutive subgroups. Terms specified to the CuSum sampling plans are:

(a) *Acceptance Limit ("L").* The maximum accumulation of defects allowed to exceed the subgroup tolerance ("T") in any subgroup or consecutive subgroups.

(b) *CuSum value.* The accumulated number of defects that exceed the subgroup tolerance ("T").

(c) *Subgroup tolerance ("T").* The allowable number of defects in any subgroup.

(d) *Starting value ("S").* The initial CuSum value used to begin a CuSum sampling plan.

Defect. Any nonconformance of a container from specified requirements.

* * * * *

Defective. A container which has one or more defects.

* * * * *

Double sampling. A sampling scheme which involves use of two independently drawn but related samples, a first sample and a second sample which is added to the first to form a total sample size. A double sampling plan consists of first and total sample sizes with associated acceptance and rejection criteria. The first sample must be inspected first, and if possible, a decision as to acceptance or rejection of the lot made before a second sample is inspected. When the decision cannot be made on the first sample, a second sample is inspected;

the decision to accept or reject is based on the total sample size.

* * * * *

On-line sampling. The random selection of samples from a production line.

Operating Characteristic Curve (OC Curve). A curve that gives the probability of acceptance as a function of the quality level of the lot or the quality level of the portion of production. It shows the discriminatory power of a sampling plan, i.e., how the probability of accepting a lot, or portion of production, varies with the quality of the containers offered for inspection.

* * * * *

Probability of Acceptance.—(a) *For Stationary Lot Sampling.* The chance that a lot with a given level of quality will be accepted. Probability of acceptance is synonymous with "Percent of Lots Expected to be Accepted." The probability of acceptance is normally designated as "Pa" but is designated as "Pas" when referring to skip lot sampling and inspection.

(b) *For On-line Sampling.* The chance that a portion of production with a given level of quality will be accepted. Probability of acceptance is synonymous with "Percent of Production Expected to be Accepted." The probability of acceptance is normally designated as "Pa." In on-line sampling inspection, the probability of acceptance of any portion of production depends on the sample results obtained from the preceding portions. The probability of acceptance values associated with these procedures are the values which would be expected if a large number of samples are to be inspected. For the CuSum plans referenced in this standard, the probability of acceptance at the Acceptable Quality Level (AQL) is approximately 95 percent. The starting value ("S") associated with each CuSum plan helps to make the probability of acceptance of the first portions of production of a basic inspection period as close as possible to 95 percent.

Random sampling. A process of selecting a sample from a lot, or portion of production, whereby each unit in the lot of portion of production, has an equal chance of being chosen.

* * * * *

Sampling plan. Any plan stating the number of sample units to be included in the sample as well as the corresponding plan parameters used to make acceptance and rejection decisions.

Secondary container. The container in which one or more primary containers are packed. For example, a shipping case containing canned product.

* * * * *

Single sampling. A sampling scheme where the decision to accept or reject an inspection lot with respect to a specified requirement is made after the inspection of a single sample. A single sampling plan consists of a single sample size with associated acceptance and rejection criteria.

* * * * *

Subgroup. A group of sample units representing a portion of production.

* * * * *

2. Section 2842.103(a) is amended to read as follows:

§ 2842.103 Purpose and scope.

(a) This subpart outlines the procedure to be used to establish the condition of containers in stationary lots of packaged foods. This subpart shall be used to determine the acceptability of a lot based on specified acceptable quality levels and defects referenced in § 2842.104 or any alternative plan which is approved by the Administrator. In addition, any other sampling plan in the tables with a larger first sample size than that indicated by the lot size range may be specified when approved by the Administrator. This subpart or approved alternative plan will be applied when a Government agency or private user of the inspection or grading services requests that filled primary containers or shipping cases, or both, be certified for condition. Unless the request for certification specifically asks that only the primary container or only the shipping case be examined, both containers will be examined.

* * * * *

§§ 2842.140–2842.142 (Subpart D)—[Redesignated Subpart E]

3. The present Subpart D—Miscellaneous (7 CFR 2842.140 through 2842.142) is redesignated Subpart E—Miscellaneous, and a new § 2842.143 is added to Subpart E—Miscellaneous to read as follows:

§ 2842.143 Operating Characteristic (OC) curves for on-line sampling and inspection.

(a) This section contains the Operating Characteristic (OC) curve for each of the on-line cumulative sum sampling plans provided in Subpart D. The OC curve and the corresponding cumulative sum sampling plans are listed by AQL.

(b) Different plan parameters used to make acceptance and rejection decisions are provided for each AQL.

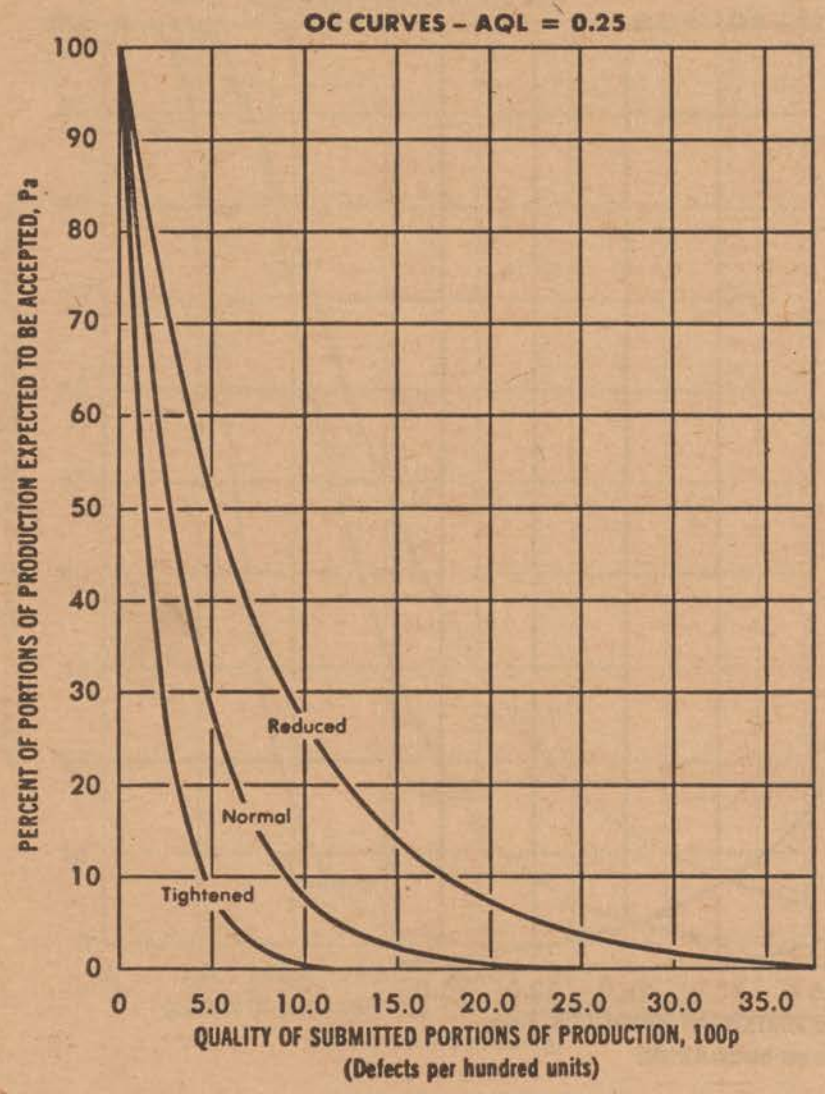
(c) The curves show the ability of the various cumulative sum sampling plans to distinguish between good and bad portions of production. The interpretation of these curves for portions of production is similar to the interpretation of the OC curves for stationary lots as illustrated in § 2842.140(c).

BILLING CODE 3410-DM-M

REDUCED, NORMAL AND TIGHTENED INSPECTION PLANS
CUMULATIVE SUM SAMPLING PLANS AND OPERATING CHARACTERISTIC (OC) CURVES FOR AQL = 0.25
DEFECTS PER HUNDRED UNITS
[SAMPLING PLANS—AQL = 0.25]

Identification name of OC curves											
Reduced				Normal				Tightened			
n_g	T	L	S	n_g	T	L	S	n_g	T	L	S
13	0	0	0	25	0.05	0.95	0.35	50	0.1	0.9	0.3

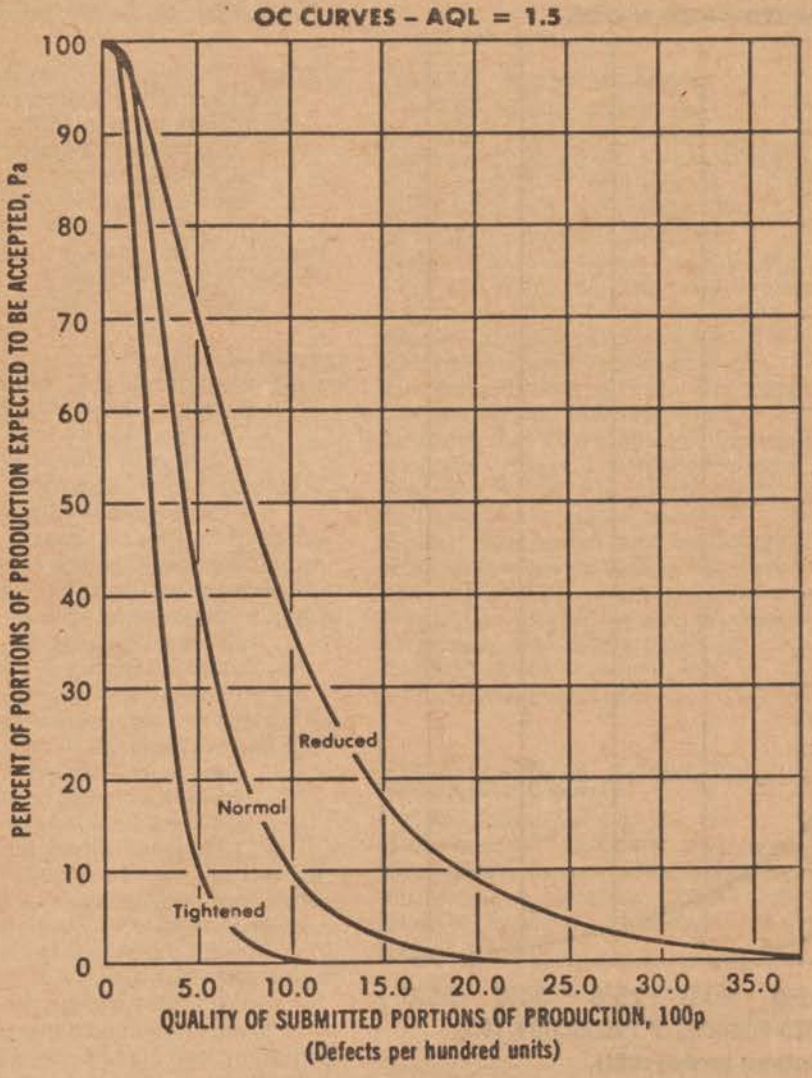
n_g = Number of sample units in a subgroup. T = Subgroup tolerance. L = Acceptance limit. S = Starting value.



REDUCED, NORMAL AND TIGHTENED INSPECTION PLANS
CUMULATIVE SUM SAMPLING PLANS AND OPERATING CHARACTERISTIC (OC) CURVES FOR AQL = 1.5
DEFECTS PER HUNDRED UNITS
[Sampling plans—AQL = 1.5]

Identification name of OC curves											
Reduced				Normal				Tightened			
n_g	T	L	S	n_g	T	L	S	n_g	T	L	S
13	0.5	0.5	0	25	0.5	2	1	50	0.8	1.6	0.4

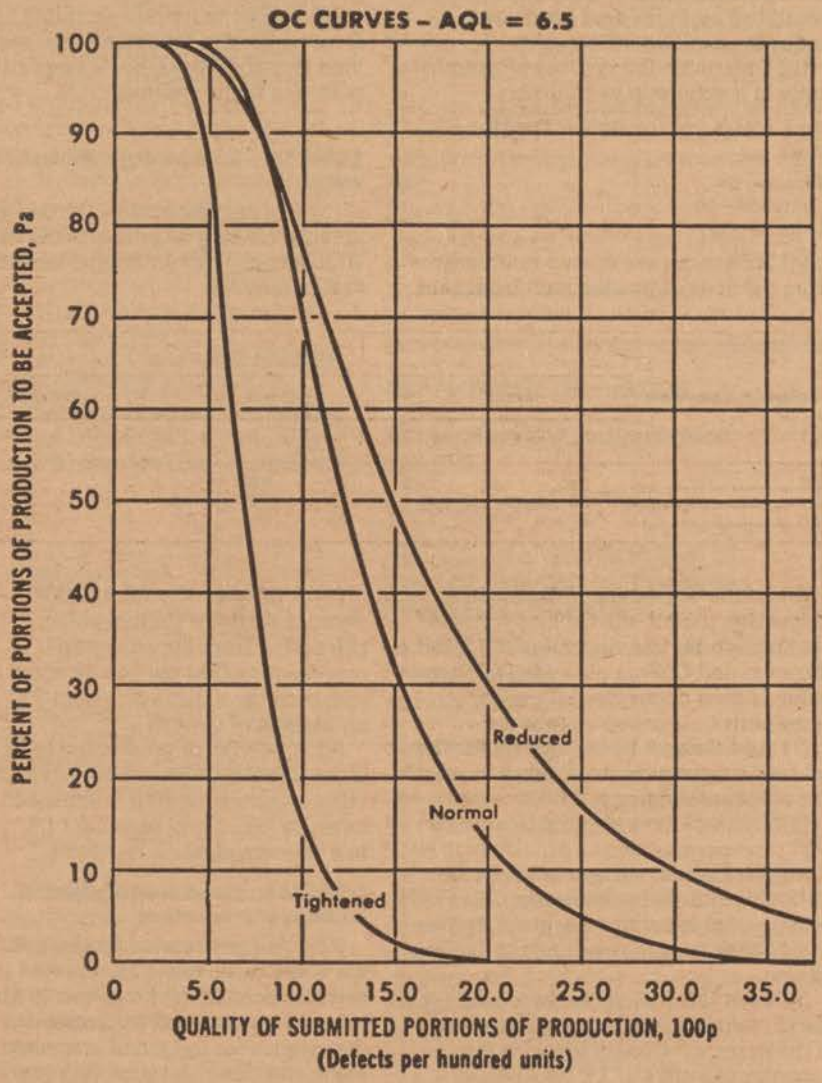
n_g = Number of sample units in a subgroup. T = Subgroup tolerance. L = Acceptance limit. S = Starting value.



REDUCED, NORMAL AND TIGHTENED INSPECTION PLANS
CUMULATIVE SUM SAMPLING PLANS AND OPERATING CHARACTERISTIC (OC) CURVES FOR AQL = 6.5
DEFECTS PER HUNDRED UNITS
[Sampling Plans—AQL = 6.5]

Identification name of OC curves											
Reduced				Normal				Tightened			
n_g	T	L	S	n_g	T	L	S	n_g	T	L	S
13	1	2	1	25	2	3	1	50	2.5	3	1

n_g = Number of sample units in a subgroup. T = Subgroup tolerance. L = Acceptance limit. S = Starting value.



4. A new Subpart D (7 CFR 2842.130–2842.136) is added, and the Table of Contents is amended accordingly, to read as follows:

Subpart D—On-Line Sampling and Inspection Procedures

Sec.
2842.130 Description and qualifications.
2842.131 Selection of samples.
2842.132 Determining cumulative sum values.
2842.133 Portion of production acceptance criteria.
2842.134 Disposition of rejected portions of production.
2842.135 Normal, tightened or reduced on-line inspection.
2842.136 Applicability of other procedures.

Authority: Sec. 203, 205, 60 Stat. 1087, as amended, 1090, as amended (7 U.S.C. 1622, 1624).

Subpart D—On-Line Sampling and Inspection Procedures

§ 2842.130 Description and qualifications.

(a) In many instances, food containers are loaded directly into carriers immediately after final packaging. This situation makes stationary lot sampling and inspection impractical. For such circumstances, the optional procedure for on-line sampling and inspection using cumulative sum sampling plans is provided. On-line sampling and inspection is a procedure in which subgroups of sampling units are selected randomly from predesignated portions of production. The acceptability of the portions of production is determined by inspecting, at the time of the sampling, the subgroups which represent these portions. On-line sampling and inspection contrasts with stationary lot procedures in which sample units are selected randomly and inspected and lot acceptability determinations are made only after lot production is completed.

(b) On-line sampling and inspection procedures may be instituted only when all of the following conditions are met:

(1) When authorized by the Administrator and acceptable to the user and producer, if different from the user.

(2) When inspection is origin inspection (see § 2842.102).

(3) When previous production lots from the producer are currently on, or eligible to be on, either normal or reduced inspection. (When shifting from stationary lot sampling and inspection to on-line sampling and inspection, normal on-line inspection shall be initially used.)

(4) When inspection of the containers is performed at a point after which all condition of container related characteristics are fixed and will not be subject to change during final handling.

§ 2842.131 Selection of samples.

(a) Prior to commencement of on-line sampling and inspection, the total amount of production for a given day or shift is predicted and is then subdivided into conveniently designated portions of production approximately equal in size. Portions may be designated by sequential numbers (e.g., containers 1 through 500 are portion 1, containers 501 through 1000 are portion 2, etc.) or by time intervals (e.g., the first half hour of production is portion 1, the second half hour of production is portion 2, etc.) during which the containers are identified by individual production codes for each time interval.

(b) Determine the number of sample units in a subgroup as follows:

Type of Inspection and Number of Sample Units
Normal—25
Tightened—50
Reduced—13

(c) Subgroups are drawn randomly from portions of production throughout the production process and are inspected for defects. The drawing of sampling units may be done in either of two ways: (1) The number of sample units (13, 25 or 50) comprising a subgroup may be drawn at the same time from a randomly chosen point in the production of each portion, or (2) sample units may be drawn individually, but in a random manner, throughout the production of each portion. At least 6 subgroups must be obtained during each basic inspection period regardless of the system used to designate portions of production.

(d) A shift to on-line sampling plans from stationary lot sampling plans (or vice versa) during a basic inspection period is not permitted.

§ 2842.132 Determining cumulative sum values.

(a) The parameters for the on-line cumulative sum sampling plans for AQL's applicable to origin inspection are as follows:

Acceptable quality levels	Type of inspection								
	Normal			Tightened			Reduced		
	T	L	S	T	L	S	T	L	S
0.25	0.05	0.95	0.35	0.1	0.9	0.3	0	0	0
1.5	0.5	2	1	0.8	1.6	0.4	0.5	0.5	0
6.5	2	3	1	2.5	3	1	1	2	1

(b) At the beginning of the basic inspection period, the CuSum value is set equal to the starting value ("S") for the specified CuSum plan. The CuSum value is then determined for each consecutive subgroup as follows:

(1) Add the number of defects for the present subgroup to the CuSum value of the previous subgroup.

(2) Subtract the subgroup tolerance ("T").

(3) The CuSum value is reset in the following situations; however, determine portion of production acceptability (see § 2842.133) prior to resetting the CuSum value:

(i) Reset the CuSum value to zero (0) if the CuSum value is less than zero (0).

(ii) Reset the CuSum value to the acceptance limit ("L") if the CuSum value exceeds the acceptance limit ("L").

§ 2842.133 Portion of production acceptance criteria.

(a) The acceptability of a portion of production is determined by comparing the calculated CuSum value with the acceptance limit ("L") for the specified AQL.

(b) A portion of production is acceptable if the CuSum value, calculated from the subgroup representing that portion, is equal to or less than the acceptance limit ("L") for all classes of defects.

(c) A portion of production is rejected if the CuSum value, calculated from the subgroup representing that portion, exceeds the acceptance limit ("L") for one or more classes of defects.

§ 2842.134 Disposition of rejected portions of production.

Rejected portions of production from the same basic inspection period may be reworked, combined together to form a lot, and resubmitted for inspection under the criteria for tightened inspection using stationary lot sampling procedures described in Subpart B of this part.

§ 2842.135 Normal, tightened or reduced on-line inspection.

(a) Normal, tightened and reduced on-line sampling plans are specified in § 2842.132 (Determining cumulative sum values). Normal plans shall be used except when the history of inspection permits reduced inspection or requires tightened inspection.

(b) Switching rules: Normal on-line inspection procedures shall be followed except when conditions in subparagraph (1) or (3) of this paragraph are applicable or unless otherwise specified. Application of the following switching rules will be restricted to the inspection of production for one applicant at a single production location and will be based upon records of original inspections of production (excluding resubmitted portions previously rejected and reworked) at that same location.

(1) *Normal Inspection to Reduced Inspection.* When normal inspection is in effect, reduced inspection shall be instituted provided that reduced inspection is considered desirable by the Administrator and further provided that all of the following conditions are satisfied for each class of defect:

(i) The preceding 40 consecutive portions of production have been on normal inspection and no more than one of these portions has been rejected on original inspection; and

(ii) The total number of defects in the subgroups (1000 sample units) from these preceding 40 consecutive portions of production is less than or equal to the following limit numbers for the specified AQL's:

Acceptable quality levels	Limit No.
0.25	0
1.5	9
6.5	54

(2) *Reduced Inspection to Normal Inspection.* When reduced inspection is in effect, normal inspection shall be reinstituted if any of the following occurs:

(i) More than one portion of production in any 40 consecutive portions of production is rejected on original inspection; or

(ii) Production becomes irregular (delayed or accelerated); or

(iii) Other valid conditions warrant that normal inspection shall be reinstituted.

(3) *Normal Inspection to Tightened Inspection.* When normal inspection is in effect, tightened inspection shall be instituted when two out of five consecutive portions of production have been rejected.

(4) *Tightened Inspection to Normal Inspection.* When tightened inspection is in effect, normal inspection shall be reinstituted when five consecutive portions of production have been considered acceptable.

(c) When the rules require a switch in the inspection status because of one or more classes of defects, all classes of defects shall be inspected under the new inspection criteria. At the option of the user of the service, and when approved by the Administrator, such user may elect to remain on normal inspection when qualified for reduced inspection, or on tightened inspection when qualified for normal inspection.

§ 2842.136 Applicability of Other Procedures.

When appropriate, the procedures for classifying and recording defects in § 2842.106 and for appeal inspections in § 2842.108 also apply to on-line sampling and inspection.

(Sec. 203, 205, 60 Stat. 1087, as amended, 1090, as amended; (7 U.S.C. 1622, 1624))

Done at Washington, D.C., on October 16, 1980.

Donald L. Houston,

Administrator, Food Safety and Quality Service.

[FR Doc. 80-32822 Filed 10-20-80; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 245

Adjustment of Status to That of Persons Admitted for Permanent Residence; Correction

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: In the interim regulations relating to Refugee and Asylum Procedures, published in the **Federal Register** on June 2, 1980 at 45 FR 37396, § 245.1(d) of Title 8 was incorrectly amended by deleting the last sentence of the sub-paragraph rather than amending the penultimate sentence. To avoid future ambiguity regarding the revised text, § 245.1(d) is being re-published in this order.

EFFECTIVE DATE: June 1, 1980.

FOR FURTHER INFORMATION CONTACT: Stanley J. Kieszkiel, Acting Instructions Officer, Immigration and Naturalization Service, 425 I Street NW., Washington, D.C. 20536. Telephone: (202) 633-3048.

SUPPLEMENTARY INFORMATION: This correction to 8 CFR 245.1(d) is published as a final rule to correct an amendment which appeared in the **Federal Register** at 45 FR 37396 on June 2, 1980. The existing sub-paragraph was incorrectly amended by deleting the last sentence without considering prior amendments which had been published in the **Federal Register** at 45 FR 26015 on April 16, 1980 and 45 FR 26947 on April 22, 1980. To avoid future ambiguity regarding the revised text, § 245.1(d) is being re-published in this order. Compliance with 5 U.S.C. as to notice of proposed rulemaking and delayed effective date is unnecessary because the correction is editorial in nature and does not make any substantive changes to the regulation.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is corrected by revising § 245.1(d) as follows:

§ 245.1 [Amended]

* * * * *

(d) *Immediate relatives under section 201(b) and preference aliens under section 203(a)(1) through 203(a)(6).* An applicant who claims immediate relative status under section 201(b) or preference status under section 203(a)(1) through 203(a)(6) of the Act is not eligible for the benefits of section 245 of the Act unless he/she is the beneficiary of a valid unexpired visa petition filed in accordance with Part 204 of this chapter and approved to accord him/her such status. A nonimmigrant alien who is an Iranian national is not eligible for the benefits of section 245 of the Act unless (1) he/she claims immediate relative status under section 201(b) or preference status under section 203(a)(1), (2), (4) or (5) of the Act and is also the beneficiary of a valid visa petition filed in accordance with Part 204 of this chapter and approved to accord him/her such status, or (2) he/she has applied for or has been granted asylum in the United States.

* * * * *

(Secs. 103, and 245; 8 U.S.C. 1103 and 1255)

Effective: June 1, 1980.

Dated: October 10, 1980.

David Crosland,

Acting Commissioner of Immigration and Naturalization.

[FR Doc. 80-32635 Filed 10-20-80; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 82

Exotic Newcastle Disease; and Psittacosis or Ornithosis in Poultry; Areas Quarantined and Released

AGENCY: Animal and Plant Health Inspection Service. USDA.

ACTION: Final rule.

SUMMARY: The purpose of these amendments is to quarantine a portion

of Caddo Parish in Louisiana because of the existence of exotic Newcastle disease and to release a portion of Broward County in Florida and a portion of Saginaw County in Michigan from the areas quarantined because of exotic Newcastle disease. Exotic Newcastle disease was confirmed in such portion of Caddo Parish, Louisiana, on September 12, 1980. Therefore, in order to prevent the dissemination of exotic Newcastle disease it is necessary to quarantine the affected area. Further surveillance activity indicates that exotic Newcastle disease no longer exists in the areas quarantined. No areas in the State of Michigan remain under quarantine.

EFFECTIVE DATE: October 15, 1980.

FOR FURTHER INFORMATION CONTACT: C. G. Mason, Chief, National Emergency Field Operations, Emergency Programs, Veterinary Services, USDA, 6505 Belcrest Road, Federal Building, Room 751, Hyattsville, MD 20782, 301–436–8073.

SUPPLEMENTARY INFORMATION: These amendments quarantine a portion of Caddo Parish in Louisiana because of the existence of exotic Newcastle disease. Therefore, the restrictions pertaining to the interstate movement of poultry, mynah and psittacine birds, and birds of all other species under any form of confinement and their carcasses, and parts thereof, and certain other articles, from quarantined areas, as contained in 9 CFR Part 82, as amended, will apply to the quarantined area.

These amendments also release a portion of Broward County in Florida and a portion of Saginaw County in Michigan from the areas quarantined because of exotic Newcastle disease. Therefore, the restrictions pertaining to the interstate movement of poultry, mynah and psittacine birds, and birds of all other species under any form of confinement, and their carcasses and parts thereof, and certain other articles from quarantined areas, as contained in 9 CFR Part 82, as amended, will no longer apply to the released areas.

Accordingly, Part 82, Title 9, Code of Federal Regulations, is hereby amended in the following respects:

§ 82.3 Areas quarantined [Amended]

1. In § 82.3 (a)(21)(i), is added to read:

(a) * * *

* * * * *

(21) *Louisiana.* (i) The premises of Docktor's Pet Center (Joe Hedl), South Park Mall #37 and 3016 Greenwood, Shreveport, Caddo Parish.

* * * * *

2. In § 82.3(a)(1), relating to the State of Florida, paragraph (vii) relating to the premises of Shawn Cadwallader, 704 N. Crescent Drive, Hollywood, Broward County is deleted.

3. In § 82.3(a)(12), relating to the State of Michigan, paragraph (ii) relating to the premises of The Fish Gallery and Hobby Shop, 247 Meyers Street, Freeland, Saginaw County is deleted.

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

These amendments impose certain restrictions necessary to prevent the interstate spread of exotic Newcastle disease, a communicable disease of poultry, and must be made effective immediately to accomplish their purpose in the public interest. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

The amendment releasing the quarantined area relieves certain restrictions no longer deemed necessary to prevent the spread of exotic Newcastle disease. It should be made effective immediately in order to permit affected persons to move poultry, mynah and psittacine birds, and birds of all other species under any form of confinement, and their carcasses and parts thereof, and certain other articles interstate from such area without unnecessary restrictions. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

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

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

This final rule implements the regulations in Part 82. It will be scheduled for review in conjunction with the periodic review of the regulations in that Part required under the provisions of Executive Order 12044 and Secretary's Memorandum 1955.

Done at Washington, D.C., this 15th day of October 1980.

R. P. Jones,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 80-32723 Filed 10-20-80; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

15 CFR Part 2301

Public Telecommunications Facilities Program Policy Statement

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Policy Statement.

SUMMARY: The National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce, announces the adoption of a "use interference" test to govern the implementation of Section 392(a)(4) of the Public Telecommunications Financing Act of 1978 (PTFA). Section 392(a)(4) of the Communications Act explicitly requires grantees to assure NTIA that facilities funded under the PTFA shall be "used only for the provision of public telecommunications services." The "use interference" test will allow grantees under the PTFA to share the cost and use of Federally-funded "non-interfering equipment" with a commercial entity.

EFFECTIVE DATE: This Policy Statement shall be effective October 21, 1980.

FOR FURTHER INFORMATION CONTACT: Dr. John Cameron, Chief, Public Telecommunications Facilities Division, NTIA, (202) 724–3307, or Kenneth Salomon, Deputy Chief Counsel, NTIA, 377–1866, Room 703, 1800 G Street, N.W., Washington D.C. 20504.

SUPPLEMENTARY INFORMATION:

Policy Statement

I. Introduction

The rapidly changing nature of the telecommunications industry requires the National Telecommunications and Information Administration (NTIA) to reassess from time to time its program implementing the Public Telecommunications Financing Act of 1978, Pub. L. No. 95–567, 92 Stat. 2405.

Grantees under the 1978 Act should not be denied the benefits of emerging technology by a rigid and unyielding regulatory scheme.

NTIA has recently received informal requests from industry representatives for a ruling on the legality of grantees sharing the cost and use of Federally-funded satellite earth stations with commercial entities. We have reviewed the relevant sections of the Communications Act, applicable case law, and administrative rulings and believe that there is authority for sharing the non-interfering components of an earth station. "Non-interfering equipment," as used in this Statement, is equipment that is capable of being used simultaneously by multiple entities without disrupting the operation of any of them. Based on a "use interference" test under § 392(a)(4) of the Communications Act, any equipment which meets this definition may be shared by a grantee and a commercial entity.

The action NTIA takes today has a dual benefit. It will increase the effective utilization of satellite technology by grantees under the Public Telecommunications Facilities Program (PTFP) and at the same time provide a mechanism to raise much-needed capital to support public telecommunications services. This flexible approach provides an economic and efficient method for enabling PTFP grantees to maintain pace in a highly dynamic industry.

While the "use interference" test has broad applicability, it is particularly advantageous for the use of satellite earth stations. An earth station includes a number of components which can be combined to satisfy particular user requirements. Typically, the simplest receive-only earth station includes an antenna, a low noise amplifier, and a receiving system. Sophisticated receive/transmit earth stations involve several additional components. The antenna and low noise amplifier are non-interfering components. Other components may be non-interfering, depending on particular characteristics. It should be stressed that this Policy Statement authorizes only the shared use of non-interfering equipment.

In this Policy Statement, we deal with the two fundamental obstacles to a sharing scheme, the active/passive test, developed by the Department of Health, Education and Welfare (HEW, now the Department of Health and Human Services) as a method of allowing grantees to share broadcast towers with commercial entities, and § 392(a)(4) of the Communications Act which requires that facilities funded under the PTFA be used only to provide public telecommunications services.

II. The Active/Passive Test

Section 392(a)(4) of the Communications Act explicitly requires grantees to assure NTIA that facilities funded under the PTFA shall be "used only for the provision of public telecommunications services." Nonetheless, NTIA [1] and HEW,[2] which administered the grant program prior to NTIA,[3] have consistently held that grantees could share broadcasting towers with commercial broadcasters.

The sharing of towers was first sanctioned in the 1964 legal memorandum referred to in footnote number two. In that memorandum, the issue was whether or not a grantee was required to exercise exclusive ownership over Federally-funded facilities. HEW's Office of the General Counsel found that it was not. "Acquisition of any type of equipment," HEW concluded, "does not require the applicant to obtain full and complete ownership of all interests." Instead, according to HEW, all that is required is that the "property interest be such as to assure that no other property interest interferes with the use of the apparatus" by the grantee. The primary concern was that shared use of Federally-funded equipment not obstruct the use of that equipment by the grantee.

With this understanding of § 392(a)(4), HEW distinguished towers from all other types of eligible transmission equipment on the following grounds: (1) towers are not actively used for transmission, but instead only passively hold other equipment; (2) shared use of a tower in no way affects the use of the tower by a grantee; and (3) shared use does not increase the wear on or the depreciation of the tower. Thus, by forming an active/passive test, HEW allowed grantees to share towers with non-grantees, including commercial broadcasters. NTIA followed this approach in its *Report and Order* adopting its rules under the PTFA.[4]

To date, only towers have been singled out as fitting within the active/passive test. Therefore, a threshold question is whether or not any components of a satellite earth station may come within this test. In order to make this determination, one must clearly understand the rationale of the HEW test. Under a strict active/passive approach, neither receive/transmit nor receive-only earth stations qualify for sharing. In fact, NTIA has held that transmitting antennae are active elements and cannot be shared. 45 FR, *supra*, at 1997–98; 44 FR, *supra*, at 30,911. Although the antenna in a receive-only earth station is not a radiating element, it still has an active role in increasing the gain of a received signal.

While both HEW and NTIA have used the active/passive language, it is clear that the primary concern has been that sharing would hamper the grantee's use of the equipment. For example, in *KBOO*, NTIA commented that, "shared use of active components [antennae] would interfere with a grantee's unfettered use of its equipment for public telecommunications purposes." [5] It was the potential for interference with the grantee's use of the equipment rather than the active nature of the equipment which formed the basis of the opinion.

Under a "use interference" test, however, both receive-only and receive/transmit earth stations contain components which qualify for sharing since they may perform multiple tasks simultaneously.[6] As long as the grantee has a sufficient property interest in the earth station to assure that no other property interest interferes with the use of the apparatus for public telecommunications purposes, sharing would be permissible.

Implementation of the "use interference" test requires NTIA to modify prior determinations.[7] As the present situation demonstrates, however, the active/passive test is unnecessarily narrow and ill-suited for emerging technology. Abandonment of the active/passive language and substitution of a "use interference" test provides the flexibility NTIA needs to administer the PTFP in light of rapidly changing technology and better serve the 1978 Act's purpose.

III. Section 392(a)(4)

Even under a "use interference" test, there is still the language of § 392(a)(4) which explicitly states that Federally-funded equipment shall be used "only for" public telecommunications services. It makes no mention of the active/passive test, and the HEW and NTIA memoranda on this subject cite no authority for such an interpretation of the section. In addition, the legislative history of the PTFA does not clarify this matter, neither explaining the "only for" language, nor addressing the active/

[1] 44 FR 30898 (May 29, 1979); *KBOO*, 45 FR 1997 (January 9, 1980).

[2] Memorandum from Edwin H. Yourman to Dr. John Bystrom (October 8, 1964).

[3] Educational Television Act of 1962, Pub. L. No. 87–447, 76 Stat. 64.

[4] 44 FR, *supra*, at 30,910–911.

[5] 45 FR, *supra*, at 1997–98.

[6] *In re Application of Western Union Telegraph Co.*, FCC 80–133 (para. 20) (March 13, 1980).

[7] *KBOO*, *supra*.

passive test. It is possible to argue, therefore, that HEW and NTIA erred in adopting and following the active/passive test and that an interference test would not cure the inconsistency with the language of § 392(a)(4).

We do not find this argument persuasive. It is well established that a longstanding interpretation of a statute by the agency charged with its execution should be given considerable deference.[8] Further, it can be reasonably assumed that Congress has had full knowledge of HEW's view of § 392(a)(4). It has amended the Act on several occasions since 1964 without upsetting that interpretation. Thus, we conclude that Congress tacitly approved the active/passive test and the interference analysis on which it is based. As the courts have ruled, "[s]uch longstanding administrative construction is entitled to great weight, particularly when, as here, Congress has revisited the Act and left the practice untouched." [9]

Having reached the conclusion that sharing of non-interfering equipment between a grantee and a commercial entity is permissible under § 392(a)(4), we note that our determination is buttressed by § 392(g)(2) of the Act, which allows for the waiver, for good cause, of the noncommercial use requirement. Section 392(g)(2) provides that:

(g) If, within 10 years after completion of any project for construction of public telecommunications facilities with respect to which a grant has been made under this section—

* * * * *

(2) such facilities cease to be used only for the provision of public telecommunications services (unless the Secretary determines, in accordance with regulations, that there is good cause for releasing the applicant or other owner from the obligation to do so); the United States shall be entitled to recover from the applicant . . . [the pro rata value of such facilities]. . . .

The phrase "obligation to do so" in § 392(g)(2) refers to the grantee's duty to use funded facilities only for public telecommunications services. Section 2301.32 of the PTFP Rules reflects this interpretation:

§ *2301.32 Termination and change in eligibility status.*

(a) The following circumstances shall constitute grounds for termination of a grant and for recovery from the applicant or other owner of the facilities of the amount bearing the same ratio to the value of the facilities as the Federal grant bore to the project if they occur within 10 years after completion of the project:

* * * * *

(2) The facilities, either permanently or for an indefinite period of time, cease to be used only for the provision of public telecommunications services (unless the Administrator determines, based on a petition for such relief with opportunity for filing oppositions by interested members of the public, that *good cause exists to release the applicant, grantee or other owner from this obligation*);. . . . [Emphasis added]

We therefore believe that § 392(g)(2) provides NTIA with authority to waive the noncommercial use requirement, for good cause, for non-interfering equipment. We have already enumerated the consequences which would flow to grantees from shared use of non-interfering equipment—mainly the ability to utilize new technology and to raise additional capital for public telecommunications services. These important benefits represent ample cause for dispensing with the commercial use prohibition on non-interfering equipment.

The "use interference" test and the waiver provision of § 392(g)(2) afford grantees the flexibility needed to make efficient use of earth station technology. Grantees may purchase an entire earth station and subsequently lease its capacity, consistent with the guidelines expressed in this Policy Statement, or they may enter into a joint venture for the purchase of qualifying earth station components. These sharing arrangements, because of the nature of the equipment, will not raise the problems of interference or increased wear and tear on the equipment. As noted, non-interfering earth station components are capable of simultaneous use and are not susceptible to significantly increased wear and tear due to such use.

An outright purchase of an earth station by a grantee and a subsequent lease to a commercial entity has certain advantages over a joint venture. The question of ownership and control in § 392(a)(2) of the Act and § 2301.6 of the PTFP Rules is much clearer where the grantee owns the entire station and leases those components which qualify under a "use interference" test. The specific charges which a grantee may assess for shared use of its equipment are normally a matter for market negotiation. NTIA involvement would occur only in exceptional circumstances (*e.g.*, a significant claim of unfair competitive advantage by grantees leasing equipment at less than prevailing market rates).

In addition, while funding the entire cost of a satellite earth station would require larger grants from NTIA than funding a joint venture, it would allow a grantee greater flexibility in leasing the earth station's capacity and thereby raising additional capital which must be rechanneled into public telecommunications facilities or services. *See* § 2301.6(d)(3) of the PTFP Rules. In order to assure continued compliance with §§ 392 (a)(1)(D), (a)(4) and 392 (6), (7), (14), we will continue to require that all income generated from rental of an earth station be used only for public telecommunications purposes.

As noted, our action today also allows grantees to enter into a joint venture with a commercial entity for the purchase of an earth station. NTIA has already specifically recognized the legitimacy of a joint venture for the funding of broadcast towers between PTFP grantees and commercial entities.[10] Of course, § 392(a)(2) of the Act and §§ 2301.6(b) and 2301.36 of the PTFP Rules require that the public telecommunications facility be controlled by the grantee. This does not mean, however, that a grantee must own 100 percent of the equipment. For example, a grantee may share a broadcast tower even though he is not the exclusive owner, so long as he actually controls the tower in the totality of circumstances.[11] The same interpretation should be applied to earth stations.

An earth station funded on a joint venture basis will likely require a smaller grant from NTIA. We will be funding, for example, up to 75 percent of half the price of an earth station rather than up to 75 percent of the full price. Moreover, depending on the particular characteristics of the joint venture agreement, it may still be possible for the grantee to raise additional capital through a lease of the earth station.

IV. Conclusion

Based on the above analysis, NTIA adopts a "use interference" test under § 392(a)(4) in place of the active/passive test. This step allows grantees, consistent with the Act and relevant precedent, to share the cost and use of the non-interfering equipment through either a joint venture or an outright lease to a commerical entity.

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[8] Zuber v. Allen, 396 U.S. 168 (1969); Udall v. Tallman, 380 U.S. 1 (1965); Alabama v. United States, 461 F.2d 1324 (Ct. Cl. 1972).

[9] *Saxbe* v. *Bustos*, 419 U.S. 65, 74 (1974).

[10] *Report and Order, supra*, at 30.911 (para. 102), *KBOO, supra*.

[11] 44 Fed. Reg., *supra*, at 30.911, paras. 101–102.

(Catalog Program No. 11.550)

Henry Geller,

Administrator, National Telecommunications and Information Administration.

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CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1021

Environmental Review; Final Procedures

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Commission issues procedures to implement the Council on Environmental Quality's final regulations of November 29, 1978 concerning agency compliance with the National Environmental Policy Act. The procedures provide for identification of the effects of a proposed action and its alternatives on the environment; for assessment of the significance of these effects; for consideration of effects at appropriate points in the Commission's decisionmaking process; and for preparation of appropriate environmental documents.

DATE: The environmental review procedures are effective November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Carole Roth, Office of the General Counsel, Consumer Product Safety Commission, Washington, D.C. 20207 (202-634-7770).

SUPPLEMENTARY INFORMATION:

Background

In the **Federal Register** of November 31, 1979, the Commission proposed procedures to implement and supplement the Council on Environmental Quality's (CEQ) regulations concerning agency compliance with the National Environmental Policy Act (NEPA) (42 U.S.C. 4321-4347 as amended by Pub. L. 94-83, August 8, 1975). (See the Commission's proposed NEPA procedures at 44 FR 62526; 16 CFR Part 1021.)

CEQ's regulations concerning agency compliance with NEPA became effective July 30, 1979. (See 43 FR 55978; 40 CFR Part 1500 et seq.) CEQ's regulations are intended to implement the procedural provisions of NEPA, the basic national charter for the protection of the environment. The procedural provisions of the act require that all federal agencies include in their decisionmaking process an appropriate and careful consideration of the environmental aspects of proposed actions and their alternatives, of ways to avoid or minimize adverse effects of proposed actions, and of ways to restore or enhance environmental quality. In addition, NEPA requires agencies to prepare detailed environmental impact statements on proposals for legislation and other major federal actions significantly affecting the quality of the human environment.

Section 1507.3 of CEQ's November 29, 1978 NEPA regulations provides that each agency shall adopt procedures to implement and supplement the Council's procedures. Therefore, as indicated above, on October 31, 1979, the Commission proposed environmental review procedures, providing a 60-day period for public comment on the proposal.

The proposed procedures do not attempt to restate or paraphrase CEQ's NEPA regulations, but merely reference those regulations, where appropriate. Essentially, the proposed procedures are designed to make the requirements set forth in the more comprehensive NEPA regulations meaningful and effective in the context of CPSC decisionmaking.

The proposal document pointed out that the Commission will follow the procedures required by its own regulatory statutes in making findings and decisions regarding product safety actions. The environmental review procedures are intended to be used for analysis and findings concerning the effects Commission actions may have upon the environment. The Commission emphasized, however, that it plans to base its substantive decisions regarding actions on consideration of the results of environmental review in addition to the considerations required by CPSC's regulatory statutes.

Comment on the Proposal

The Commission received one comment, from an interested person, on its proposed environmental review procedures. The commenter referred to § 1021.12(b) of the proposed procedures concerning the contents of an environmental assessment and asked why an assessment should discuss measures for mitigating adverse effects on the environment when, at this stage, no determination concerning the significance of environmental effects and the corresponding need for an environmental impact statement has been made.

Under CEQ's NEPA regulations, an environmental assessment is used in determining whether an environmental impact statement (EIS) is needed for an action. (See § 1508.9 of the NEPA regulations.) One of the issues which is required to be analyzed in detail in an EIS is methods to mitigate adverse environmental impacts (section 1502 of the NEPA regulations). Therefore, the Commission believes it is appropriate to consider mitigation measures briefly in an environmental assessment. If, however, no adverse environmental effect is identified in an assessment of a particular action, then, obviously, mitigation measures need not and cannot be discussed in the assessment. The Commission points out that the language of § 1021.12 recognizes that there may be assessments which do not discuss mitigation measures; the section states that the assessment shall discuss "*any* methods or approaches which would avoid or minimize adverse effects on the environment." (emphasis added)

The Commission points out, in addition, that an action may produce environmental effects which, while not significant, may, nonetheless, be desirable to mitigate. Mitigation measures for such effects should be discussed in the assessment. Furthermore, the availability of mitigation measures in a given instance may render potentially significant environmental effects insignificant. Therefore, such measures need to be identified in the environmental assessment, the document on which a determination of significancy of effects for an action is made.

The commenter also stated that it is CEQ's position that only physical effects on the environment itself are covered by the EIS requirement of NEPA.

The Commission notes that the Council's view as reflected in its NEPA regulations is that not only are the natural and physical environmental effects of an action required to be analyzed in an EIS but also aesthetic, economic, social, cultural, historic, and health effects which interrelate with natural or physical effects. (See §§ 1508.8 and 1508.14.) The Commission's implementing procedures recognize that effects other than ecological effects should be subject to environmental review; for example, § 1021.5(b)(1) states that CPSC regulatory actions dealing with health risks have the potential for producing environmental effects and therefore, will normally require environmental assessments.

The Final Procedures

The final environmental review procedures, with one clarification discussed below, are the same as the procedures proposed on October 31,

1979. In accordance with § 1507.3 of CEQ's NEPA regulations, the final procedures have been submitted to CEQ for review and CEQ has determined that the procedures conform with the NEPA regulations.

The procedures set forth below will be effective on November 20, 1980. The procedures, when effective, supersede the interim NEPA procedures issued by the Commission on May 18, 1976. (16 CFR Part 1021; 42 FR 25494.) The procedures, a few highlights of which are discussed more fully in the preamble to the proposed version of the procedures, are essentially self-explanatory. They provide for the identification of CPSC actions which: Require the preparation of various environmental documents; designate the official reponsible for CPSC compliance with environmental review requirements; assure coordination of the environmental review process with CPSC procedures; describe the content of necessary documents; and provide for obtaining information and comment from public agencies and interested persons.

The Commission has made one clarification to the proposed procedures in the final version below. Section 1021.5(c) of the proposed and final procedures lists those categories of CPSC actions ("categorical exclusions") which normally have no potential for affecting the human environment and for which neither an environmental assessment nor an environmental impact statement is required. The proposal document listed in this category, § 1021.5(c)(4), administrative adjudications which are primarily law enforcement proceedings; this provision is continued in the final version of the procedures. However, the proposal did not specifically refer to the issuance by the Commission of subpoenas or general and special orders, actions which are in the nature of law enforcement, as being categorical exclusions. Since subpoenas and general and special orders are intended only for information-gathering purposes and respondents are required to take no action other than to report to the Commission, the Commission believes it is appropriate that these information-gathering tools be treated as categorical exclusions under CPSC procedures. The Commission has, therefore, added a new subsection (§ 1021.5(c)(7)) in the final version of the procedures generally excluding the issuance of subpoenas and orders from the preparation of environmental documents.

Conclusion

The Commission has been operating under the interim environmental review procedures referred to above for over three years. As indicated in the proposal documents, the new CPSC environmental review procedures follow the interim rules to the maximum extent possible consistent with the Council's new NEPA regulations. The Commission found the interim procedures to be an effective way of carrying out its NEPA responsibilities. The Commission believes that the new procedures below will, similarly, prove to be a workable approach to integrating Commission activities with the requirements of NEPA.

Accordingly, under provisions of the National Environmental Policy Act (Pub. L. 91–190, 42 U.S.C. 4321–4347, as amended by Pub. L. 94–83, August 9, 1975) and the Regulations issued by the President's Council on Environmental Quality (40 CFR Part 1500 et seq., 53 FR 55978, November 29, 1978), the Commission revises Part 1021 of Title 16, Chapter II, Subchapter A, to read as follows:

PART 1021—ENVIRONMENTAL REVIEW

Subpart A—General

Sec.

1021.1 Purpose.
1021.2 Policy.
1021.3 Definitions.
1021.4 Overview of environmental review process for CPSC actions.
1021.5 Categories of CPSC action.

Subpart B—Procedures

1021.6 Responsible official.
1021.7 Coordination of environmental review with CPSC procedures.
1021.8 Legislative proposals.
1021.9 Public participation, notice and comment.
1021.10 Emergencies.
1021.11 Information regarding NEPA compliance.

Subpart C—Contents of Environmental Review Documents

1021.12 Environmental assessment.
1021.13 Finding of no significant impact.
1021.14 Environmental impact statement.

Authority: National Environmental Policy Act (Pub. L. 91–190, 83 Stat. 852, 42 U.S.C 4321–4347, as amended by Pub. L. 94–83, August 9, 1975) and Regulations issued by the President's Council on Environmental Quality (40 CFR Part 1500 et seq., 43 FR 55978, November 29, 1978).

Subpart A—General

§ 1021.1 Purpose.

This part contains Consumer Product Safety Commission procedures for review of environmental effects of Commission actions and for preparation of environmental impact statements (EIS) and related documents. These procedures supersede any Commission procedures previously applicable. The procedures provide for identification of effects of a proposed action and its alternatives on the environment; for assessment of the significance of these effects; for consideration of effects at the appropriate points in the Commission's decision-making process; and for preparation of environmental impact statements for major actions significantly affecting the environment. These procedures are intended to implement the Council on Environmental Quality's final regulations of November 29, 1978 (43 FR 55978; 40 CFR Part 1500, et seq.) concerning agency compliance with the National Environmental Policy Act, as amended (NEPA) (15 U.S.C. 4321–4347 as amended by Pub. L. 94–83, August 8, 1975).

§ 1021.2 Policy.

It is the policy of the Commission to weigh and consider the effects upon the human environment of a proposed action and its reasonable alternatives. Actions will be designed to avoid or minimize adverse effects upon the quality of the human environment wherever practicable.

§ 1021.3 Definitions.

(a) The term "CPSC actions" means rulemaking actions; enforcement actions; adjudications; legislative proposals or reports; construction, relocation, or renovation of CPSC facilities; decisions on petitions; and any other agency activity designated by the Executive Director as one necessitating environmental review.

(b) The term "Commission" means the five Commissioners of the Consumer Product Safety Commission.

(c) The term "CPSC" means the entire organization which bears the title Consumer Product Safety Commission.

(d) The term "NEPA regulations" means the Council of Environmental Quality regulations of November 29, 1978 (43 FR 55978) for implementing the provisions of the National Environmental Policy Act, as amended (42 U.S.C 4321, et. seq).

(e) The term "environmental review process" refers to all activities associated with decisions to prepare an environmental assessment, a finding of no significant impact, or an environmental impact statement.

(f) The definitions given in Part 1508 of the Council's NEPA regulations are applicable to this Part 1021 and are not repeated here.

§ 1021.4 Overview of environmental review process for CPSC actions.

The environmental review process normally begins during the staff development of a proposed action and progresses through the following steps:

(a) *Environmental assessment* (section 1508.9 of the NEPA regulations). The assessment is initiated along with the staff development of a proposal and the identification of realistic alternatives. The assessment shall be available to the Commission before the Commission votes on a proposal and its alternatives. Its purpose is to identify and describe foreseeable effects on the environment, if any, of the action and its alternatives. The assessment culminates in a written report. This report generally contains analyses of the same categories of information as would an EIS, but in a much less detailed fashion. (See § 1021.10(a), below.) It contains sufficient information to form a basis for deciding whether effects on the environment are likely to be "significant." (See section 1508.27 of the NEPA regulations.).

(b) *Decision as to significance of effects on the environment.* This decision is made by the Executive Director of the CPSC and is based upon the results of the environmental assessment as well as any other pertinent information. If the effects are significant, CPSC publishes in the **Federal Register** a notice of intent to prepare an environmental impact statement. (See § 1508.22 of the NEPA regulations.) If not, a finding of no significant impact is prepared. (Section 1508.13 of the NEPA regulations.)

(c) *Finding of no significant impact.* This is a written document which gives reasons for concluding that the effects of a proposed action, or its alternatives, on the environment will not be significant. Together with the environmental assessment, it explains the basis for not preparing an EIS. The finding of no significant impact is signed by the Executive Director. The finding of no significant impact and the environmental assessment accompany the proposed action throughout the Commission decision-making process.

(d) *Draft environmental impact statement.* The content of a draft EIS is described in § 1021.12, below. For a particular proposal, the breadth of issues to be discussed is determined by using the scoping process described in section 1501.7 of the NEPA regulations. The draft EIS pertaining to a proposed rule is before the Commission at the time it considers the proposed action and is available to the public when the notice of proposed rulemaking is published or as soon as possible thereafter. In appropriate instances, the **Federal Register** preamble for a proposed rule may serve as the draft EIS. The draft EIS shall accompany the proposed action throughout the remainder of the Commission decision-making process.

(e) *Final EIS.* The content of this document is described in § 1021.12. A final EIS responds to all substantive comments on the draft statement. It is before the Commission when it considers a final action.

(f) *Supplemental statements.* When CPSC makes changes in the proposed action that are important to environmental issues or when there is significant new environmental information, the Executive Director instructs CPSC staff to prepare supplements to either the draft or final EIS (See § 1502.9(c) of the NEPA regulations).

(g) *Record of decision.* (Sections 1505.2 and 1506.1 of the NEPA regulations.) At the time of a decision on a proposed action which involves an EIS, CPSC prepares a written record of decision explaining the decision and why any alternatives discussed in the EIS were rejected. This written record is signed by the Secretary of the Commission for the Commission. No action going forward on the proposal may be taken until the record of decision is signed and filed in the Office of the Secretary of the Commission.

§ 1021.5 Categories of CPSC actions.

(a) There are no CPSC actions which ordinarily produce significant environmental effects. Therefore, there are no actions for which an environmental impact statement is normally required.

(b) The following categories of CPSC actions have the potential of producing environmental effects and therefore, normally require environmental assessments but not necessarily environmental impact statements:

(1) Regulatory actions dealing with health risks.

(2) Actions requiring the destruction or disposal of large quantities of products or components of products.

(3) Construction, relocation, or major renovation of CPSC facilities.

(4) Recommendations or reports to Congress on proposed legislation that will substantially affect the scope of CPSC authority or the use of CPSC resources, authorize construction or razing of facilities, or dislocate large numbers of employees.

(5) Enforcement actions which result in the widespread use of substitute products, which may present health risks.

(c) The following categories of CPSC actions normally have little or no potential for affecting the human environment; and therefore, neither an environmental assessment nor an environmental impact statement is required. (These categories are termed "categorical exclusions" in the NEPA regulations; see §§ 1507.3(b)(2) and 1508.4):

(1) Rules or safety standards to provide design or performance requirements for products, or revision, amendment, or revocation of such standards.

(2) Product certification or labeling rules.

(3) Rules requiring poison prevention packaging of products or exempting products from poison prevention packaging rules.

(4) Administrative proceedings to require individual manufacturers to give notice of and/or to correct, repair, replace, or refund the purchase price of banned or hazardous products. Other administrative adjudications which are primarily law enforcement proceedings.

(5) Recommendations or reports to Congress on proposed legislation to amend, delete or add procedural provisions to existing CPSC statutory authority.

(6) Decisions on petitions for rulemaking.

(7) Issuance of subpoenas, general orders, and special orders.

(d) In exceptional circumstances, actions within category in paragraph (c) of this section ("categorical exclusions") may produce effects on the human environment. Upon a determination by the Executive Director that a normally excluded proposed action may have such an effect, an environmental assessment and a finding of no significant impact or an environmental impact statement shall be prepared.

Subpart B—Procedures

§ 1021.6 Responsible official.

(a) The Executive Director of the CPSC shall have the responsibility to ensure that the Commission's policies and procedures set forth in this part are carried out. He or she shall have the following specific powers and duties:

(1) To ensure that CPSC environmental review is conducted in accordance with the NEPA regulations as well as this Part 1021.

(2) To evaluate the significance of effects of a CPSC action on the environment and to determine whether a finding of no significant impact or an EIS should be prepared.

(3) To determine when a categorical exclusion requires environmental

review because of exceptional circumstances indicating that the otherwise excluded action may produce an environmental effect.

(4) To instruct CPSC staff to prepare supplements to either draft or final EIS's where there is new environmental information or when CPSC makes changes in a proposed action that are important to environmental issues.

(5) To ensure that environmental documents are before the Commission at all stages of review of proposed action.

(6) To make provisions for soliciting public comment on the anticipated effects on the environment of proposed CPSC actions and their reasonable alternatives at any stage of the environmental review process, whenever he or she decides that such comment will be helpful. The Executive Director, for example, shall have the power to require that provision for soliciting such comments, written or oral, be included in any announcement of a public hearing on proposed rulemaking or on the merits of a petition for rulemaking.

(7) To call upon all resources and expertise available to CPSC to ensure that environmental review is accomplished through an interdisciplinary effort.

(8) To delegate any of his or her powers and duties, other than paragraphs (a) (2) and (3) of this section, to any officer or employee of the CPSC.

§ 1021.7 Coordination of environmental review with CPSC procedures.

(a) The Commission shall consider all relevant environmental documents in evaluating proposals for Commission action. The preparation and completion of assessments and statements required by this part shall be scheduled to assure that available environmental information is before the Commission at all appropriate stages of development of CPSC actions along with technical and economic information otherwise required. The range of alternatives discussed in appropriate environmental documents shall be encompassed by the range of alternatives considered by the Commission for an action.

(b) An environmental assessment on a proposed rulemaking action requiring environmental review shall be available to the commission before the Commission votes on a proposed rule, and its alternatives. If the Executive Director determines that an EIS is needed, the draft EIS shall normally be before the Commission at the time it votes to publish a proposed rule. A final EIS shall be before the Commission when it considers final action on a proposed rule. Relevant environmental documents shall accompany the proposed rulemaking action throughout the Commission's decisionmaking process.

(c) Draft EISs or findings of no significant impact together with environmental assessments shall be made available to the public for comment at the time of publication in the **Federal Register** of CPSC proposals for regulatory action requiring environmental review or promptly thereafter. Pursuant to § 1506.10 of the NEPA regulations, no decision on a proposed action shall be made by the Commission until the later of 90 days after the Environmental Protection Agency (EPA) has published a notice announcing receipt of the draft EIS or 30 days after EPA announces receipt of the final EIS. These time periods may run concurrently. In addition, with regard to rulemaking for the purpose of protecting the public health and safety, the Commission may waive the 30 day period and publish a decision on a final rule simultaneously with publication by EPA of the notice of availability.

(d) Whenever the Commission decides to solicit offers by an outside person or organization to develop a proposed consumer product safety standard in accordance with section 7 of the Consumer Product Safety Act (15 U.S.C. 2056) and the Executive Director has determined that environmental review is needed, the Executive Director shall recommend to the Commission whether the "offeror" should perform an environmental assessment during development of the proposed standard. In making this recommendation, the Executive Director shall take into account the resources of the "offeror", including the expertise and money available to it. If the Commission decides that the "offeror" should perform an assessment, the agreement between the Commission and the offeror shall so provide. CPSC, however, shall independently evaluate any assessment prepared and shall take responsibility for the scope and content of the assessment.

(e) CPSC adjudications are primarily law enforcement proceedings and therefore are not agency actions within the meaning of NEPA. (See § 1508.18(8) of the NEPA regulations.) However, in CPSC formal rulemaking proceedings, all available environmental information, including any supplements to a draft or final EIS, shall be filed in the Office of the Secretary and shall be made part of the formal record of the proceeding.

§ 1021.8 Legislative proposals.

Draft EISs on legislative proposals which may significantly affect the environment shall be prepared as described in § 1506.8 of the NEPA regulations. The draft EIS, where feasible, shall accompany the legislative proposal or report to Congress and shall be available in time for Congressional hearings and deliberations. The draft EIS shall be forwarded to the Environmental Protection Agency in accordance with § 1506.9 of the NEPA regulations. Comments on the legislative statement and CPSC's responses shall be forwarded to the appropriate Congressional committees.

§ 1021.9 Public participation, notice, and comment.

(a) Information and comments are solicited from and provided to the public on anticipated environmental effects of CPSC actions as follows:

(1) Promptly after a decision is made to prepare a draft EIS, a notice of intent to prepare the draft EIS shall be published in the CPSC Public Calendar and in the **Federal Register**. The notice shall state the nature of the proposed action and available alternatives and shall describe the planned scoping process. The notice shall solicit information and comment by other governmental agencies and the public.

(2) As soon as practicable after a finding of no significant impact is completed, a copy of the finding together with the environmental assessment report shall be forwarded to the Office of the Secretary of the Commission to be made available to the public. Any information and comments received from the public on the documents will be considered and will accompany the documents throughout the CPSC decisionmaking process, but comments will not ordinarily be answered individually.

(3)(i) Upon completion of a draft EIS, a notice of its availability for comment should be published in the CPSC Public Calendar and in the **Federal Register.** Copies of the draft EIS shall be filed with the Environmental Protection Agency (EPA) in accordance with § 1506.9 of the NEPA regulations. The length of the comment period on the draft EIS shall be stated in the notice of availability and on the cover of the draft EIS. The comment period, in accordance with § 1506.10 of the NEPA regulations, shall be a minimum of 45 days from the date the notice of receipt of the draft EIS is published in the **Federal Register** by EPA. It should also be stated in the CPSC notice that comments received during the comment period will be addressed in the final EIS, whereas late

comments will be considered to the extent practicable, and that all comments will be appended to the final EIS.

(ii) Copies of the draft EIS shall be sent to public and private organizations known by CPSC to have special expertise with respect to the environmental effects involved, those who are known to have an interest in the action, and those who request an opportunity to comment. Also, copies shall be circulated for comment to Federal, State, and local agencies with jurisdiction by law and special expertise with respect to environmental effects involved. Part 1503 of the NEPA regulations shall be consulted for further details of this procedure.

(iii) Draft EIS's shall be available to the public in the Office of the Secretary at Commission headquarters.

(4) Upon completion of a final EIS, a notice of its availability in the Office of the Secretary, shall be published in the CPSC Public Calendar and if deemed appropriate, in the **Federal Register.** Copies of the final EIS shall be forwarded to EPA and one copy shall be sent to each entity or person who commented on the draft EIS.

(5) A list of EIS's under preparation and of EIS's or findings of no significant impact and environmental assessments completed shall be available to the public in the Office of the Secretary, at Commission headquarters. The list shall be continuously updated.

(6) In addition to publication in the CPSC Public Calendar and the **Federal Register,** notices called for by this section may also be publicized through press releases or local newspapers, whenever appropriate.

§ 1021.10 Emergencies.

Where emergency circumstances make it necessary to take an action without observing all the provisions of these implementing procedures or the NEPA regulations, CPSC will consult with the Council on Environmental Quality about alternative arrangements.

§ 1021.11 Information regarding NEPA compliance.

Interested persons may contact the Commission's Office of the Executive Director (301–492–6550) for information regarding CPSC NEPA compliance.

Subpart C—Contents of Environmental Review Documents

§ 1021.12 Environmental assessment.

(a) An environmental assessment shall first briefly describe the proposed action and realistic alternative actions. Next, it shall identify all effects on the environment that can be expected to result from the proposed and alternative actions. After each anticipated effect is identified, it shall be described as fully as can be done with available data in order to show its magnitude and significance. Sources of information for assessment include CPSC staff studies and research reports, information gathered at hearings or meetings held to obtain the views of the public on the proposed action, and other information received from members of the public and from governmental entities.

(b) The assessment shall identify and describe any methods or approaches which would avoid or minimize adverse effects on the environment.

§ 1021.13 Finding of no significant impact.

(a) A finding of no significant impact shall cite and be attached to the environmental assessment upon which it is based. It shall refer to anticipated effects upon the environment identified in the environmental assessment and give the reason(s) why those effects will not be significant. The final paragraph of the finding shall give the reasons why the overall impact on the environment is not regarded as significant.

(b) The signature of the Executive Director shall appear at the end of the finding of no significant impact.

§ 1021.14 Environmental impact statement.

(a) Draft and final EIS's, unless there is a compelling reason to do otherwise, shall conform to the recommended format specified in § 1502.10 of the NEPA regulations and shall contain the material required by §§ 1502.11–1502.18 of those regulations.

(b) It may be necessary to include in an EIS a description of effects which are not effects on the natural or physical environment, but rather are, for example, purely economic or health effects. For this reason, an EIS may include issues and facts that are thoroughly analyzed in other comprehensive CPSC documents such as hazard analyses, economic impact analyses, or analyses of impact on particular age groups among consumers. In such cases, the EIS shall not duplicate the other documents, but rather shall cite and summarize from them. A list of background documents and sources of data cited in the EIS shall appear at the end of every EIS.

Dated: October 15, 1980.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 80–32697 Filed 10–20–80; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF STATE

Office of the Secretary

22 CFR Part 142

[Departmental Reg. 108.797]

Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting From Federal Financial Assistance

AGENCY: Department of State

ACTION: Final rule.

SUMMARY: This regulation sets forth policies and procedures to assure nondiscrimination on the basis of handicap in programs and activities in which the Department of State extends financial assistance. The rule implements Section 504 of the Rehabilitation Act of 1973, as amended, and Executive Order 11914, which relate to nondiscrimination toward handicapped persons. The rule follows the guidelines established by the Department of Health and Human Services, for carrying out the provisions of E.O. 11914 (43 FR 2132, January 13, 1978).

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Paul M. Coran, Office of the Legal Adviser, United States Department of State, 2201 C Street, N.W., Washington, D.C. 20520, (202) 632–3022.

SUPPLEMENTARY INFORMATION: On April 11, 1979, the Department of State published a proposed rule implementing Section 504 of the Rehabilitation Act of 1973, as amended [44 FR 21661].

The rule implements Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, with regard to federal financial assistance administered by the Department of State. Section 504 prohibits qualified handicapped persons from being denied the benefits of, or participation in, any federally assisted program. The rule applies to all recipients of financial assistance from the Department of State including organizations which receive nonreimbursed or partially reimbursed personnel assignments from the Department of State, but no funds. The programs to which this rule applied are set forth in Appendix A.

The rule was reviewed by the Office of Civil Rights, DHEW, for compliance with Executive Order 11914, and the Architectural and Transportation Barriers Compliance Board was consulted pursuant to 45 CFR Section 85.7.

Following is a summary of the principal comments and substantive revisions to the proposed regulation.

1. Several individuals and an organization urged that the rule be amended to encompass Department of State financial assistance to private elementary and secondary schools operating and educating American and other students abroad. The Department believes the suggested amendment to be beyond the scope of Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), which applies only to qualified handicapped individuals ". . . in the United States." Section 142.2 has been revised, however, to reflect the meritorious suggestions of one commentator that programs carried on in part or in whole abroad might directly affect handicapped individuals in the United States.

2. Several organizations commented persuasively that the proposed regulation dealing with recipient communications with and accommodation to individuals with impaired vision or hearing would be more effective and provide better guidance to recipients if it set forth specifically the types of compensation modes envisioned; Sections 142.4(e), 142.8(a), 142.12(b), 142.16(b), and 142.44(d) have been revised accordingly.

3. One organization suggested that equitable and logical considerations do not warrant the exclusion from the requirement for recipient adoption of grievance procedures, complaints from applicants for employment or from applicants for admission to post-secondary educational institutions. The Department now concurs in that view and has revised Section 142.7 (b), accordingly.

4. One organization commented that the proposed regulation regarding recipient screening processes too narrowly focused on neutralizing the effects of impaired sensory, manual, or speaking skills, which unwarrantedly would not encompass such conditions as dyslexia. To remove any possibility of unjustified omission, Sections 142.13(b), 142.42(b)(3), and 142.44(c) have been revised to encompass generally the impairment of skills which results from handicaps.

5. One organization's comments opposed categorically the alternative of home visits for program accessibility as set forth in Section 142.16(b). The Department has decided to retain this provision for home visit program accessibility to accommodate the hopefully exceptional circumstance where existing facilities will not afford program assessibility to a beneficiary.

6. One organization observed that Sections 142.6(c), Self-evaluation, and 142.16(d) Transition plans are integrally connected but procedurally infirmed by 142.6(c) prescribing one year for self-evaluation and modification of offensive policies and practices, while Section 142.16(d) requires a program accessibility transition plan within six months from the effective date of this rule. The observed conflict is well taken and Section 142.16(d) has been revised accordingly to provide for a six month time period for self-evaluation.

7. One organization suggested, with merit, that a recipient's transition plan should include a list of persons and organizations consulted in the process of plan formulation. Adoption of this suggestion is desirable as it would encourage recipients to broaden their outreach to all interested parties. Section 142.16(d) has been revised accordingly.

8. The Architectural and Transportation Barriers Compliance Board ("ATBCB") through consultation pursuant to 45 CFR 85.7, made several suggestions which have been adopted in this final rule. Accordingly, 142.17(a), (b) and (c) have been modified to reflect general requirements of the Architectural Barriers Act, 42 U.S.C. 4151 *et seq.*

In consideration of the foregoing, part 142 is hereby added to Title 22 of the Code of Federal Regulations as set forth below:

PART 142—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS AND ACTIVITIES RECEIVING OR BENEFITING FROM FEDERAL FINANCIAL ASSISTANCE

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Subpart D—Postsecondary Education

142.41 Application of this subpart.
142.42 Admissions and recruitment.
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Subpart E—Health, Welfare, Social, and Other Services

142.61 Application of this subpart.
142.62 Health, welfare, social, and other services.
142.63 Drug and alcohol addicts.
142.64–1432.69 [Reserved].

Subpart F—Procedures

142.70 Procedures.
142.71—142.99 [Reserved]
Appendix A—Grants and activities to which this part applies.

Authority: Sec. 504, Rehabilitation Act of 1973, Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794); Sec. 11(a), Rehabilitation Act; Amendments of 1974, Pub. L. 93–516, 88 Stat. 1619 (29 U.S.C. 706); amendments of 1978, Pub. L. 95–602.

Subpart A—General Provisions

§ 142.1 Purposes.

The purpose of this part is to effectuate section 504 of the Rehabilitation Act of 1973, which is designed to eliminate discrimination on the basis of handicap in any program or activity receiving Federal financial assistance.

§ 142.2 Application.

This part applies to all programs directly affecting handicapped individuals in the United States carried on by recipients of Federal financial assistance pursuant to any authority held or delegated by the Secretary of State, including the Federally-assisted programs and activities listed in Appendix A of this part. (Appendix A may be revised from time-to-time by notice in the **Federal Register**.) It applies to money paid, property transferred, or other Federal financial assistance extended under any such program after the effective date of this regulation, even if the application for such assistance is approved prior to such effective date. This part does not apply to:

(a) Any Federal financial assistance by way of insurance or guaranty contracts;

(b) Money paid, property transferred or other assistance extended under any such program before the effective date of this part;

(c) Any assistance to any individual who is the ultimate beneficiary under any such program; and

(d) Any procurement of goods or services, including the procurement of training. This part does not bar selection and treatment reasonably related to the foreign affairs objective or such other authorized purpose as the Federal assistance may have. It does not bar selections which are limited to particular groups where the purpose of the program calls for such a limitation, nor does it bar special treatment including special courses of training, orientation or counseling consistent with such purpose.

§ 142.3 Definitions.

As used in this part, the term:

(a) "Executive Order" means Executive Order 11914, entitled "Nondiscrimination with Respect to the Handicapped in Federally Assisted Programs," issued April 28, 1976.

(b) "The Act" means the Rehabilitation Act of 1973, Pub. L. 93–112, as amended by the Rehabilitation Act Amendments of 1974, Pub. L. 93–516, and the Rehabilitation Act of Amendments of 1978, Pub. L. 95–602.

(c) "Section 504" means section 504 of the Rehabilitation Act of 1973, Pub. L. 93–112, as amended by the Rehabilitation Act Amendments of 1974, Pub. L. 93–516, 29 U.S.C. 794: amendments of 1978, Pub. L. 95–602.

(d) "Department" means the Department of State and includes each of its organizational units. It does not include the Agency for International Development.

(e) "Secretary" means the Secretary of State or any officer or employee of the Department to whom the Secretary has heretofore delegated, or to whom the Secretary may hereafter delegate, the authority to act under the regulations in this part.

(f) "Recipient" means any State or its political subdivision, any instrumentality of a state or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance and any sovereign foreign government.

(g) "Applicant for Assistance" means one who submits an application, request, or plan required to be approved by a Department official or by a recipient as a condition or becoming a recipient.

(h) "Federal financial assistance" means any grant, loan, contract (other than a procurement contract or a contract of insurance or guaranty), cooperative agreement, or any other arrangement by which the Department provides or otherwise makes available assistance in the form of:

(1) Funds;

(2) Services of Federal personnel; or

(3) Real and personal property or any interest in or use of such property, including:

(i) Transfers or leases of such property for less than fair market value or for reduced consideration; and

(ii) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government.

(i) "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.

(j) "Handicapped person". (1) means any person who: (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.

(2) As used in paragraph (j)(1) of this section, the phrase:

(i) "Physical or mental impairment" means (A) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or (B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness and drug addiction and alcoholism.

(ii) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(iii) "Has a record of such an impairment" means has a story of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(iv) "Is regarded as having an impairment" means (A) has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation; (B) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairments, or (C) has none of the impairments defined in paragraph (j)(2)(i) of this section but is treated by a recipient as having such an impairment.

(k) "Qualified handicapped person" means:

(1) With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question;

(2) With respect to public pre-school, elementary, secondary, or adult educational services, a handicapped person, (i) of an age during which nonhandicapped persons are provided such services, (ii) of any age during which it is mandatory under State law to provide such services to handicapped persons, or (iii) to whom a State is required to provide a free appropriate public education under section 612 of the Education of the Handicapped Act; and

(3) With respect to postsecondary and vocational education services, a handicapped person who meets the academic and technical standard requisite to admission or participation in the recipient's education program or activity;

(4) With respect to other services, a handicapped person who meets the essential eligibility requirements for the recipient of such services.

(l) "Handicap" means any conditions or characteristic that renders a person a handicapped person as defined in paragraph (j) of this section.

§ 142.4 Discrimination prohibited.

(a) *General.* No qualified handicapped person shall on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance.

(b) *Discriminatory actions prohibited.* (1) A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped person unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to any agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipients program;

(vi) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vii) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

(2) For purposes of this part, aids, benefits, and services to be effective, are not required to produce identical result or level of achievement for handicapped and nonhandicapped persons, but must afford handicapped person equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person's needs.

(3) Despite the existence of separate or different programs or activities provided in accordance with this part, a recipient may not deny a qualified handicapped person the opportunity to participate in such programs or activities that are not separate or different.

(4) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration (i) that have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap, (ii) that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program with respect to handicapped persons, or (iii) that perpetuate the discrimination with respect to another recipient if both recipients are subject to common administrative control or are agencies of the same State.

(5) In determining the site or location or a facility, an applicant for assistance or a recipient may not make selections (i) that have the effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives or benefits from Federal financial assistance of (ii) that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to handicapped persons.

(6) As used in this section, the aid, benefit, or service provided under a program or activity receiving or benefiting from Federal financial assistance includes any aid, benefit, or service provided in or through a facility that has been constructed, expanded, altered, leased or rented, or otherwise acquired, in whole or in part with Federal financial assistance.

(c) *Programs limited by Federal law.* The exclusion of a handicapped person from the benefits or a program limited by Federal statute or executive order to a different class of handicapped persons is not prohibited by this part.

(d) Recipients shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

(e) Recipients shall ensure that communications with their applicants, employees, and handicapped persons participating in their programs and activities, or receiving aids, or benefits of services, are available to persons with impaired vision and hearing in appropriate modes, including braille, enlarged type, sign language and telecommunication devices for the deaf.

§ 142.5 Assurances required.

(a) *Assurances.* An applicant for Federal financial assistance for a program or activity to which this part applies shall submit an assurance on a form specified by the Secretary, that the program will be operated in compliance with this part. An applicant may incorporate these assurances by reference in subsequent applications to the Department.

(b) *Duration of obligations.* (1) In the case of Federal financial assistance extended in the form of real property or to provide real property or structures on the property, the assurance will obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for the purposes for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) Where no transfer of property is involved but property is purchased or improved with Federal financial assistance, the recipient shall agree to include the covenant described in paragraph (c)(1) of this section in the instrument effecting or recording any subsequent transfer of the property.

(3) Where Federal financial assistance is provided by the Department in the form of real property or interest in real property, the covenant shall also include a condition coupled with a right to be reserved by the Department to revert title to the property in the event of a breach of the covenant. If a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing facilities on the property for the purposes for which the property was transferred, the Secretary may, upon request of the transferee and if necessary to accomplish such financing and upon such conditions as the Secretary deems appropriate, agree to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

§ 142.6 Remedial action, voluntary action, and self-evaluation.

(a) *Remedial action.* (1) If the Secretary finds that a recipient has discriminated against persons on the basis of handicap in violation of section 504 of the Act or this part, the recipient shall take such remedial action as the Secretary deems necessary to overcome the effects of the discrimination.

(2) Where a recipient is found to have discriminated against persons on the basis of handicap in violation of section 504 of the Act or this part and where another recipient exercises control over the recipient that has discriminated, the Secretary, where appropriate, may require either or both recipients to take remedial action.

(3) The Secretary may, where necessary to overcome the effects of discrimination in violation of section 504 of the Act or this part, require a recipient to take action (i) with respect to handicapped persons who are no longer participants in the recipient's program but who were participants in the program when such discrimination occurred, or (ii), with respect to handicapped persons who would have been participants in the program had the discrimination not occurred.

(b) *Voluntary action.* A recipient may take steps, in addition to any action required by this part, to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity by qualified handicapped persons.

(c) *Self-evaluation.* (1) A recipient shall, within six months of the effective date of this part:

(i) Evaluate, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, its current policies and practices and the effects thereof that do not or may not meet the requirements of this part;

(ii) Modify, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, any policies and practices that do not meet the requirements of this part; and

(iii) Take, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to these policies and practices.

(2) A recipient shall, for at least three years following completion of the evaluation required under paragraph (c)(1) of this section, maintain on file, make available for public inspection, and provide to the Secretary upon request: (i) A list of the interested persons consulted, (ii) a description of areas examined and any problems identified, and (iii) a description of any modifications made and of any remedial steps taken.

§ 142.7 Designation of responsible employee and adoption of grievance procedures.

(a) *Designation of responsible employee.* A recipient that employs 15 or more persons shall designate at least one person to coordinate its efforts to comply with this part.

(b) *Adoption of grievance procedures.* A recipient that employs 15 or more persons shall adopt grievance procedures that incorporate appropriate due process for the prompt and equitable resolution of complaints alleging any action prohibited by this part.

§ 142.8 Notice.

(a) A recipient shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of handicap in violation of section 504 of the Act or this part. The notification shall state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment or employment in, its programs and activities. The notification shall also include an identification of the responsible employee designated pursuant to Sec. 142.7(a). A recipient shall make the initial notification required by this paragraph within 90 days of the effective date of this part. Methods of initial and continuing notification may include but are not limited to the posting of notices, publication in newspapers and magazines, placement of notices in recipients' publications, distribution of memoranda or other written communications; and with persons with impaired vision and hearing, through appropriate modes including braille, enlarged type, sign language, and telecommunication devices for the deaf.

(b) If a recipient publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants or employees, it shall include in those materials or publications a statement of the policy described in paragraph (a) of this section. A recipient may meet the requirement of the paragraph either by including appropriate inserts in existing materials and publications or by revising and reprinting the materials and publications.

§ 142.9 Administrative requirements for small recipients.

The Secretary may require any recipient with fewer than fifteen employees, or any class of such recipients, to comply with § 142.7, in whole or in part, when the Secretary finds a violation of this part or finds that such compliance will not significantly impair the ability of the recipient or class of recipients to provide benefits or services.

§ 142.10 Effect of State or local law or other requirements and effect of employment opportunities.

(a) The obligation to comply with this part is not obviated or alleviated by the existence of any State or local law or other requirement that, on the basis of handicap, imposes prohibitions or limits upon the eligibility of qualified handicapped persons to receive services or to practice any occupation or profession.

(b) The obligation to comply with this part is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for handicapped persons than for nonhandicapped persons.

Subpart B—Employment Practices

§ 142.11 Discrimination prohibited.

(a) *General.* (1) No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity receiving Federal financial assistance.

(2) A recipient shall make all decisions concerning employment under any program or activity to which this part applies in a manner which ensures that discrimination on the basis of handicap does not occur and may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of handicap.

(3) A recipient may not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants or employees to discrimination prohibited by this subpart. This includes relationships with employment and referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the recipient, and with organizations providing training and apprenticeship programs.

(b) *Specific activities.* The provisions of this part apply to:

(1) Recruitment, advertising, and the processing of applications for employment;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right to return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classification, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absence, sick leave, or any other leave;

(6) Fringe benefits available by virtue of employment whether or not administered by the recipient;

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences and other related activities, and selection for leaves of absence to pursue training;

(8) Employer sponsored activities, including social or recreational programs; and

(9) Any other condition, or privilege of employment.

(c) A recipient's obligation to comply with this subpart is not affected by any inconsistent term of any collective bargaining agreement to which it is a party.

§ 142.12 Reasonable accommodation.

(a) A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of the program.

(b) Reasonable accommodation may include: (1) Making facilities used by employees readily accessible to and usable by handicapped persons, and (2) job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions.

(c) In determining pursuant to paragraph (a) of this section whether an accommodation would impose an undue hardship on the operation of a recipient's program, factors to be considered include:

(1) The overall size of the recipient's program with respect to number and type of facilities, and size of budget;

(2) Job restructuring, part-time or modified work schedules, acquisition and or modification of equipment of devices such as telecommunication devices for the deaf, the provision of readers or interpreters and other similar actions including the use of braille, enlarged type, and sign language, when appropriate.

(3) The nature and cost of the accommodation needed.

(d) A recipient may not deny any employment opportunity to a qualified handicapped employee or applicant if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

§ 142.13 Employment criteria.

(a) A recipient may not make use of any employment test or other selection criterion that screens out or tends to screen out handicapped persons or any class of handicapped persons unless:

(1) The test score or other selection criterion, as used by the recipient, is shown to be job-related for the position in question, and

(2) Alternative job-related tests or criteria that do not screen out or tend to screen out as many handicapped persons are not shown by the Secretary to be available.

(b) A recipient shall select and administer tests concerning employment to ensure that when administered to any applicant or employee who has a handicap that impairs sensory, manual, speaking, or other skills, the test results accurately reflect the applicant's or employee's job skills, aptitude, or whatever factor the test purports to measure, rather then reflecting the applicant's impaired sensory, manual, speaking, or other skills (except where those skills are the factors that the test purports to measure).

§ 142.14 Pre-employment inquiries.

(a) Except as provided in paragraph (b) and (c) of this section, a recipient may not conduct a preemployment medical examination or may not make preemployment inquiry of an applicant as to whether the applicant is a handicapped person or as to the nature or severity of a handicap. A recipient may, however, make preemployment inquiry into an applicant's ability to perform job-related functions.

(b) When a recipient is taking remedial action to correct the effects of past discrimination pursuant to 142.6(a), when a recipient is taking voluntary action to overcome the effect of conditions that resulted in limited participation in its federally assisted program or activity pursuant to 142.6(b), or when a recipient is taking affirmative action pursuant to section 503 of the Act, the recipient may invite applicants for employment to indicate whether and to what extent they are handicapped: *Provided,* that:

(1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally, if no written questionnaire is used, that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary or affirmative action efforts; and

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential as provided in paragraph (d) of this section, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that is will be used only in accordance with this part.

(c) Nothing in this section shall prohibit a recipient from conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty. *Provided,* that: (1) All entering employees are subjected to such an examination regardless of handicap, and (2) the results of such an examination are used only in accordance with the requirement of this part.

(d) Information obtained in accordance with this section as to the medical condition or history of the applicant shall be collected and maintained on separate forms that shall be accorded confidentiality as medical records except that:

(1) Supervisors and managers may be informed regarding restrictions on the work or duties of handicapped persons and regarding necessary accommodation;

(2) First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment; and

(3) Government officials investigating compliance with the Act shall be provided relevant information upon request.

Subpart C—Program Accessibility

§ 142.15 Discrimination prohibited.

No qualified handicapped person shall, because a recipient's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which the part applies.

§ 142.16 Existing facilities.

(a) *Program accessibility.* A recipient shall operate each program or activity to which this part applies so that the program or activity when viewed in its entirety is readily accessible to and usable by handicapped persons. This paragraph does not require a recipient to make each of its existing facilities or every part of an existing facility accessible to and usable by handicapped persons.

(b) *Methods.* A recipient may comply with the requirement of paragraph (a) of this section through such means as the addition of equipment (e.g., telecommunication device for the deaf) redesign of equipment, reassignment of classes or other services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of health, welfare, or other social services at alternate accessible sites, alteration of existing facilities and construction of new facilities in conformance with the requirement of 142.18, or any other method that results in making its program or activity accessible to handicapped persons. A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with paragraph (a) of this section. In choosing among available methods for meeting the requirement of paragraph (a) of this section, a recipient shall give priority to those methods that offer programs and activities to handicapped persons in the most integrated setting appropriate.

(c) *Time period.* A recipient shall comply with the requirement of

paragraph (a) of this section within 60 days of the effective date of this part except that where structural changes in facilities are necessary, such changes shall be made within three years of the effective date of this part, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities are necessary to meet the requirement of paragraph (a) of this section, a recipient shall develop, within six months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons. A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum:

(1) Identify physical obstacles in the recipient's facilities that limit the accessibility of its program or activity to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve full program accessibility and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period;

(4) Indicate the person responsible for implementation of the plan; and

(5) A list of all handicapped persons and organizations consulted in the plan formulation process.

(e) *Notice.* The recipient shall adopt and implement procedures to ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of services, activities, and facilities that are accessible to and usable by handicapped persons.

§ 142.17 New construction.

(a) *Design and construction.* Each facility or part of the facility constructed by, on behalf of, or for the use of a recipient shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by handicapped persons, if the construction was commenced after the effective date of this part; or since 1968, pursuant to the Architectural Barriers Act, for federally funded construction (in whole or in part).

(b) *Alteration.* Each facility or part of a facility which is altered by, on behalf of, or for the use of a recipient after the effective date of this pact shall, subject to the standards set forth in 41 CFR 101–19.6 *et seq.*, be altered in such a manner that the altered portion of the facility is readily accessible to and usable by handicapped persons.

(c) American National Standards Institute accessibility standards: Design, construction, or alteration of facilities in conformance with the "American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," published by the American National Standards Institute, Inc. (ANSI A117.1–1969)(R1971) (Copies obtainable from American National Standards Institute, Inc., 1430 Broadway, New York, New York 10018.), is incorporated by reference in this part, and shall constitute compliance with paragraphs (a) and (b) of this section. Departures from particular requirements of those standards by the use of other methods shall be permitted only by special waiver or modification by the appropriate standard setting agency (the General Services Administration, Department of Housing and Urban Development, Department of Defense, United States Postal Service), after application by the Secretary, and upon a determination that a waiver or modification is clearly necessary.

§§ 142.18–142.40 [Reserved]

Subpart D—Postsecondary Education

§ 142.41 Application of this subpart.

Subpart D applies to postsecondary education programs and activities, including postsecondary vocational education programs and activities, that receive or benefit from Federal financial assistance from the Department of State, and to recipients that operate, or that receive or benefit from Federal financial assistance for the operation of, such programs or activities.

§ 142.42 Admissions and recruitment.

(a) *General.* Qualified handicapped persons may not, on the basis of handicap, be denied admission or be subjected to discrimination in admission or recruitment by a recipient to which this subpart applies.

(b) *Admissions.* In administering its admission policies, a recipient to which this subpart applies:

(1) May not apply limitations upon the number or proportion of handicapped persons who may be admitted;

(2) May not make use of any test or criterion for admission that has a disproportionate, adverse effect on handicapped persons or any class of handicapped persons unless (i) the test or criterion, as used by the recipient, has been validated as a predictor of success in the education program of activity in question and (ii) alternate tests or criteria that have a less disproportionate, adverse effect are not shown by the Secretary to be available;

(3) Shall assure itself that (i) admissions tests are selected and administered so as to ensure that, when a test is administered to an applicant who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the applicant's impaired sensory, manual, speaking or other skills (except where those skills are the factors that the test purports to measure); (ii) admissions tests that are designed for persons with impaired sensory, manual, speaking or other skills are offered as often and in as timely a manner as are other admissions tests; and (iii) admissions tests are administered in facilities that, are accessible to handicapped persons; and

(4) Except as provided in paragraph (c) of this section, may not make preadmission inquiry as to whether an applicant for admission is a handicapped person but, after admission, may make inquiries on a confidential basis as to handicaps that may require accommodation.

(c) Preadmission inquiry exception. When a recipient is taking remedial action to correct the effects of past discrimination pursuant to § 142.6(a) or when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity pursuant to § 142.6(b), the recipient may invite applicants for admissions to indicate whether and to what extent they are handicapped; *Provided,* that: (1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary action efforts; and

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential, that refusal to provide it will not subject the applicant to any adverse treatment, and that it will be used only in accordance with this part.

(d) *Validity studies.* For the purpose of paragraph (c)(2) of this section, a recipient may base prediction equations on first year grades, but shall conduct periodic validity studies against the criterion of overall success in the

education program or activity in question in order to monitor the general validity of the test scores.

§ 142.43 Treatment of students; general.

(a) No qualified handicapped student shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any academic, research, occupational, training, housing, health, insurance, counseling, financial aid, physical education, athletics, recreation, transportation, other extracurricular, or other postsecondary education program or activity to which this subpart applies.

(b) A recipient to which this subpart applies that considers participation by students in education programs activities not operated wholly by the recipient as part of, or equivalent to, an education program or activity operated by the recipient shall assure itself that the other education program or activity, as a whole, provides an equal opportunity for the participation of qualified handicapped persons.

(c) A recipient to which this subpart applies may not, on the basis of handicap, exclude any qualified handicapped student from any course, course of study, or other part of its education program or activity.

(d) A recipient to which this subpart applies shall operate its programs and activities in the most integrated setting appropriate.

§ 142.44 Academic adjustments.

(a) *Academic requirements.* A recipient to which this subpart applies shall make such modifications to its academic requirements as are necessary to ensure that such requirements do not discriminate or have the effect of discrimination, on the basis of handicap, against a qualified handicapped applicant or student. Academic requirements that the recipient can demonstrate are essential to the program of instruction being pursued by such student or to any directly related licensing requirement will not be regarded as discriminatory within the meaning of this section. Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific courses required for the completion of degree requirements, and adaptation of the manner in which specific courses are conducted.

(b) *Other rules.* A recipient to which this subpart applies may not impose upon handicapped students other rules, such as the prohibition of tape recorders in classrooms or of dog guides in campus buildings, that have the effect of limiting the participation of handicapped students in the recipient's education program or activity.

(c) *Course examinations.* In its examinations or other procedures for evaluating students' academic achievement in its program, a recipient to which this subpart applies shall provide such methods for evaluating the achievement of students who have a handicap that impairs sensory, manual, speaking or other skills as will best ensure that the results of the evaluation represent the student's achievement in the course, rather than reflecting the student's impaired sensory, manual, speaking or other skills (except where such skills are the factors that the test purports to measure).

(d) *Auxiliary aids.* (1) A recipient to which this subpart applies shall take such steps as are necessary to ensure that no handicapped student is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination under the education program or activity operated by the recipient because of the absence of educational auxiliary aids for students with impaired sensory, manual, speaking or other skills.

(2) Auxiliary aids may include taped texts, interpreters, telecommunication devices for the deaf or other effective methods of making orally delivered materials available to students with hearing impairments, readers in libraries for students with visual impairments, classroom equipment adapted for use by students with manual impairments, and other similar services and actions. Recipients need not provide attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.

§ 142.45 Housing.

(a) *Housing provided by the recipient.* A recipient that provides housing to its nonhandicapped students shall provide comparable, convenient, and accessible housing to handicapped students at the same cost as to others. At the end of the transition period provided for in subpart C of this part, such housing shall be available in sufficient quantity and variety so that the scope of handicapped students' choice of living accommodation is, as a whole, comparable to that of nonhandicapped students.

(b) *Other housing.* A recipient that assists any agency, organization, or person in making housing available to any of its students shall take such action as may be necessary to assure itself that such housing is, as a whole, made available in a manner that does not result in discrimination on the basis of handicap.

§ 142.46 Financial and employment assistance to students.

(a) *Provisions of financial assistance.* (1) In providing financial assistance of qualified handicapped persons, a recipient to which this subpart applies may not:

(i) On the basis of handicap, provide less assistance than is provided to nonhandicapped persons, limit eligibility for assistance, or otherwise discriminate; or

(ii) Assist any entity or person that provides assistance to any of the recipient's students in a manner that discriminates against qualified handicapped persons on the basis of handicap.

(2) A recipient may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established under wills, trusts, bequests, or similar legal instruments that require awards to be made on the basis of factors that discriminate or have the effect of discriminating on the basis of handicap only if the overall effect of the award of scholarships, fellowships, and other forms of financial assistance is not discriminatory on the basis of handicap.

(b) *Assistance in making available outside employment.* A recipient that assists any agency, organization, or person in providing employment opportunities to any of its students shall assure itself that such employment opportunities, as a whole, are made available in a manner that would not violate subpart B if they were provided by the recipient.

(c) *Employment of students by recipients.* A recipient that employs any of its students may not do so in a manner that violates subpart B.

§ 142.47 Non-academic services.

(a) *Physical education and athletics.* (1) In providing physical education courses, athletics and similar programs and activities to any of its students, a recipient to which this subpart applies may not discriminate on the basis of handicap. A recipient that offers physical education courses or that operates or sponsors intercollegiate, club, or intramural athletics shall provide to qualified handicapped students an equal opportunity for participation in these activities.

(2) A recipient may offer to handicapped students physical education and athletic activities that are separate or different only if separate or differentiation is consistent with the requirements of 142.43(d) and only if no

qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.

(b) *Counseling and placement services.* A recipient to which this subpart applies that provides personal, academic or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of handicap. The recipient shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are nonhandicapped students with similar interests and abilities. This requirement does not preclude a recipient from providing factural information about licensing and certification requirements that may present obstacles to handicapped persons in their pursuit of particular careers.

(c) *Social organizations.* A recipient that provides significant asssistance to fraternities, sororities, or similar organizations shall assure itself that the membership practices of such organizations do not permit discrimination otherwise prohibited by this subpart.

§§ 142.48–142.60 [Reserved]

Subpart E—Health, Welfare, Social, and Other Services

§ 142.61 Application of this subpart.

Subpart E applies to health, welfare, social and other programs and activities that receive or benefit from Federal financial assistance and to recipients that operate, or that receive or benefit from Federal financial assistance for the operation of such programs or activities.

§ 142.62 Health, welfare, social, and other services.

(a) *General.* In providing health, welfare, social and other services or benefits, a recipient may not, on the basis of handicap:

(1) Deny a qualified handicapped person these benefits or services;

(2) Afford a qualified handicapped person an opportunity to receive benefits or services that are not equal to those offered nonhandicapped persons;

(3) Provide a qualified handicapped person with benefits or services that are not as effective (as defined in 142.4(b)) as the benefits or services provided to others;

(4) Provide benefits or services in a manner that limits or has the effect of limiting the participation of qualified handicapped persons; or

(5) Provide different or separate benefits or services to handicapped persons except where necessary to provide qualified handicapped persons with benefits and services that are as effective as those provided to others.

(b) *Notice.* A recipient that provides notice concerning benefits or services or written material concerning waivers of rights or consent to treatment shall take such steps as are necessary to ensure that qualified handicapped persons, including those with impaired sensory or speaking skills, are not denied effective notice because of their handicap.

(c) Emergency treatment for the hearing impaired. A recipient hospital that provides health services or benefits shall establish a procedure for effective communication with persons with impaired hearing for the purpose of providing emergency health care.

(d) *Auxiliary aids.* (1) A recipient to which this subpart applies that employs 15 or more persons shall provide appropriate auxiliary aids to persons with impaired sensory, manual, speaking or other skills (where necessary) to afford such persons an equal opportunity to benefit from the service in question.

(2) The Secretary may require recipients with fewer than 15 employees to provide auxiliary aids where the provision of aids would not significantly impair the ability of the recipient to provide its benefits or services.

(e) For the purpose of this paragraph, auxiliary aids may include brailled and taped material, interpreters, and other aids for persons with impaired hearing or vision.

§ 142.63 Drug and alcohol addicts.

A recipient to which this subpart applies that operates a general hospital or outpatient facility may not discriminate in admission or treatment against a drug or alcohol abuser or alcoholic who is suffering from a medical condition, because of the person's drug or alcohol abuse or alcoholism.

Subpart F—Procedures

§ 142.70 Procedures.

The procedural provisions applicable to Title VI of the Civil Rights Act of 1964 apply to this part. These procedures are found in 22 CFR subchapter 0, Part 14.

Dated: October 9, 1980.

Ben H. Read,

Under Secretary of State for Management, Department of State.

Appendix A—List of Affected Programs

Programs of Financial Assistance Administered by the Department of State Subject to Handicap Discrimination Regulations.

1. Resettlement of Refugees in the United States Under the Migration and Refugee Assistance Act of 1962, as amended (22 U.S.C. 2601 *et seq.* (1976)).

2. Non-reimbursable assignment of Foreign Service officers to State or local governments, public schools, community colleges, and other public or private nonprofit organizations designated by the Secretary of State (section 576 of the Foreign Service Act of 1946, as amended; 22 U.S.C. 966 (1976)).

3. Diplomat-in-Residence Program of the Foreign Service Institute under title VII of the Foreign Service Act of 1946, as amended (22 U.S.C. 1041, *et seq.* (1976)).

[FR Doc. 80-32790 Filed 10-20-80; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 151

General Grazing Regulations; Livestock Trespass

October 7, 1980.

AGENCY: Bureau of Indian Affairs, Department of the Interior.

ACTION: Final rule.

SUMMARY: On pages 6955 and 6956 of the **Federal Register** of January 31, 1980 there was published a proposed rule that would revise § 151.24 to strengthen the means of coping with livestock grazing trespass on Indian lands. The intended effect of this action is to assure compliance with a decision of the United States Court of Appeals for the Eighth Circuit while enforcing the per diem penalty in the other circuits; to discourage unauthorized use and abuse of Indian trust lands, and to provide for reimbursement of all expenses incurred in gathering, impounding, caring for, and disposing of trespass livestock. We are now issuing the proposal as a Final Rule.

DATES: The revised § 151.24, shall become effective November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Dan Renteria, Division of Water and Land Resources, Office of Trust Responsibilities, Bureau of Indian Affairs, Washington, D.C. 20245. Telephone: (202) 343–4004.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to the authority of 25 U.S.C. 466 and 25 U.S.C. 179, delegated by the Secretary of the Interior to the Assistant Secretary for Indian Affairs by 209 DM 8. The primary author of this document is George Davis, Office of Trust Responsibilities, (202) 343–4004.

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.

The Department of the Interior has determined that this revision does not significantly affect the quality of the environment and does not require an environmental impact statement under Section 102 (2)(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(c).

The proposed rule invited comments and interested persons were given until April 29, 1980 to submit comments, suggestions or objections to the proposed regulation revision. Comments were received from twenty-eight individuals or groups. Twelve commentors felt that the trespass rule should also apply to fee patented lands. The response is that the Bureau does not have jurisdiction on fee patented lands and the aggrieved would have recourse to the state courts and trespass laws. Several comments indicated a need for some type of immediate action when there was imminent danger of severe crop or forage damage. As a result of these comments and careful consideration of the problem, a fourth section was added to § 151.24(f) to permit immediate impoundment. Several comments recommended that the lessee be considered for reimbursement for crop or forage damage caused by trespassing livestock. A phrase was added to § 151.24(b) to permit the payment of damages to a lessee for forage or crops consumed or destroyed by trespassing livestock. Other comments were of a general nature and to bring attention to some editorial changes and corrections.

Section 151.24 of Subchapter N, of Chapter I, of Title 25, of the Code of Federal Regulations is revised to read as follows:

§ 151.24 Livestock trespass.

(a) *Acts prohibited on Indian trust, restricted or Government lands.* The following acts are prohibited on Indian trust or restricted lands under the jurisdiction of the Bureau of Indian Affairs:

(1) The grazing upon or driving across any individually owned, tribal, or Government lands of any livestock without an approved grazing or crossing permit.

(2) Allowing livestock to drift and graze on trust or restricted Indian lands without an approved permit.

(3) The grazing or livestock upon trust or restricted Indian lands within an area closed to grazing of that class of livestock.

(4) The grazing of livestock by permittee upon an area of trust or restricted Indian lands withdrawn from use for grazing purposes to protect it from damage by reason of the improper handling of livestock, after the receipt of notice from the Superintendent of such withdrawal, or refusal to remove livestock upon instructions from the Superintendent when an injury is being done to the Indian lands by reason of improper handling of livestock.

(b) *Unauthorized grazing.* The owner of any livestock grazing in trespass on trust or restricted Indian lands is liable to a penalty of $1 per head for each animal thereof for each day of trespass (except in North Dakota, South Dakota, Nebraska and Minnesota where the penalty shall be $1 per head of cattle regardless of the number of days of trespass), together with the reasonable value of the forage consumed by their livestock and damages to property injured or destroyed, and for expenses incurred in impoundment and disposal. The Superintendent shall take action to collect all such penalties and damages, reimbursement for expenses incurred in impoundment and disposal, and seek injunctive relief when appropriate. All payments for such penalties and damages shall be credited to the landowners where the trespass occurs except that the value of forage or crops consumed or destroyed may be paid to the lessee of the lands not to exceed the rental paid, and reimbursement for expenses incurred in impoundment and disposal shall be credited as appropriate.

(c) *Notice and order to remove.* (1) When it has been determined that a violation exists and the owner of the unauthorized livestock is known, written notice shall be served upon the alleged violator or his agent by certified mail with return receipt requested, or personal delivery and a copy of the notice shall be sent to any known lien holder.

The notice shall set forth the act consituting the violation, the legal description of the land where the livestock were observed, the verification of brands in the State Brand Book, and the regulation alleged to have been violated. The notice shall also instruct the alleged violator to remove the livestock within a specified time, allow a specified time from receipt of the notice to show that there has been no violations, or to make settlement under § 151.24(d). If the alleged violator fails to comply with the notice, the Superintendent may impound the livestock under § 151.24(f).

(2) When neither the owner of the unauthorized livestock nor his representative is known, the Superintendent may proceed to impound the livestock under § 151.24(f).

(d) *Settlement.* The amount due the Indian landowner and/or the United States in settlement for unauthorized grazing use shall be determined by the Superintendent as follows:

(1) A penalty of $1 for each animal thereof for each day of trespass, except in the States of Minnesota, Nebraska, North Dakota, and South Dakota where the penalty shall be $1 for each animal without regard to the number of days of trespass.

(2) A reasonable value of forage consumed based upon the average rate received per month for comparable grazing privileges on the reservation for the kind of livestock concerned, or the estimated commercial value for such privileges if no comparable grazing privileges are sold.

(3) Damages to Indian or Government property injured or destroyed.

(4) All expenses incurred in gathering, impounding, caring for, and disposing of livestock in cases which necessitate impoundment under § 151.24(f).

(5) Neither the imposition of any civil penalty nor any action by the Secretary of the Interior shall preclude either any civil action by the United States, an Indian, or an Indian tribe for damages caused by trespassing livestock or prosecution for any offense involved with such trespass.

(e) *Demand for payment.* Where the livestock have been removed, but satisfactory settlement has not been made within the time prescribed under § 151.24(c), a certified letter, return receipt requested, shall be sent or personally delivered to the livestock owner or his agent, and a copy of the letter shall be sent to any know lien holder. The letter shall demand immediate settlement and advise the violator that unless settlement is received within five working days from date of receipt, the case may be referred to the Department of Justice for appropriate action.

(f) *Impoundment and disposal.* Unauthorized livestock remaining on trust or restricted Indian or Government lands which are not removed therefrom within the period prescribed in § 151.24(c) may be impounded and disposed of by the Superintendent as provided herein:

(1) A written notice of intent to impound shall be sent by certified mail, return receipt requested, or personally delivered to the owner, or his agent, and a copy of the notice shall be sent to any known lien holder. Any time after five days of delivery of the notice, the unauthorized livestock may be impounded.

(2) Where the owner or his agent is unknown, or a known owner or his

agent refuses to accept delivery of the notice, a notice of intent to impound shall be published in a local newspaper, posted at the nearest community building and tribal council headquarters, and at a post office near the Indian or Government lands involved. Any time after five days of posting of the notice, the unauthorized livestock may be impounded.

(3) Unauthorized livestock that are owned by persons given notice under paragraphs (1) and (2) of this subsection may be impounded without further notice any time within the 12-month period following the effective date of a notice given under this subsection.

(4) Where there is imminent danger that trespassing livestock will severely injure a growing or harvestable crop or substantially destroy the range forage, the livestock may be impounded immediately.

(g) *Notice of public sale.* Following the impoundment of unauthorized livestock, a notice of sale of impounded livestock shall be published in a local newspaper, posted at the nearest community building and tribal council headquarters, and at a post office near the Indian or Government lands involved. The notice will describe the livestock and specify the date, time and place of sale. The date set shall be at least five days after the publication and posting of such notice. Any known owners or agents and known lien holders shall be notified in writing by certified mail, return receipt requested, or by personal delivery of the sale, and the procedure by which the impounded livestock may be redeemed prior to the sale as described in § 151.24(h).

(h) *Redemption.* Any owner or known lien holder of the impounded livestock may redeem them at any time before the time set for the sale by submitting proof of ownership and the settlement of all obligations described in § 151.24(d).

(i) *Sale.* If the livestock are not redeemed before the time fixed for their sale, they shall be sold at public sale to the highest bidder. If a satisfactory bid is not received, the livestock may be reoffered for sale, condemned and destroyed, or otherwise disposed of. When livestock are sold by the Superintendent pursuant to these regulations, he shall furnish the purchaser a bill of sale or other written instrument evidencing the sale.

(j) *Distribution of proceeds.* The net proceeds of the sale, after deduction of the prescribed penalty and the deduction of the necessary costs and expenses of the Secretary of the Interior as provided in § 151.24(d), shall be paid to the owner of the animal upon satisfactory proof of ownership submitted within six months of the date of the sale. Net proceeds of the sale of an animal, not paid to the owner, shall be deposited in the United States Treasury to the credit of the landowners where the trespass occurred.

Philip S. Deloria,

Deputy Assistant Secretary—Indian Affairs.

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DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS) to reflect that the Secretary of the Navy has determined that USS *RIDDLE* (CG 34) is a vessel of the Navy which, due to its special construction and purpose cannot comply fully with 72 COLREGS, Annex I, Section 2(f) pertaining to the placement of masthead lights over all other lights and obstructions; 72 COLREGS, Rule 21(a) pertaining to the arc of visibility of the forward masthead lights; and, 72 COLREGS, Rule 23(a)(j) pertaining to the reguirement for a forward masthead light, without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: October 21, 1980.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Charles Stanley Prentace, JAGC, USN, Admiralty Division, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexander, Virginia 22332, Telephone No. (202) 325-9744.

SUPPLMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605 and Executive Order 11964, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS *BIDDLE* (CG 34) is a ship of the Navy which, due to its special construction and purpose cannot comply fully with 72 COLREGS, Annex I, Section 2(f) pertaining to the placement of masthead lights over all other lights and obstructions; 72 COLREGS, Rule 21(a) pertaining to the arc of visibility of the forward masthead lights; and, 72 COLREGS, Rule 23(a)(i) pertaining to the requirement for a forward masthead light. Full compliance with these provisions would interfere with the special functions of the ship. The Secretary of the Navy has also certified that the lights previously mentioned are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to the public interest since it is based on technical findings that the placement of lights on this ship in a manner different from that prescribed herein will adversely affect the ship's ability to perform its military function. Accordingly, 32 CFR Part 706 is amended as follows:

§ 706.2 [Amended]

1. Table Four is amended to reflect certifications issued by the Secretary of the Navy by inserting the following new note 14.

14. On USS *Biddle* the arc of visibility of the forward masthead light may be obscured through 1.4 degree arcs of visibility at 017 and 343 degrees relative to the ship's head.

Dated: October 17, 1980.

Edward Hidalgo,

Secretary of the Navy.

[FR Doc. 80-33007 Filed 10-20-80; 8:45 am]

BILLING CODE 3810-71-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 5922]

List of Communities Eligible for the Sale of Insurance Under the National Flood Insurance Program

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain flood plain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The date listed in the fifth column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Phone: (800) 638–6620.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free Line 800–424–8872, Room 5270, 451 Seventh Street SW., Washington, DC 20410.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Federal Insurance Administrator has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Federal Insurance Administrator finds that delayed effective dates would be contrary to the public interest. The Administrator also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance." This program is subject to procedures set out in OMB Circular A–95.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State	County	Location	Community No.	Effective dates of authorization/ cancellation of sale of flood insurance in community	Special flood hazard area identified
California	San Bernardino	Colton, city of	060273A	Sept. 17, 1980, suspension withdrawn	June 7, 1974.
Do	Tehama	Tehama, city of	060400A	do	Dec. 24, 1974.
Colorado	Eagle	Minturn, town of	080053B	do	Aug. 16, 1974 and Apr. 4, 1976.
Connecticut	New London	Noank fire district	090129A	do	Feb. 21, 1975.
Florida	Seminole	Sanford, city of	120294B	do	Aug. 16, 1974. June 28, 1974 and Feb. 20, 1976.
Illinois	Cook	Alsip, village of	170055C	do	Mar. 22, 1974, Mar. 26, 1976, and June 2, 1978.
Do	Henry	Colona, village of	170749A	do	Oct. 29, 1976.
Do	do	Lisle, village of	170211B	do	July 6, 1973 and Nov. 8, 1974.
Iowa	Clinton	Clinton, city of	190088B	do	June 28, 1974 and Sept. 17, 1976.
Kentucky	Kenton	Independence, city of	210240B	do	Feb. 8, 1974 and July 16, 1976.
Michigan	St. Clair	Cottrellville, township of	260196B	do	Apr. 12, 1974 and Dec. 31, 1976.
New Jersey	Passaic	Hawthorne, borough of	340400B	do	Nov. 30, 1973 and July 16, 1976.
Do	Camden	Lindenwold, borough of	340137B	do	Nov. 22, 1974 and June 18, 1976.
Do	do	Stratford, borough of	340146B	do	Mar. 22, 1974 and July 16, 1976.
Ohio	Cuyahoga	Bedford Heights, city of	390096B	do	Mar. 22, 1974 and Apr. 30, 1976.
Do	do	Maple Heights, city of	390114B	do	Feb. 8, 1974 and Apr. 9, 1976.
Oregon	Jackson	Gold Hill, city of	410094B	do	Jan. 9, 1974 and Jan. 2, 1976.
Pennsylvania	Delaware	Aldan, borough of	420401B	do	Aug. 26, 1974 and June 11, 1976.
Do	Lycoming	Cummings, township of	420638B	do	Aug. 30, 1974 and July 2, 1976.
Do	do	Eldred, township of	421839A	do	Nov. 8, 1974.
Do	Luzerne	Hollenback, township of	421831A	do	Dec. 13, 1974.
Do	Lycoming	Lycoming, township of	420644C	do	May 17, 1974, Aug. 20, 1976, and Nov. 19, 1976.
Do	Delaware	Newtown, township of	420991B	do	Jan. 23, 1974 and June 11, 1976.
Do	Lycoming	Upper Fairfield, township of	420660B	do	Jan. 13, 1978.
Texas	Tarrant	Saginaw, city of	480610B	do	Mar. 8, 1974 and Sept. 24, 1976.
Do	Dallas	Wilmer, city of	480190B	do	Feb. 1, 1974 and June 11, 1976.
Virginia	Wise	Appalachia, town of	510319B	do	May 10, 1974 and June 25, 1976.
Illinois	Du Page	Clarendon Hills, village of	170203B	Sept. 27, 1980, suspension withdrawn	Mar. 8, 1974 and Dec. 16, 1976.
				do	
Texas	Kaufman	Kemp, city of	480412A	Sept. 16, 1980, emergency, Sept. 16, 1980, regular.	Apr. 23, 1976.
Pennsylvania	Warren	Sugar Grove, township of	422549	Sept. 18, 1980, emergency	Jan. 24, 1975.
Georgia	Gwinnett	Suwanee, city of	130328	Sept. 22, 1980, emergency	Apr. 4, 1975.
Kentucky	Carlisle	Arlington, city of	210362—New	do	
North Carolina	Pitt	Unincorporated areas	370372A	do	June 30, 1978.
Texas	Taylor	do	481014A	do	Nov. 29, 1977.
South Carolina	Pickens	Clemson, city of	450238A	do	Dec. 15, 1978.
Texas	Cameron	Primera, city of	48119B	Sept. 18, 1980, emergency	
Arkansas	Pulaski	Alexander, city of	050377	Sept. 26, 1980, emergency	Apr. 18, 1975.
Texas	Red River	Avery, city of	480983	do	Aug. 13, 1976.
North Carolina	Sampson	Autryville, town of	370358	Sept. 29, 1980, emergency	July 25, 1975.
Pennsylvania	Greene	Freeport, township of	422432	do	Jan. 3, 1975.
New York	Wyoming	Wethersfield, town of	361246	Sept. 30, 1980, emergency	Dec. 13, 1974.
North Carolina	Buncombe	Asheville, city of	370032A	June 30, 1976, emergency, July 16, 1980, regular, July 16, 1980, suspended, Sept. 19, 1980, reinstated.	Apr. 2, 1976.
Pennsylvania	Luzerne	Black Creek, township of	420598B	Mar. 9, 1973, emergency, Sept. 3, 1980, regular, Sept. 3, 1980, suspended, Sept. 23, 1980, reinstated.	May 31, 1974 and May 14, 1976.
Do	McKean	Eldred, township of	421854A	Aug. 21, 1974, emergency, Sept. 3, 1980, regular, Sept. 3, 1980, suspended, Sept. 23, 1980, reinstated.	Nov. 15, 1974.
Do	Luzerne	Lake, township of	421833A	Oct. 24, 1975, emergency, Sept. 3, 1980, regular, Sept. 3, 1980, suspended, Sept. 23, 1980, reinstated.	Nov. 22, 1974.

State	County	Location	Community No.	Effective dates of authorization/ cancellation of sale of flood insurance in community	Special flood hazard area identified
Do	Mifflin	Oliver, township of	421882A	Aug. 29, 1975, emergency, Sept. 17, 1980, regular, Sept. 17, 1980, suspended, Sept. 29, 1980, reinstated.	Feb. 14, 1975.
Do	Luzerne	Jackson, township of	42061OB	Mar. 16, 1973, emergency, Sept. 17, 1980, regular, Sept. 17, 1980, suspended, Sept. 29, 1980, reinstated.	June 10, 1977.
Connecticut	Middlesex	Clinton, town of	090061B	Sept. 30, 1980, suspension withdrawn	Dec. 1, 1974 and Mar. 4, 1977.
Idaho	Canyon	Parma, city of	160039C	do	May 17, 1974 and June 4, 1976.
Indiana	Clark	Unincorporated areas	180426A	do	Feb. 24, 1978.
Louisiana	Lafayette	Lafayette, city of	220105C	do	Mar. 1, 1974 and July 17, 1979.
Maine	Kennebec	Farmingdale, town of	230164B	do	Aug. 2, 1974 and Sept. 3, 1976.
Massachusetts	Middlesex	Holliston, town of	250195B	do	Aug. 2, 1974 and Nov. 5, 1976.
DO	Franklin	Northfield, town of	250060B	do	Aug. 9, 1974 and June 19, 1979.
Michigan	Eaton	Dimondale, village of	260333A	do	Oct. 17, 1975.
Minnesota	Anoka	Andover, city of	270689A	do	Dec. 17, 1976.
Mississippi	Simpson	Mendenhall, city of	280159B	do	June 14, 1974, Oct. 17, 1975, and Sept. 1, 1978.
Nebraska	Seward	Seward, city of	310210B	do	June 14, 1974 and Jan. 2, 1976.
Nevada	Clark	Las Vegas, city of	325276B	do	Dec. 3, 1976.
New Jersey	Bergen	Emerson, vorough of	340030B	do	June 15, 1973 and Oct. 21, 1977.
North Dakota	Cass	Harwood, city of	380338A	do	
Ohio	Hamilton	Amberley, village of	390206A	do	
Do	Summit	Hudson, village of	390660B	do	Mar. 29, 1974 and June 25, 1976.
Oklahoma	Grady	Chickasha, city of	400234B	do	May 24, 1974 and May 21, 1976.
Do	Bryan	Durant, city of	400460B	do	May 10, 1974 and Feb. 13, 1976.
Oregon	Jackson	Central Point, city of	410092B	do	June 21, 1974 and Jan. 2, 1976.
Do	Union	La Grande, city of	410260B	do	Nov. 30, 1973 and Oct. 15, 1976.
Pennsylvania	Westmoreland	Arnold, city of	420870B	do	June 14, 1974 and June 18, 1976.
Do	Luzerne	Ashley, borough of	420596B	do	April 5, 1974 and June 11, 1976.
Do	Chester	East Caln, township of	421477B	do	Oct. 18, 1974 and May 28, 1976.
Do	Allegheny	Emsworth, borough of	420034B	do	Dec. 3, 1976.
Do	Bucks	Falls, township of	420188A	do	May 18, 1973.
Do	Lycoming	Gamble, township of	420974B	do	Feb. 22, 1974 and July 8, 1977.
Do	Susquehanna	Great Bend, borough of	422068A	do	Sept. 20, 1974.
Do	do	Hallstead, borough of	422069A	do	Nov. 22, 1974.
Do	Blair	Huston, township of	422332A	do	Jan. 10, 1975.
Do	Lycoming	Muncy Creek, township of	420650B	do	Aug. 23, 1974 and Feb. 27, 1976.
Do	Lancaster	Pequea, township of	421779A	do	Oct. 22, 1976.
Do	Blair	Taylor, township of	421394A	do	Jan. 17, 1975.
Do	Luzerne	Union, township of	421836A	do	Jan. 17, 1975.
Tennessee	Smith	Carthage, city of	470176B	do	Aug. 2, 1974 and July 30, 1976.
Do	Roane	Unincorporated areas	470267D	do	Dec. 23, 1977.
Texas	Houston	Crockett, city of	480359C	do	May 10, 1974, Jan. 16, 1976, and Feb. 18, 1977.
Do	Dallas	Framers Branch, city of	480174B	do	April 12, 1974 and Feb. 15, 1978.
Vermont	Essex	Canaan, town of	500046B	do	May 31, 1974 and Mar. 4, 1977.
Wisconsin	Dane	Madison, city of	550083B	do	Mar. 8, 1974 and Sept. 5, 1975.
Do	do	Oregon, village of	550089B	do	May 24, 1974 and Aug. 6, 1976.
Do	Racine	Wind Point, village of	550355B	do	June 28, 1974 and Sept. 24, 1976.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: October 3, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-32470 Filed 10-20-80; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 64

[Docket No. FEMA 5923]

List of Communities Eligible for the Sale of Insurance Under the National Flood Insurance Program

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain flood plain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The date listed in the fifth column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Phone: (800) 638–6620.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program, (202) 426–1460 or Toll Free Line 800–424–8872, Room 5150,

451 Seventh Street, SW., Washington, DC 20410.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Federal Insurance Administrator has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. In the communities listed where a flood map has been published, Section 102 of the flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Federal Insurance Administrator finds that delayed effective dates would be contrary to the public interest. The Administrator also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance." This program is subject to procedures set out in OMB Circular A–95.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State	County	Location	Community No.	Effective date of authorization of sale of flood insurance for area	Hazard area identified
Texas	Kaufman County	Kemp, city of	480412	800916 emerg., 800916 reg	760423
Arkansas	Jackson County	Diaz, city of	050100	750512 emerg., 800917 reg	740308
California	San Bernardino County	Colton, city of	060273	740115 emerg., 800917 reg	0
California	Riverside County	Lake Elsinore, city of	060636	750613 emerg., 800917 reg	740628
California	Tehama County	Tehama, city of	060400	750210 emerg., 800917 reg	741224
Colorado	Eagle County	Minturn, town of	080053	750926 emerg., 800917 reg	740816
Connecticut	New London County	Noank fire district	090129	730925 emerg., 800917 reg	750221
Connecticut	New Haven County	North Haven, town of	090086	730713 emerg., 800917 reg	740524
Florida	Seminole County	Sanford, city of	120294	750121 emerg., 800917 reg	740816
Illinois	Cook County	Alsip, village of	170055	750113 emerg., 800917 reg	740322
Illinois	Henry County	Colona, village of	170749	760707 emerg., 800917 reg	761029
Illinois	Du Page County	Lisle, village of	170211	730706 emerg., 800917 reg	740315
Indiana	Morgan County	Brooklyn, town of	180402	751119 emerg., 800917 reg	731207
Iowa	Scott County	Buffalo, city of	190241	740926 emerg., 800917 reg	740301
Iowa	Clinton County	Clinton, city of	190088	740611 emerg., 800917 reg	740628
Kentucky	Kenton County	Independence, city of	210240	741010 emerg., 800917 reg	740208
Maryland	Frederick County	Emmitsburg, town of	240029	750506 emerg., 800917 reg	740329
Michigan	St. Clair County	Cottrellville, township of	260196	740412 emerg., 800917 reg	740412
Michigan	Macomb County	New Haven, Village of	260446	750725 emerg., 800917 reg	750711
Mississippi	Rankin County	Brandon, city of	280143	741212 emerg., 800917 reg	740607
New Jersey	Passaic County	Hawthorne, borough of	340400	730628 emerg., 800917 reg	731130
New Jersey	Camden County	Lindenwold, borough of	340137	760112 emerg., 800917 reg	741122
New Jersey	Camden County	Stratford, borough of	340146	750321 emerg., 800917 reg	740322
Ohio	Cuyahoga County	Bedford Heights, city of	390096	750611 emerg., 800917 reg	740322
Ohio	Cuyahoga County	Maple Heights, city of	390114	750722 emerg., 800917 reg	740208
Ohio	Cuyahoga County	North Royalton, city of	390121	740116 emerg., 800917 reg	740329
Oklahoma	Caddo County	Anadarko, city of	400018	750703 emerg., 800917 reg	740215
Oklahoma	Garvin County	Pauls Valley, city of	400246	761209 emerg., 800917 reg	770705
Oregon	Jackson County	Gold Hill, city of	410094	740805 emerg., 800917 reg	740109
Pennsylvania	Delaware County	Aldan, borough of	420401	740826 emerg., 800917 reg	731228
Pennsylvania	Lycoming County	Cummings, township of	420638	730606 emerg., 800917 reg	740830
Pennsylvania	Lycoming County	Eldred, township of	421839	740620 emerg., 800917 reg	741108
Pennsylvania	Erie County	Harborcreek, township of	421144	740409 emerg., 800917 reg	740913
Pennsylvania	Luzerne County	Hollenback, township of	421831	750930 emerg., 800917 reg	741213
Pennsylvania	Luzerne County	Jackson, township of	420610	730316 emerg., 800917 reg	770610
Pennsylvania	Lycoming County	Lycoming, township of	420644	730504 emerg., 800917 reg	740517
Pennsylvania	Delaware County	Newtown, township of	420991	720915 emerg., 800917 reg	740123
Pennsylvania	Mifflin County	Oliver, township of	421882	750829 emerg., 800917 reg	750214
Pennsylvania	Lycoming County	Pine, township of	420954	731004 emerg., 800917 reg	740726
Pennsylvania	Lycoming County	Upper Fairfield, township of	420660	730515 emerg., 800917 reg	780113
Texas	Tarrant County	Everman, city of	480594	750701 emerg., 800917 reg	731217
Texas	Tarrant County	Saginaw, city of	480610	760416 emerg., 800917reg	740308
Texas	Dallas County	Wilmer, city of	480190	750602 emerg., 800917 reg	740201
Virginia	Wise County	Appalachia, town of	510319	750327 emerg., 800917 reg	740510
West Virginia	Harrison County	Nutter Fort, town of	540059	750310 emerg., 800917 reg	740315
Wisconsin	Sauk County	Sauk County*	550391	730907 emerg., 800917 reg	780714
Alabama	Jefferson County	Mulga, town of	010129	751003 emerg., 800919 reg	740920
California	Riverside County	Coachella, city of	060249	790911 emerg., 800930 reg	740517
California	Marin County	Sausalito, city of	060182	741010 emerg., 800930 reg	740517
Connecticut	Middlesex County	Clinton, town of	090061	730302 emerg., 800930 reg	740201
Connecticut	New London County	Stonington, Town of	090106	750528 emerg., 800930 reg	741018
Idaho	Canyon County	Parma, city of	160039	760727 emerg., 800930 reg	740517
Indiana	Clark County	Clark County*	180426	750915 emerg., 800930 reg	780224
Louisiana	Lafayette Parish	Lafayette, city of	220105	730807 emerg., 800930 reg	740301
Maine	Kennebec County	Farmingdale, town of	230164	750417 emerg., 800930 reg	740802
Maryland	Frederick County	Walkersville, town of	240032	740612 emerg., 800930 reg	740628
Massachusetts	Barnstable County	Harwich, town of	250008	731210 emerg., 800930 reg	740719
Massachusetts	Middlesex County	Holliston, town of	250195	751205 emerg., 800930 reg	740802

State	County	Location	Community No.	Effective date of authorization of sale of flood insurance for area	Hazard area identified
Massachusetts	Franklin County	Northfield, town of	250124	750815 emerg., 800930 reg	740809
Massachusetts	Middlesex county	Watertown, town of	250223	741205 emerg., 800930 reg	740628
Massachusetts	Norfolk County	Weymouth, town of	250257	721215 emerg., 800930 reg	740614
Michigan	Eaton County	Dimondale, village of	260333	760921 emerg., 800930 reg	751017
Minnesota	Anoka County	Andover, city of	270689	760623 emerg., 800930 reg	761217
Mississippi	Simpson County	Mendenhall, city of	280159	731019 emerg., 800930 reg	740614
Mississippi	Simpson County	Simpson County*	280281	790615 emerg., 800930 reg	771021
Nebraska	Seward County	Seward, city of	310210	740920 emerg., 800930 reg	740614
Nevada	Clark County	Las Vegas, city of	325276	740816 emerg., 800930 reg	761203
New Jersey	Bergen County	Emerson, borough of	340030	720225 emerg., 800930 reg	730615
New York	Suffolk County	East Hampton, village of	360795	730601 emerg., 800930 reg	731228
North Dakota	Cass County	Harwood, city of	380338	760411 emerg., 800930 reg	0
Ohio	Hamilton County	Amberley, village of	390206	731116 emerg., 800930 reg	0
Ohio	Summit County	Hudson, village of	390660	750519 emerg., 800930 reg	740329
Oklahoma	Grady County	Chickasha, city of	400234	740115 emerg., 800930 reg	740524
Oklahoma	Bryan County	Durant, city of	400460	750520 emerg., 800930 reg	740510
Oregon	Jackson County	Central Point, city of	410092	740918 emerg., 800930 reg	740621
Oregon	Jackson County	Eagle Point, city of	410093	740605 emerg., 800930 reg	741018
Oregon	Union County	La Grande, city of	410260	740206 emerg., 800930 reg	731130
Oregon	Jackson County	Shady Cove, city of	410099	740823 emerg., 800930 reg	740823
Pennsylvania	Westmoreland County	Arnold, city of	420870	740531 emerg., 800930 reg	740614
Pennsylvania	Luzerne County	Ashley, borough of	420596	741213 emerg., 800930 reg	740405
Pennsylvania	Allegheny County	Braddock, borough of	420015	750121 emerg., 800930 reg	740329
Pennsylvania	Chester County	East Caln, township of	421477	741010 emerg., 800930 reg	741018
Pennsylvania	Allegheny County	Emsworth, borough of	420034	750620 emerg., 800930 reg	761203
Pennsylvania	Bucks County	Falls, township of	420188	720721 emerg., 800930 reg	730518
Pennsylvania	Lycoming County	Gamble, township of	420974	730801 emerg., 800930 reg	740222
Pennsylvania	Susquehanna County	Great Bend, borough of	422068	750121 emerg., 800930 reg	740920
Pennsylvania	Susquehanna County	Hallstead, borough of	422069	750702 emerg., 800930 reg	741122
Pennsylvania	Blair County	Huston, township of	422332	760206 emerg., 800930 reg	750110
Pennsylvania	Lycoming County	Muncy Creek, township of	420650	740823 emerg., 800930 reg	740823
Pennsylvania	Westmoreland County	North Belle Vernon, borough of	422182	780307 emerg., 800930 reg	741129
Pennsylvania	Lancaster County	Pequea, township of	421779	750124 emerg., 800930 reg	761022
Pennsylvania	Blair County	Taylor, township of	421394	750725 emerg., 800930 reg	750117
Pennsylvania	Luzerne County	Union, township of	421836	760218 emerg., 800930 reg	750117
Pennsylvania	Montgomery County	Upper Pottsgrove, township of	421910	741010 emerg., 800930 reg	741025
Pennsylvania	Chester County	Uwchlan, township of	421492	741011 emerg., 800930 reg	740906
Pennsylvania	Westmoreland County	Vandergrift, borough of	420904	741009 emerg., 800930 reg	740614
Tennessee	Smith County	Carthage, city of	470176	740502 emerg., 800930 reg	740802
Tennessee	Roane County	Roane County*	470267	741021 emerg., 800930 reg	771223
Texas	Bexar County	Castle Hills, city of	480037	731031 emerg., 800930 reg	740524
Texas	Houston County	Crockett, city of	480359	750624 emerg., 800930 reg	740510
Texas	Hill County	Hillsboro, city of	480351	751107 emerg., 800930 reg	741025
Texas	Kaufman County	Terrell, city of	480416	760618 emerg., 800930 reg	741220
Vermont	Essex County	Canaan, town of	500046	750721 emerg., 800930 reg	740531
Vermont	Washington County	Fayston, town of	500326	750812 emerg., 800930 reg	0
Wisconsin	Dane County	Madison, city of	550083	750717 emerg., 800930 reg	740308
Wisconsin	Dane County	Oregon, village of	550089	740528 emerg., 800930 reg	740524
Wisconsin	Racine County	Wind Point, village of	550355	750318 emerg., 800930 reg	740628

Total is: 107.

Asterisk refers to county only.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: October 3, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-32472 Filed 10-20-80; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 65

[Docket No. FEMA 5919]

List of Communities With Special Hazard Areas Under the National Flood Insurance Program

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities with areas of special flood, mudslide, or erosion hazards as authorized by the National Flood Insurance Program. The identification of such areas is to provide guidance to communities on the reduction of property losses by the adoption of appropriate flood plain management or other measures to minimize damage. It will enable communities to guide future construction, where practicable, away from locations which are threatened by flood or other hazards.

EFFECTIVE DATES: The effective date shown at the top right of the table or 30 days after the date of this **Federal Register** publication (November 20, 1980), whichever is later.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program, (202) 426–1460 or Toll Free Line 800–424–8872, Room 5150, 451 Seventh Street, SW., Washington, DC 20410.

SUPPLEMENTARY INFORMATION: The Flood Disaster Protection Act of 1973 (Pub. L. 93–234) requires the purchase of flood insurance on and after March 2, 1974, as a condition of receiving any form of Federal or federally related financial assistance for acquisition or construction purposes in a identified flood plain area having special flood hazards that is located within any community participating in the National Flood Insurance Program.

One year after the identification of the community as flood prone, the requirement applies to all identified special flood hazard areas within the United States, so that, after that date, no such financial assistance can legally be provided for acquisition and construction in these areas unless the

community has entered the program. The prohibition, however, does not apply in respect to conventional mortgage loans by federally regulated, insured, supervised, or approved lending institutions.

This 30 day period does not supersede the statutory requirement that a community, whether or not participating in the program, be given the opportunity for a period of six months to establish that it is not seriously flood prone or that such flood hazards as may have existed have been corrected by floodworks or other flood control methods. The six months period shall be considered to begin 30 days after the date of publication in the **Federal Register** (November 20, 1980) or the effective date of the Flood Hazard Boundary Map, whichever is later. Similarly, the one year period a community has to enter the program under section 201(d) of the Flood Disaster Protection Act of 1973 shall be considered to begin 30 days after publication in the **Federal Register** (November 20, 1980) or the effective date of the Flood Hazard Boundary Map, whichever is later.

This identification is made in accordance with Part 64 of Title 44 of the Code of Federal Regulations as authorized by the National Flood Insurance Program (42 U.S.C. 4001–4128).

Section 65.3 is amended by adding in alphabetical sequence a new entry to the table:

BILLING CODE 6718-03-M

§ 65.3 List of communities with special hazard areas (FHBMs in effect).

EFFECTIVE DATE October 3, 1980

1 State	2 Ident. Number	3 Community Name County Name	4 Panels Printed (# and Suffix)	5 Inland/ Coastal	6 Hazard	7 60.3 Code	8 Program Status	9 Status of FHBM	9 Status of FIRM	10 Previous Map Dates FHBM	10 Previous Map Dates FIRM	11 Revision Code(s)	12 Rescission	13 Floodways Panels Printed	14 Location of Map Repository
OH	390295	Village of Adena (Harrison & Jefferson Cos.)	0001A	I	FL	B	1	3	I	7/23/76	N/A	9 10 16	N/A	N/A	June McKim, Mayor Box 448 Adena, OH 43901 Phone: (614)-546-3536
PA	421333	Township of Broad Top (Bedford Co.)	Index 0001A 0003A 0005A	I	FL	B	1	3	I	1/17/75	N/A	9 10 16	N/A	N/A	Donald Graffious, Chairman Twp. Board of Supervisors Township Building Defiance, PA 16633 Phone: (814)-928-4661
PA	421688	Township of Cromwell (Huntingdon Co	Index 0002A 0003A 0004A	I	FL	B	1	3	I	12/27/74	N/A	9 10 16	N/A	N/A	Robert Sheets, Chairman Twp. Board of Supervisors RD Orbisonia, PA 17243 Phone: (814)-447-3857
PA	421338	Township of Harrison (Bedford Co.)	Index 0001A 0003A	I	FL	B	1	3	I	1/24/75	N/A	9 10 16	N/A	N/A	William Garland, Chairman Twp. Board of Supervisors RD 1 Buffalo Mills, PA 15534 Phone: (814)-623-9779
PA	421731	Township of McCalmont (Jefferson Co.)	Index 0001A 0002A 0003A	I	FL	B	1	3	I	1/24/75	N/A	9 10 16	N/A	N/A	Larry Carlson, Chairman Twp. Board of Supervisors Anita, PA 15711 Phone: (814)-938-5539

EFFECTIVE DATE October 7, 1980

1 STATE	2 IDENT. NUMBER	3 COMMUNITY NAME & COUNTY NAME	4 PANELS PRINTED (# AND SUFFIX)	5 INLAND/ COASTAL	6 HAZARD	7 60.3 CODE	8 PROGRAM STATUS	9 STATUS OF FHBM	9 STATUS OF FIRM	10 PREVIOUS MAP DATES FHBM	10 PREVIOUS MAP DATES FIRM	11 REVISION CODE(S)	12 RESCISSION	13 FLOODWAYS PANELS PRINTED	14 LOCATION OF MAP REPOSITORY
LA	220223	Town of Delcambre (Vermilion and Iberia Parishes)	01A	I	FL	B	1	3	I	4-5-74	N/A	8 9 10	N/A	N/A	The Honorable Willie J. Landry Mayor, Town of Delcambre 107 North Railroad Street Delcambre, LA 70528 (318) 685-4462

EFFECTIVE DATE October 10, 1980

1 State	2 Ident. Number	3 Community Name County Name	4 Panels Printed (# and Suffix)	5 Inland/ Coastal	6 Hazard	7 60.3 Code	8 Program Status	9 Status of FHBM	9 Status of FIRM	10 Previous Map Dates FHBM	10 Previous Map Dates FIRM	11 Revision Code (#)	12 Rescission	13 Floodways Panels Printed	14 Location of Map Repository
PA	422394	Twp. of Rockdale (Crawford Co.)	Index 0001A 0002A 0003A 0004A	I	FL	B	1	3	I	1/10/75	N/A	9 10 16	N/A	N/A	Elmer W. Zilhaver, Chairman Twp. Board of Supervisors Municipal Building RD 3 Cambridge Springs, PA 16403 Twp. Building (814) 398-2967 Home (814) 398-2531
PA	422396	Twp. of Sadsbury (Crawford Co.)	Index 0001A 0002A	I	FL	B	1	3	I	1/24/75	N/A	9 10 16	N/A	N/A	Richard Miller, Chairman Twp. Board of Supervisors Municipal Building RD 2 Conneaut Lake, PA 16316 Twp. Building (814) 382-8579 Home (814) 382-8282
NJ	340029	B. of Edgewater (Bergen County)	0005 B	I	FL	B	1	3	1	8/2/74 4/30/76	NA	10	N/A	N/A	Charles Susskind, Clerk Borough Hall 916 River Road Edgewater, New Jersey 07020

EFFECTIVE DATE October 17, 1980

1 State	2 Ident. Number	3 Community Name County Name	4 Panels Printed (# and Suffix)	5 Inland/ Coastal	6 Hazard	7 60.3 Code	8 Program Status	9 Status of FHBM	9 Status of FIRM	10 Previous Map Dates FHBM	10 Previous Map Dates FIRM	11 Revision Code (#)	12 Rescission	13 Floodways Panels Printed	14 Location of Map Repository
PA	421607	Twp. of Benzinger (Elk Co.)	Index 0001A 0002A 0003A 0004A	I	FL	B	1	3	I	4/11/75	N/A	9 10 16	N/A	N/A	Gerald Mahoney Chairman, Twp. Board of Supervisors Municipal Building P.O. Box 224 St. Mary's, PA 15857 Phone: (814) 781-1274
PA	422473	Twp. of Corydon (McKean Co.)	Index 0001A 0002A 0003A	I	FL	B	1	3	I	4/ 4/75	N/A	9 10 16	N/A	N/A	Floyd Cornelius Chairman, Twp. Board of Supervisors Municipal Building 2474 W. Washington St. Bradford, PA 16701 Phone: (814) 362-1978
PA	421528	Twp. of Lawrence (Clearfield Co.	Index 0001A 0002A 0003A 0004A 0005A 0006A	I	FL	B	1	3	I	4/11/75	N/A	9 10 16	N/A	N/A	James Wisor Chairman, Twp. Board of Supervisors Municipal Building Box 508 Clearfield, PA 16830 Phone: (814) 765-7302
PA	421732	Twp. of Oliver (Jefferson Co.)	Index 0001A 0002A	I	FL	B	1	3	I	12/13/74	N/A	9 10 16	N/A	N/A	Glenn Bodenhorn Chairman, Twp. Board of Supervisors Box 26 Coolspring, PA 15730 Phone: (814) 849-2670

EFFECTIVE DATE October 21, 1980

1 STATE	2 IDENT. NUMBER	3 COMMUNITY NAME & COUNTY NAME	4 PANELS PRINTED (# AND SUFFIX)	5 INLAND/ COASTAL	6 HAZARD	7 60.3 CODE	8 PROGRAM STATUS	9 STATUS OF FHBM	9 STATUS OF FIRM	10 PREVIOUS MAP DATES FHBM	10 PREVIOUS MAP DATES FIRM	11 REVISION CODE(S)	12 RESCISSION	13 FLOODWAYS PANELS PRINTED	14 LOCATION OF MAP REPOSITORY
WA	530114	Town of Wilbur (Lincoln County)	0001B	I	FL	B	1	3	I	6-7-74 1-9-76	N/A	9 10	N/A	N/A	The Honorable Jacki Holy Mayor, Town of Wilbur P.O. Box 214 Wilbur, WA 99185 (509) 647-5821

EFFECTIVE DATE October 24, 1980

1 State	2 Ident. Number	3 Community Name County Name	4 Panels Printed (# and Suffix)	5 Inland/ Coastal	6 Hazard	7 60.3 Code	8 Program Status	9 Status of FHBM	9 Status of FIRM	10 Previous Map Dates FHBM	10 Previous Map Dates FIRM	11 Revision Code(s)	12 Rescission	13 Floodways Panels Printed	14 Location of Map Repository
PA	420263	Borough of Howard (Centre Co.)	0001B	I	FL	B	1	3	I	5/31/74 5/14/76	N/A	9 10 16	N/A	N/A	John Tressler, Mayor Borough Hall Howard, PA 16841 Phone: (814) 625-2540
PA	421197	Township of Miles (Centre Co.)	Index 0001B 0002B 0003B 0004B 0005B 0006B	I	FL	B	1	3	I	9/13/74 6/25/76	N/A	9 10 16	N/A	N/A	Robert Tyson, Chairman Twp. Board of Supervisors Municipal Building Rebersburg, PA 16872 Phone: (814) 349-8394
PA	421633	Township of North Union (Fayette Co.)	Index 0001A 0003A	I	FL	B	1	3	I	12/27/74	N/A	9 10 16	N/A	N/A	Carman Galderisi, Chairman Twp. Board of Supervisors RD 2, Box 444 Lemont Furance, PA 15456 Phone: (412) 438-7506
PA	421466	Township of Penn (Centre Co.)	Index 0001A 0002A	I	FL	B	1	3	I	12/13/74	N/A	9 10 16	N/A	N/A	Robert Bowersox, Chairman Twp. Board of Supervisors Coburn, PA 16832 Phone: (814) 349-8395
PA	421468	Township of Rush (Centre Co.)	Index 0001A 0002A 0003A 0004A 0006A 0007A 0009A	I	FL	B	1	3	I	12/20/74	N/A	9 10 16	N/A	N/A	Rodger Cartright, Chairman Twp. Board of Supervisors Sandy Ridge, PA 16677 Home Phone: (814) 342-6312 Work Phone: (814) 865-9171

EFFECTIVE DATE October 28, 1980

1 STATE	2 IDENT. NUMBER	3 COMMUNITY NAME / COUNTY NAME	4 PANELS PRINTED (# AND SUFFIX)	5 INLAND/ COASTAL	6 HAZARD	7 60.3 CODE	8 PROGRAM STATUS	9 STATUS OF FHBM	9 STATUS OF FIRM	10 PREVIOUS MAP DATES FHBM	10 PREVIOUS MAP DATES FIRM	11 REVISION CODE(S)	12 RESCISSION	13 FLOODWAYS PANELS PRINTED	14 LOCATION OF MAP REPOSITORY
UT	490210	City of Lindon (Utah County)	0001B	I	FL	B	4	3	1	6-21-77	N/A	8 9 10	N/A	N/A	Mr. Mark Palesh City Manager 383 West Lakeview Road Lindon, UT 84062 (801) 785-5043

EFFECTIVE DATE October 31, 1980

1 State	2 Ident. Number	3 Community Name County Name	4 Panels Printed (# and Suffix)	5 Inland/ Coastal	6 Hazard	7 60.3 Code	8 Program Status	9 Status of FHBM	9 Status of FIRM	10 Previous Map Dates FHBM	10 Previous Map Dates FIRM	11 Revision Code(s)	12 Rescission	13 Floodways Panels Printed	14 Location of Map Repository
PA	421689	Twp. of Dublin (Huntingdon Co.)	Index 0001A 0002A	I	FL	B	1	3	1	12/13/74	N/A	9 10 16	N/A	N/A	Galen Kling, Chairman Twp. Board of Supervisors R.D. Shade Gap, PA 17255 Phone: (814) 259-3371
PA	421608	Twp. of Fox (Elk Co.)	Index 0002A 0003A	I	FL	B	1	3	1	11/15/74	N/A	9 10 16	N/A	N/A	Gerald Huff, Chairman Twp. Board of Supervisors Municipal Building Irish Town Road Kersey, PA 15846 Phone: (814) 885-8450
PA	421348	Twp. of Napier (Bedford Co.)	Index 0003A 0004A 0005A	I	FL	B	1	3	1	1/31/75	N/A	9 10 16	N/A	N/A	Harry Miller, Chairman Twp. Board of Supervisors R.D. 1 Schellsburg, PA 15559 Phone: (814) 733-2930

BILLING CODE 6718-03-C

Community Map Actions

(Codes: Where no entry is necessary use N/A)

Column Code:

1. Two letter state designator.
2. FIA Community 6-digit identity number.
3. Community name; County(ies) name.
4. Four digit number and suffix of each FIRM or FHBM panel printed.
5. INL/Coast
   I—Inland
   C—Coastal
6. Hazard
   FL—Flood
   MS—Mudslide
   ER—Erosion
   NF—Non Flood Prone
   MF—Minimally Flood Prone
7. 60.3 Code
   A—Special Hazard not defined, no elevation data (No FHBM)
   B—Special Hazard Designated, no elevation data (FHBM)
   C—FIRM, No Floodway or Coastal High Hazard
   *D—FIRM, Regulatory Floodway Designated
   *E—FIRM, Coastal High Hazard
   *Dual entry is available.
8. Program Status
   1—Emergency
   2—Regular
   3—Not participating, no map
   4—Not participating, with map
   5—Withdrew
   6—Suspended
9. FHBM Status
   1—Never mapped
   2—Original
   3—Revised
   4—Rescinded
   5—Superseded by firm
9. Firm Status
   1—Never mapped
   2—Original
   3—Revised
   4—Rescinded
   5—All zone C—No published firm
   6—All zone A and C—No elevations determined
10. Dates of all previous maps
11. Revision codes
    1. 1916 BFE (Based Flood Elevation) Decrease
    2. 1916 BFE Increase
    3. 1916 SFHA (Special Flood Hazard Area) Change
    4. Change of Zone Designation; revised FIRM
    5. Curvilinear
    6. 1914 Incorporation
    7. 1914 Discorporation
    8. 1914 Annexation
    9. SFHA Reduction
    10. Non-1916 SFHA Increase Without Numbered Zones
    11. Non-1916 SFHA Increase with Numbered Zones
    12. Drafting Correction; Printing Errors
    13. Suffix Change ONLY
    14. Change to Uniform Zone Designations (7/1/74)
    15. Revisions Withdrawn
    16. Refunds Possible
    17. Letter of Map Amendment (1916)
    18. Letter of Map Amendment (1916 without **Federal Register** publication)
    19. **Federal Register** Omission
    20. Attention. A previous map (or maps) has been rescinded or withdrawn for this community. This may have affected the sequence of suffixes.
    21. Miscellaneous
13. List of numbered floodway panels printed
14. Address of community map repository.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: October 6, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80–32488 Filed 10–20–80; 8:45 am]

BILLING CODE 6718–03–M

Final Base (100-Year) Flood Elevations

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Pennsylvania	Township of Brown, Lycoming County (Docket No. FEMA–5726).	Pine Creek	Downstream Corporate Limits	*722
			Township Route 755 (Upstream)	*744
			State Route 414 (Upstream)	*759
			Township Route 762 (Upstream)	*796
			Conrail (Upstream)	*808
			Approximately 6,200' upstream of Conrail Bridge	*818

Maps available at the residence of Ms. Kathryn Kreighbaum, Cedar Run, Pennsylvania.

44 CFR Part 67

National Flood Insurance Program; Final Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the nation.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, Federal Emergency Management Agency, Federal Insurance Administration, National Flood Insurance Program, (202) 426–1460 or Toll Free Line (800) 424–8872 (in Alaska and Hawaii call Toll Free (800) 424–9080), Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for each community listed.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR Part 67. An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided, and the Administrator has resolved the appeals presented by the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 44 CFR Part 60.

The final base (100–year) flood elevations for selected locations are:

Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Pennsylvania	Ridgebury, Township, Bradford County (Docket No. FI-5358).	Bentley Creek	Downstream Corporate Limits	*872
			Pennsylvania Legislative Route 08068 (Upstream)	*957
			Confluence of Justice Run	*1,008
			U.S. Township Route 374 (Downstream crossing)	*1,031
			Pennsylvania Legislative Route 08144 (Upstream)	*1,056
			Township Route 374 (Upstream crossing)	*1,103
			Approximately 280 feet downstream of Ridgebury Road	*1,142
		Three Falls Glen	Township Route 374	*969
		Justice Run	Township Route 374	*1,018
			Approximately 380 feet downstream of Monkey Run Road	*1,125
		Buck Creek	Pennsylvania Legislative Route 08059	*1,129
			Approximately 5,800 feet above mouth	*1,158
Texas	Katy, City, Fort Bend County, Waller County, Harris County, (Docket No. FI-5660).	Cane Island Branch	Southern Corporate Limits	*133
			Interstate Highway 10 (upstream)	*135
			First Street (upstream)	*142
			Tenth Street	*143
			Franz Road (upstream)	*147
			Morton Road (upstream)	*153
			Northern Corporate Limits	*158
Maps available at the City Hall, Katy, Texas.				
Virginia	Pound, Town, Wise County (Docket No. FEMA-5738).	Pound River	Downstream Corporate Limits	*1,549
			*Confluence of Bold Camp Creek	*1,556
			*Confluence of South Fork Pound River	*1,558
		North Fork Pound River	U.S. Route 23 Bypass	*1,558
		South Fork Pound River	Bridge Street	*1,558
		Bold Camp Creek	Confluence with Pound River	*1,556
		Bad Creek	Downstream Corporate Limits	*1,601
			Upstream Corporate Limits	*1,625
		Tributary No. 1 to Bad Creek	State Route 630	*1,607
			Private Drive approximately 300' upstream from State Route 630 (Upstream).	*1,611
		Indian Creek	Business Route 23	*1,556
			Upstream Corporate Limits	*1,591
Maps available at the Town Hall, P.O. Box 426, Pound, Virginia 24279.				

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator).

Issued: September 18, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-32469 Filed 10-20-80; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

45 CFR Parts 1321 and 1328

Grants for State and Community Programs on Aging; Grants to Indian Tribes for Social and Nutrition Services

AGENCY: Office of Human Development Services (OHDS), HHS.

ACTION: Final rule.

SUMMARY: This amendment corrects inadvertent errors in the provisions of the regulations pertaining to legal services that incorporate the Legal Services Corporation Act (LSC) regulations. Present regulations are unclear with respect to the circumstances under which attorneys and employees engaged in legal services funded under parts 1321 and 1328 may engage in fee generating work, voter registration, legislative representation, public demonstrations, strikes, boycotts, and picketing. The regulations could be interpreted to preclude any such activity, even when the employees and attorneys performed the activities after hours on their own time, or using funds other than Older Americans Act funds. They could also be interpreted to interfere with an attorney's provision of legal assistance to a client. These interpretations would be more restrictive than the comparable LSC regulations. It has never been our intention to impose restrictions on attorneys and employees of legal service providers that are more restrictive than those imposed under the LSC regulations. This amendment conforms the Title III and Title VI regulations to the LSC regulations.

EFFECTIVE DATE: October 21, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick Luhmann, Chief, Division of State and Community Programs, HHS North Building, Room 4650, 330 Independence Avenue, S.W., Washington, D.C. 20201, (202) 245–0004.

SUPPLEMENTARY INFORMATION: Section 307(a)(15)(A)(ii) of the Older Americans Act, as added by Pub. L. 95–478, provides that recipients of funds under Title III for legal services will be subject to those specific restrictions and regulations promulgated under the Legal Services Corporation (LSC) Act that the Commissioner decides are appropriate. Section 604(a)(10) of the Act, also added by Pub. L. 95–478, requires that legal services be made available under direct grants to Indian tribes substantially in compliance with the provisions of Title

III relating to legal services. Proposed regulations implementing Title III as amended by Pub. L. 95–478 were published on July 31, 1979 (44 FR 45032). We included those LSC regulatory requirements that we thought were clearly appropriate: those restricting outside employment and partisan political activity, those requiring special language skills, and those requiring disclosure of operating policies and other general information. We specifically solicited comments on the appropriateness of incorporating any additional LSC regulations. Proposed regulations implementing Title VI were published on December 5, 1979 (44 FR 70064). We incorporated substantially the same LSC requirements in the Title VI proposed regulations.

We received several comments on the Title III regulations recommending the addition of certain LSC requirements. In response to these comments, we added LSC restrictions on voter registration activity, fee generating cases, legislative representation, picketing, demonstrations, boycotts, and other disturbances. (See section 1321.151(c)(3)(iii)(D), (vi), (vii), and (viii)). The LSC restrictions are found at 45 CFR 1608.4(b), 1608.6(c), 1609.3, 1612.4 and 1612.2(a). We intended to conform our requirements to the LSC regulations. However, in drafting these additional requirements, which were published in final on March 31, 1980, (45 FR 21126), we did not make clear, as do the LSC regulations, that we intended the restrictions to apply in each case *only* to activities funded under this part. We also did not add the important LSC exemption for activities conducted in the course of representing a client. Since it was not our intention to attempt to restrict these types of activities when they would not be restricted under the LSC regulations, we are correcting the Title III regulations.

We incorporated the same additional requirements in the final Title VI regulations, which were published on July 18, 1980 (45 FR 48380). The requirement with respect to legislative representation conforms to the LSC regulations. The others do not. Accordingly, we are also correcting the Title VI regulations.

We also added in the final Title III and Title VI regulations LSC restrictions on rioting, civil disturbances, and other illegal activities. Those restrictions apply to any employee at any time, and have been included in this correction notice as they appear in the LSC regulations at 45 CFR 1612.2(b).

Waiver of Proposed Rulemaking

Present regulations are unclear with respect to the circumstances under which attorneys and employees engaged in legal services funded under parts 1321 and 1328 may engage in fee generating work, voter registration, legislative representation, public demonstrations, strikes, boycotts, and picketing. The regulations could be interpreted to preclude any such activity, even when the employees and attorneys performed the activities after hours on their own time, or using funds other than Older Americans Act funds. They could also be interpreted to interfere with an attorney's provision of legal assistance to a client. These interpretations would be more restrictive than the comparable LSC regulations. It has never been our intention to impose restrictions on attorneys and employees of legal service providers that are more restrictive than those imposed under the LSC regulations, and this correction will simply conform the regulations to our intent.

We are very concerned that the present regulations will be interpreted to prohibit activity that we did not intend to prohibit. We think that it is essential to correct the regulations as soon as possible, so that attorneys and employees providing legal services under the Act are not deterred from engaging in activities that we did not intend to prohibit. Accordingly, we find that there is good cause to waive the Notice of Proposed Rulemaking.

Date: October 10, 1980.

Robert Benedict,

Commissioner on Aging.

Approved: October 10, 1980.

Kathryn Morrison,

Acting Assistant Secretary for Human Development Services.

Approved: October 16, 1980.

Patricia Roberts Harris,

Secretary of Health and Human Services.

(Titles III and VI of the Older Americans Act, 42 U.S.C. 3021–3030(g) and 3057. (Catalog of Federal Domestic Assistance Program Numbers: 13.633 Special Programs for Aging Title III Parts A and B—Grants on Aging))

I. Part 1321, § 1321.151, paragraph (c)(3) is amended by revising (iii) and (v)–(viii) and by adding a new (ix) and (x) to read as follows:

§ 1321.151 Legal services.

* * * * *

(C) * * *

(3) Each legal service provider must—

* * * * *

(iii) Ensure that while employed under this part, no employee and no staff attorney of the provider at any time—

(A) Uses official authority or influence for the purpose of interfering with or affecting the results of an election or nomination for office, whether partisan or nonpartisan;

(B) Directly or indirectly coerce, attempts to coercec command or advise an employee of any provider to pay, land, or contribute anything of value to a political party, or committee, organization, agency or person for political purposes; or

(C) Is a candidate for partisan elective public office.

* * * * *

(vi) Ensure that legal services are not provided using funds under this part in fee generating cases, as defined in 45 CFR 1609.2 unless adequate representation is unavailable from private attorneys;

(vii) Ensure that no funds under this part are used to directly or indirectly engage in activities intended to influence the passage or defeat of any legislation by the Congress of the United States or by any State or local legislative body or State proposals by initiative petition except where—

(A) Representation by a provider for a client is necessary with respect to such client's rights and responsibilities (except that no employee shall solicit a client in violation of professional responsibilities for the purpose of making such representation possible), or

(B) A governmental agency legislative body, committee or member thereof requests the provider to testify, draft or review measures or to make representations to such agency, body, committee or member, or is considering a measure directly affecting the activities of a provider under this part; and

(viii) Ensure that, while providing legal services funded under this part, no employee of the provider knowingly participates in any public demonstration, picketing, boycott, or strike, except as permitted by law in connection with the employee's own employment situation.

(ix) Ensure that, while employed under this part, no employee of the provider at any time knowingly participates in any:

(A) Rioting or civil disturbance;

(B) Activity in violation of an outstanding injunction of any court of competent jurisdiction; or

(C) Any other illegal activity that is inconsistent with an employee's responsibilities under the Act, these regulations, or the Code of Professional Responsibility; and

(x) Ensure that, while providing legal services funded under this part, no

attorney or employee of the provider engages in any voter registration activity.

2. Part 1321, § 1321.151, paragraph (c), is amended to add a subparagraph (5) to read as follows:

* * * * *

(c) *Conditions legal service providers must meet.* * * *

(5) Nothing in this section is intended to prohibit an attorney or staff attorney from providing any form of legal assistance to an eligible client, or to interfere with the fulfillment of any attorney's professional responsibilities to a client.

* * * * *

3. Part 1328, § 1328.23, paragraph (b)(3) is amended by revising (iv), (vii), and (ix) and by adding a new (x) to read as follows:

§ 1328.23 Legal services.

* * * * *

(b) * * *

(3) Each legal service provider must—

* * * * *

(iv) Ensure that, while providing legal services funded under this part, no attorney and no employee of the provider engages in any voter registration activity;

* * * * *

(vii) Ensure that legal services are not provided using funds under this part in fee generating cases, as defined in 45 CFR 1609.2 unless adequate representation is unavailable from private attorneys;

* * * * *

(ix) Ensure that, while providing legal services funded under this part, no employee of the provider knowingly participates in any public demonstration, picketing, boycott, or strike, except as permitted by law in connection with the employee's own employment situation; and

(x) Ensure that, while employed under this part, no employee of the provider at any time knowingly participates in any:

(A) Rioting or civil disturbance;

(B) Activity in violation of an outstanding injunction of any court of competent jurisdiction; or

(C) Any other illegal activity that is inconsistent with an employee's responsibilities under the Act, these regulations, or the Code of Professional Responsibility.

* * * * *

4. Part 1328, § 1328.23, paragraph (b) is amended to add a new subparagraph (5) to read as follows:

* * * * *

(b) * * *

(5) Nothing in this section is intended to prohibit an attorney or staff attorney from providing any form of legal assistance to an eligible client, or to interfere with the fulfillment of any attorney's professional responsibilities to a client.

* * * * *

[FR Doc. 80-32973 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-92-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[BC Docket No. 79-267; RM-3342]

FM Broadcast Stations in DeSoto and Potosi, Mo.; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule (report and order).

SUMMARY: Action taken herein substitutes Channel 249A for Channel 261A at Potosi, Missouri, and reassigns Channel 261A to DeSoto, Missouri, in response to a petition filed by Pinckney Cole. DeSoto would receive a first FM assignment.

EFFECTIVE DATE: November 21, 1980.

ADDRESSES: 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. (DeSoto and Potosi, Missouri), BC Docket No. 79-267, RM-3342.

Report and Order—Proceeding Terminated

Adopted: October 6, 1980.

Released: October 16, 1980.

1. The Commission has before it a *Notice of Proposed Rule Making,* adopted October 18, 1979, proposing the reassignment of Channel 261A from Potosi, Missouri, To DeSoto, Missouri, and the substitution of Channel 249A at Potosi. The *Notice* was issued in response to a petition filed by Pinckney Cole ("Cole"). Channel 261A can be assigned to DeSoto in conformity with the Commission's minimum distance separation requirements, provided that the site is located approximately 12.6 kilometers (7.8 miles) southwest of DeSoto.[1] Cole has affirmed his intent to apply for Channel 261A, if assigned to DeSoto. With respect to Potosi, Channel 249A can be assigned there, provided that the transmitter of a station serving that community on the channel is located approximately 11 kilometers (7 miles) southwest of the community.

2. Comments on the proposed assignment to DeSoto and substitution at Potosi have been filed by petitioner Cole; by Florissant Broadcasting Co., Inc. ("Florissant"), licensee of FM Station KSCF (Channel 246), Florissant, Missouri; by Mid Central Broadcasting Co., Inc. ("Mid Central"), licensee of AM Station KYRO, Potosi, Missouri; by Laclede Radio, Inc. ("Laclede"), licensee of FM Station WZEN (Channel 262), Alton, Illinois; and by WIL Music, Inc. ("WIL"), licensee of Station WIL-FM (Channel 222), St Louis, Missouri. Reply comments were filed by Cole, Mid Central and WIL.

3. In comments, Florissant opposes the substitution of Channel 249A for Channel 261A at Potosi, on the grounds that the proposed substitution would prevent it from upgrading its facilities for Station KSCF on Channel 246. Florissant complains that Station KSCF's present site is inadequate, inaccessible and unsatisfactory, and tells us that it could solve these problems by relocating in Missouri, where it would be permitted to upgrade to Class C facilities. However, we are told that the proposed substitute channel for Potosi would preclude such a move. Florissant also points out that the assignment of Channel 249A to Potosi would have a similar effect on Station KSLQ, St. Louis. Florissant advocates deletion of Channel 261A from Potosi, without any substitution. Mid Central Opposes deletion of Channel 261A from Potosi, since it plans to apply for that channel and co-locate the facilities with Station KYRO(AM) in Potosi. Spacing requirements would prevent co-location, were Channel 249A assigned to Potosi, and Mid Central asserts that the expense of separate sites would prove prohibitive. In reply comments, Mid Central amplified its concerns about the assignment of Channel 249A to Potosi, contending that a transmitter using that frequency would have to be sited in the Clark National Forest, an uninhabited woodland with no readily available source of power, from which a city-grade signal could not be provided for all of Potosi. WIL supports the substitute assignment of Channel 249A to Potosi, since the Channel 224A alternative would

[1] The pleadings raised some question as to whether Cole would be able to cover DeSoto with a city-grade signal at this distance, using Class A facilities. Engineering data filed by Cole with his comments on the *Notice* indicated that the city-grade signal would extend approximately 0.1 mile beyond the city limits of DeSoto.

preclude a site change it anticipates. WIL also points out that if Channel 224A is substituted providing for the Florissant proposed site change, a first local aural service to Steelville, Missouri, would be precluded. See footnote 5, *infra.* Cole filed comments and reply comments affirming his interest in the assignment of Channel 261A to DeSoto. Laclede opposes the reassignment of Channel 261A to DeSoto arguing that the proposed allocation would cause interference to Station WZEN as well as inhibit its future growth.

4. We have considered the positions taken by all parties in this procedding. With respect to the assignment of Channel 261A to DeSoto, we find that the proposal has merit. Cole submitted engineering data which indicates that a transmitter located approximately 7.8 miles from the community could provide the required 3.16 mV/m signal, operating with 3 kW at 300 feet above average terrain. This could provide a first local FM and nighttime aural service to approximately 6,000 local citizens, as well as the first FM service located in Jefferson County, whose population is over 105,000.[2] As to Laclede's claim that this outlet would cause interference to Station WZEN, we need not concern ourselves with such allegations, as long as the proposed facility would provide the protection established by our minimum distance separation requirements, as Cole's proposal does. In addition, we find Laclede's stated concern that its anticipated relocation south to reach more of St. Louis would be precluded by the assignment of Channel 261A to DeSoto to be an inadequate reason when the effect would be to prevent an assignment which could provide a first local FM service to DeSoto.[3]

5. With respect to Potosi, our alternatives are to leave Channel 261A assigned to that community, substitute Channel 224A there, or substitute Channel 249A there. Mid Central states that it plans to file an application for Channel 261A in Potosi, and that it may be precluded from filing for any other channel that might be assigned there, due to site restrictions which would make it impossible for it to co-locate an FM facility with its AM station, KYRO. However, to date we have received no such application from Mid Central, and we believe it would be inefficient use of the FM spectrum to hold channels open based upon parties' bald assertions, without more, of future plans. While Channel 261A could provide Potosi with its first local FM outlet, the pleadings indicate that Channels 224A and 249A could also fulfill this function, and our failure to assign Channel 261A to DeSoto will leave that community without an opportunity for a first local FM service.

6. Substitution of Channel 224A in Potosi would result in short spacing to the proposed new location of Station WIL (Channel 222), St. Louis.[4] WIL's application for this modification is currently on file with the Commission. Furthermore, the transmitter of a station operating on Channel 224A in Potosi would have to be sited approximately 11 kilometers (7 miles) southwest of the community in a large, uninhabited wooded area where access to telephone and electrical power lines is not assured. Finally, it is not clear that a facility operating at this site could provide the necessary 70 dBu contour over the entire community. While we need not let a party's site preference preclude an assignment which could provide first local service to a community, it appears that, in this instance, another alternative can facilitate all competing concerns, WIL's site preference and first FM allocations both to Potosi and DeSoto. This result would maximize the public benefits.

7. Substitution of Channel 249A in Potosi would prevent Mid Central from co-locating an FM facility with its AM Station KYRO, which may well preclude it from applying for an FM channel there altogether. Mid Central could provide Potosi with a first local FM service; however, since no such application has been filed to date, it is difficult to determine how serious is their intent to do so. Florissant complains that the assignment of Channel 249A to Potosi would preclude it from relocating its transmitter in Zone 2, which would permit it to upgrade from Class B to Class C facilities.[5] However, not only was Florissant's previous attempt to do so denied by the Commission (*Memorandum Opinion and Order,* FCC 77-237, 40 RR 2d 470 (1977)), but we currently have no such application on file. Florissant adds that Station KSLQ would be somewhat restricted from moving its transmitter south by the assignment of Channel 249A at Potosi. Having no indication that KSLQ intends such an action, we need give no particular weight to this allegation. We reiterate here that we are extremely reluctant to accord any particular significance to the mere assertions of future intentions of parties who have initiated no formal proceeding at the Commission with respect to their stated purposes. This is not the case with WIL since it has applied for a site change for its station (see paragraph 6). Finally, we note that a station operating on Channel 249A in Potosi would be subject to approximately the same site restriction as one operating on Channel 224A (11 kilometers (7 miles) southwest of the community). While the availability of electrical power and the ability of a Class A facility to provide a city-grade signal to all of Potosi from this location have not been definitively established, we nevertheless believe that the public interest would be best served by the assignment of Channel 249A to Potosi. Mid Central has expressed some interest in applying for an FM channel there, and it is against out policy to delete an unoccupied assignment without providing a substitute channel in a community where there is a modicum of interest in the establishment of FM service. See *Martin, Kentucky,* 43 FR 54097, published November 20, 1978, 44 RR 2d 971; cf. *Canton and Raymond, Mississippi,* 31 RR 2d 1455 (1974).

8. In light of the foregoing, we believe that the public will be best served by the assignment of Channel 261A to DeSoto, where we have assurances that Cole intends to provide a first FM service to the community, and the substitute assignment of Channel 249A to Potosi, where a first local FM service could be provided to that community.

9. Accordingly, it is ordered, That effective November 21, 1980, § 73.202(b) of the Commission's rules, the FM Table of Assignments, is amended, with respect to DeSoto and Potosi, Missouri, as follows:

City and Channel No.
DeSoto, Missouri—261A
Potosi, Missouri—249A

10. Authority for the action taken herein is contained in Sections 4(i), 5(d)(1), 303(g) and (r) and 307(b) of the Commission's rules.

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

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

(Secs. 4, 5, 303, 48 Stat., as amended, 1066, 1068, 1082; (47 U.S.C. 154, 155, 303))

[2] Engineering analysis reveals that Cole's proposed facility will provide a 1 mV/m contour over Potosi, as well.

[3] See *Cape Girardeau, Missouri,* 54 F.C.C. 2d 896 (1975).

[4] The distance between Potosi and WIL's proposed new site is approximately 69 kilometers (43 miles). The required separation for second channel adjacencies is 104 kilometers (65 miles).

[5] Although we may not formally take account of it in this proceeding, we note that moving the KSCR transmitter into Zone 2 would preclude the assignment of Channel 244A to Steelville, Missouri (RM-3489), where it could provide a first local FM service.

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 80-32795 Filed 10-20-80; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[BC Docket No. 80-37; RM-3259; RM-3646]

FM Broadcast Stations in Olympia and Chehalis, Wash.; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule (report and order).

SUMMARY: This action assigns Class C Channel 241 to Olympia, Washington, as its first FM channel assignment in response to a petition filed by Washington Oregon Broadcasting, Inc. A counterproposal requesting the assignment of the same channel to Chehalis, Washington, filed by Premier Boradcasters, Inc., was denied.

EFFECTIVE DATE: November 17, 1980.

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

FOR FURTHER INFORMATION CONTACT: John F. Kamp, Broadcast Bureau, (202) 632-9660.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of § 73.202(b), *Table of Assignments*, FM Broadcast Stations. (Olympia, and Chehalis, Washington [1]), BC Docket No. 80-37, RM-3259, RM-3646.

Report and Order—Proceeding Terminated

Adopted: October 2, 1980.

Released: October 21, 1980.

1. The Commission herein considers the *Notice of Proposed Rule Making*, adopted January 29, 1980, 45 FR 8674, published February 28, 1980, instituted in response to a request by Washington Oregon Broadcasting, Inc. ("petitioner"), to assign FM Channel 241 to Olympia, Washington, as a first FM assignment to that city. Comments were filed by the petitioner; by KGY, Inc. ("KGY"), licensee of Station KGY(AM), Olympia; and by Mr. Michael F. Marohn ("Marohn"). Reply comments were filed by the petitioner, and Marohn. A counterproposal was submitted by Premier Broadcasters, Inc. ("Premier"), licensee of Station KIT(AM), Seattle, Washington, seeking the assignment of Channel 241 to Chehalis, Washington, as a first commercial FM assignment to that city.[2] KIXI, Inc. ("KIXI"), submitted a reply to the counterproposal. Petitioner submitted a motion to accept additional pleadings after expiration of the comment periods.[3]

2. The following comments were made by the respective parties in response to the *Notice of Proposed Rule Making*. Petitioner reaffirmed its intention to file an application for use of the channel if it is assigned to Olympia, as proposed. KGY alleged that petitioner's proposed site is short spaced by approximately 6 kilometers (3.8 miles) to the co-channel 241 allocation in North Vancouver, British Columbia. KGY's engineers explored other sites and found none able to provide adequate city grade coverage to Olympia, under § 73.315(a) of the Commission's rules. KGY, therefore, suggested that if an assignment were made in the area, that the channel be assigned to Centralia or Chehalis, Washington, which are smaller cities located near the proposed antenna site. Marohn, an Olympia citizen who has assembled a group of local business people to apply for a new Olympia station, supported the assignment to Olympia, but said that the Commission should not specify the antenna location as part of the allocation process. Marohn believed that although the proposed site and alternative sites would be short-spaced, the issue should be resolved as part of the licensing process.

3. Premier's counterproposal cited the engineering data submitted by KGY detailing presumed difficulties with the petitioner's proposed site, and agreed with KGY that Centralia or Chehalis would be a "more reasonable" assignment for Channel 241. Premier argued that Chehalis is also without an FM assignment, and that because the antenna would have to be located in approximately the same location as for Olympia, the assignment of 241 at Chehalis, would provide substantially similar first and second FM service in the area. Meanwhile, Premier argued that Olympia already receives substantial service from stations allocated to Seattle and Tacoma, while the only FM service in the Centralia/Chehalis area is provided by one commercial station—Channel 275, KELA-FM.

4. In its reply to the Premier counterproposal, Marohn argued that the public interest would be better served by assigning 241 to Olympia. He emphasized that Olympia is considerably larger than Chehalis, and is the state capital, but with no commercial FM service. Meanwhile, according to Marohn, Chehalis is served as part of a dual market by KELA-FM in Centralia. (Centralia is about 4.5 kilometers (3 miles) north of Chehalis.) Marohn states that local service is the most important aspect of this proceeding, and that the Premier counterproposal would result in four commercial broadcast outlets with 24-hour service to the Chehalis/Centralia market, while much larger Olympia would be limited to two such outlets, both AM.

5. Petitioner filed reply comments directed both to the comments of KGY and to the counterproposal of Premier. Petitioner noted that the KGY engineering statement indicating that the proposed site would be short-spaced is in error because it relies on the wrong coordinates for Canadian Station CKO-4, occupying Channel 241 at North Vancouver. Petitioner submitted an engineering report using the coordinates which indicates that the proposed site is not short-spaced. Petitioner also re-submitted its earlier engineering statement to dispute KGY's contention that the proposed site would not provide an adequate city grade signal to all parts of Olympia. Petitioner also asserted that if a local channel is deemed necessary for Chehalis, Channel 289A could be assigned there under the standards proposed in the *Notice of Proposed Rule Making* adopted February 28, 1980, investigating increased assignments on the FM radio band.[4]

6. KIXI also filed reply comments on the Premier counterproposal. KIXI supported the use of Channel 241 at Chehalis, rather than at Olympia, based largely on engineering studies indicating inadequate city grade signal coverage of Olympia from petitioner's proposed site. KIXI engineers used the appropriate coordinates for the Canadian channel at North Vancouver, and stipulated that the petitioner's site meets the applicable requirements of § 73.313 of the Commission's Rules for adequate city grade coverage of Olympia. KIXI argued, however, that the Commission can and should rely on alternative measurement

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[1] The latter community has been added to the caption.

[2] Public Notice of this filing was given on May 7, 1980, Report No. 1227.

[3] After expiration of the filing period, petitioner filed a Motion to Accept Additional Pleadings to the reply comments filed by KIXI. Petitioner argued that the KIXI reply comment was more in the nature of a comment on the *Notice* than on the counterproposal of Premier. Inasmuch as the KIXI comment is an appropriate reply to the Premier counterproposal, and that the Commission staff study adequately addresses the KIXI comment, we find no compelling public interest reason to accept the late filing of petitioner and we shall not consider it herein.

[4] *In Re Modification of FM Broadcast Station Rules to Increase the Availability of Commercial FM Broadcast Assignments*, BC Docket No. 80-90, 45 FR 17602, published March 19, 1980.

methods, citing *In Re WATR–TV*, 21 RR 2d 675, as authority. Using such alternative methods KIXI asserted that the proposed site would not provide adequate coverage despite technical compliance with Commission requirements.

7. After careful and extensive review of all the issues in this case, the Commission believes that the assignment of Channel 241 to Olympia would best serve the public interest. First, the matter of the adequacy of the petitioner's proposed site must be addressed. KGY, Marohn, and Premier variously asserted that the petitioner's proposed antenna site is either short-spaced or otherwise inadequate for coverage to Olympia. A Commission staff study confirms petitioner's contention that its proposed site is not short-spaced, and that it meets adequate city grade coverage for all parts of Olympia. KGY apparently made a calculation error in finding petitioner's proposed site short-spaced to Station CKO–4 (Channel 241), North Vancouver. The error invalidates the engineering study, and removes the KGY objection, and those of Marohn and Premier relying on KGY's engineering report, from our consideration. For the same reasons, it is not necessary to consider the alternative antenna site suggested by Mr. Marohn, nor his suggestion that no site be specified in this procedure.

8. The remaining objection to the proposed site is that interposed by KIXI in its favorable reply to the Premier counterproposal. KIXI correctly stated that the proposed site meets the coverage requirements of Section 73.313, but argued that the Commission can and should rely on additional measurement devices and other measurement data in this proceeding. We find KIXI's reliance on *In Re WATR–TV* misplaced for several reasons. *In Re WATR–TV* is a UHF–TV case, not FM radio, and it involves a request for a facility change for an existing station, rather than a petition for an assignment. Even more important is the distinguishing *use* of the data in that case. There the Review Board denied a request by WATR for changes in antenna location and height, and increased power that would have amounted to a *de facto* reallocation of the channel from Waterbury to New Haven, Connecticut. The denial was supported by several alternative grounds, only one of which involved data previously not recognized by the Commission. Furthermore, the data accepted there only confirmed the uncontradicted fact that if the proposed changes would have been authorized, WATR would have substantially decreased its service to its city of license.[5] Acceptance and use of the alternative data as suggested here could have a dispositive rather than a collateral effect on the outcome here. To do so could raise the possibility of denying a petition based on standards and measuring devices not a part of our published rules while that petition apparently meets all standards which we have previously adhered to. If our published standards are not adequate (and we are not persuaded by these pleadings of their inadequacy), we think that a general rule making would be a preferable method for modification.

9. Therefore, considering the items in the previous two numbered paragraphs, there appears to be no valid technical reason to reject the original proposal submitted in our *Notice of Proposed Rule Making*. Accepting this, the mutually exclusive counterproposal to assign Channel 241 to Chehalis can be addressed and compared to the original proposal.

10. *Comparative Data.*—(a) *Communities.* Olympia (pop. 23,110),[6] is the capital of the State of Washington. It is also the seat of Thurston County (pop. 76,894). Chehalis (pop. 5,727) is the seat of Lewis County (pop. 45,467).

(b) *Local Aural Service.* Olympia is served by AM Stations KGY and KITN, and noncommercial educational KOAS–FM (Channel 207A). Chehalis is served by AM Stations KELA and KITI.

(c) *Preclusion.* Because the channel has only a restricted area in which the assignment can be made, the site of the tower for either community of license would be about the same. Therefore the preclusive impact cited in the *Notice of Proposed Rule Making* would be approximately the same for either community of license.

(d) *First and Second FM Service.* Olympia—petitioner proposes facilities of 100 kW power and an antenna height of 430 meters (1,410 feet) which would provide:

Service	Persons	Area
1st FM	30,100	7,644 sq. km. (2,940 sq. mi.)
2nd FM	72,700	6,240 sq. km. (2,400 sq. mi.)

Premier's data is incomplete but states that operating with 100 kW power and 152 meters (500 feet) at a different site would provide similar first or second FM service. Its engineering analysis states:

Service	Persons	Area
1st FM	Not stated	2,779 sq. km. (1,073 sq. mi.)
2nd FM	Not stated	1,922 sq. km. (742 sq. mi.)

11. Although this in some respects appears to be a close case, the weight of the comparative evidence persuades us that Olympia, rather than Chehalis, is the most appropriate city of assignment. Most important is that Olympia, a state capital with over 23,000 inhabitants, will hereby be authorized its first local FM commercial service. Beyond this the comparative data indicate that the Olympia proposal will provide a first and second FM service to approximately three times the area as that of the Chehalis proposal. Although population comparisons for these areas are not available, they are apparently sparsely populated areas which in light of the limited availability of additional frequencies may be very difficult to serve in the future.

12. Canadian concurrence in the assignment have been obtained.

13. In view of the foregoing, it is ordered, That effective November 17, 1980, the FM Table of Assignments (§ 73.202(b) of the Commission's rules) is amended with regard to the following community:

City and Channel No.

Olympia, Washington, 241

14. Authority for 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 § 0.281 of the Commission's rules.

15. It is further ordered, that the counterproposal filed by Premier Broadcasters, Inc. to assign Channel 241 to Chehalis, Washington, is denied.

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

17. For further information concerning this proceeding, contact John F. Kamp, Broadcast Bureau, (202) 632–9660.

(Secs. 4, 5, 303, 48 Stat., as amended, 1066, 1068, 1082; (47 U.S.C. 154, 155, 303))

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 80–32796 Filed 10–20–80; 8:45 am]

BILLING CODE 6712–01–M

[5] *In Re WATR–TV*, 21 RR 2d 675, 678.

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

47 CFR Part 73

[BC Docket No. 80-106; RM-3327]

FM Broadcast Station in Livingston, Mont.; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule (report and order).

SUMMARY: Action taken herein substitutes a Class C FM channel for a Class A FM channel in Livingston, Montana, and modifies the license of petitioner, Yellowstone Broadcasting Service, Inc. The Class C channel would provide a substantial first and second FM and second nighttime aural service.

EFFECTIVE DATES: November 17, 1980.

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

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Broadcast Bureau, (202) 632-9660.

SUPPLEMENTARY INFORMATION: In the matter of amendment of § 73.202(b), *Table of Assignments,* FM Broadcast Stations, (Livingston, Montana), BC Docket No. 80-106, RM-3327.

Report and Order—Proceeding Terminated

Adopted: October 2, 1980.

Released: October 15, 1980.

1. The Commission has under consideration a *Notice of Proposed Rule Making,* 45 FR 19574, published March 26, 1980, proposing the substitution of Class C Channel 248 for Channel 249A at Livingston, Montana, in response to a petition filed by Yellowstone Broadcasting Service, Inc. ("petitioner"), licensee of FM Station KYBS (Channel 249A). The *Notice* also proposed to delete Channel 249A from Livingston to avoid short-spacing and intermixture. Petitioner submitted supporting comments reaffirming its intent to apply for the channel, if assigned.

2. Livingston (pop. 6,883),[1] seat of Park County (pop. 11,197), is located approximately 153 kilometers (96 miles) southeast of Butte, Montana. It is served locally by daytime-only AM Station KPRK and FM Station KYBS (Channel 249A).

3. Petitioner asserts that a wide area coverage Class C facility would permit expansion of FM service to unserved areas by providing a first FM service to 9,868 persons, a second FM service to 4,352 persons, and a second nighttime aural service to 9,581 persons. Petitioner submitted a listing of alternate channels available to the communities precluded by the Class C assignment, as requested in the *Notice.*

4. The Canadian Government has given its concurrence to the proposed assignment of Channel 248 to Livingston, Montana.

5. In view of the above, the Commission believes that the public interest would be served by the proposed substitution of channels since significant first and second FM and second nighttime aural services would be provided to a substantial population. We have also authorized in paragraph 8, *infra,* a modification of petitioner's license for Station KYBS (FM) to specify Channel 248, since there has been no other expression of interest in the Class C channel.

6. In view of the foregoing, it is ordered, that effective November 17, 1980, § 73.202(b) of the Commission's rules, the FM Table of Assignments, is amended, with respect to the community listed below as follows:

City and Channel No.
Livingston, Montana, 248

7. 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.

8. It is further ordered, that pursuant to Section 316(a) of the Communications Act of 1934, as amended, the outstanding license held by Yellowstone Broadcasting Services, Inc., for Station KYBS (FM), Livingston, Montana, is modified, effective November 17, 1980, to specify operation on Channel 248 instead of 249A. The licensee shall inform the Commission in writing no later than November 17, 1980, of its acceptance of this modification. Station KYBS (FM) may continue to operate on Channel 249A for one year from the effective date of this action or until it is ready to operate on Channel 248, whichever is earlier, unless the Commission sooner directs, subject to the following conditions:

(a) At least 30 days before commencing operations on Channel 248, the licensee of Station KYBS (FM) shall submit to the Commission the technical information normally requested of an applicant for Channel 248.

(b) At least 10 days prior to commencing operation on Channel 248, the licensee of Station KYBS (FM) shall submit measurement data required of an applicant for a broadcast license; and

(c) The licensee of Station KYBS (FM) shall not commence operation on Channel 248 without prior Commission authorization.

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

10. For further information concerning this proceeding, contact Montrose H. Tyree, Broadcast Bureau, (202) 632-9660.

(Secs. 4, 5, 303, 48 Stat., as amended, 1066, 1068, 1082; (47 U.S.C. 154, 155, 303))

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 80-32797 Filed 10-20-80; 8:45 am]

BILLING CODE 6712-01-M

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

47 CFR Part 73

[Docket No. 20576; RM-2467; RM-2468; RM-2578; RM-3192; RM-3300; RM-3301]

FM Broadcast Stations in Franklin and Keene, N.H. and Bennington and Brattleboro, Vt. Also Concord, Conway, Hinsdale, Littleton, Meredith, Plymouth, Rochester, and Wolfeboro, N.H., Skowhegan, Maine, and Lyndon, Vt.; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule (report and order).

SUMMARY: This action assigns six new FM channels to various communities in New Hampshire and Vermont and makes other changes in the FM Table of Assignments to communities in the area, including Maine, in response to separate petitions for new assignments.

EFFECTIVE DATE: November 17, 1980.

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

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

SUPPLEMENTARY INFORMATION:

In the matter of Amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Franklin and Keene, New Hampshire and Bennington and Brattleboro, Vermont. Also Concord, Conway, Hinsdale, Littleton, Meredit, Plymouth, Rochester, and Wolfeboro, New Hampshire, Skowhegan, Maine and Lyndon, Vermont.),[1] Docket No. 20576, RM-2467, RM-2468, RM-2578, RM-3192, RM-3300, RM-3301.

Report and Order—Proceeding Terminated

Adopted: October 3, 1980.

Released: October 23, 1980.

1. Before the Commission is the *Further Notice of Proposed Rule Making*

[1] This last group of communities has been added to the caption.

and Orders to Show Cause in the above-captioned proceeding, adopted October 27, 1978. (43 FR 51652). This document basically proposed three alternative assignment plans encompassing several New England communities. The primary difference among the plans was as follows: *Option one* involves deletion of Channel 287 from Plymouth, New Hampshire and substitution of a Class A channel at Meredith, New Hampshire; *Option two* retains Channel 287 at Plymouth; and *Option three* simply deletes Channel 287 from Plymouth with no substitution. Each option also would assign FM channels to other communities, in response to demand therefrom, as spacing considerations permit. In the *Further Notice,* the Commission specifically requested comment on deletion of the Class C channel from Plymouth, interest in a Class A assignment at Meredith and commitment to apply for a Class A channel at Littleton, New Hampshire. *Orders to Show Cause* were issued against Strafford Broadcasting Corporation, permittee of Station WWNH–FM Rochester, New Hampshire, asking why it should not be required to modify its permit from Channel 244A to 288A,[2] and against North Country Communications, Inc., asking why its license for Station WNCS (FM), Montpelier, Vermont, should not be modified from Channel 244A to 276A.[3]

2. Comments were received from Northeast Communications Corporation ("Northeast"), proponent of the assignment of Channel 232A to Franklin, New Hampshire; North Country Radio, Inc. ("North Country Radio"), licensee of Station WBNC–FM (Channel 228A), Conway, New Hampshire; Thomas M. Pancoast ("Pancoast"), proponent of the assignment of Channel 288A to Littleton, New Hampshire; Profile Broadcasting Company, Inc. ("Profile"), licensee of Station WLTN (AM), Littleton, New Hampshire; Stereo Corporation ("Stereo"), licensee of Station WBLM (Channel 298), Lewiston-Auburn, Maine; Radio Wolfeboro, Inc. ("Radio Wolfeboro") proponent of a Class A assignment at Wolfeboro, New Hampshire; Lakes Region Broadcasting Corporation ("Lakes Region"), applicant for the use of Channel 287 at Meredith, New Hampshire, under the Commission's 15-mile rule, § 73.203(b); Alpine Broadcasting Corporation ("Alpine"), licensee of Station WHOM, Mt. Washington, New Hampshire; Strafford Broadcasting Corporation ("Strafford"), permittee of Station WWNH–FM, Rochester, New Hampshire, and North Country Communications, Inc. ("North Country Communications"), licensee of Station WNCS (FM) Montpelier, Vermont. Several parties filed conflicting petitions in time to be considered as counterproposals in this proceeding. They are Lyndon State College ("Lyndon State"), proposing the assignment of Channel 288A to Lyndon, Vermont; Lloyd F. Simon and Edward F. Perry ("Simon and Perry"), proposing the assignment of either Channel 287 or 288A to Concord, New Hampshire; and Brian Dodge on behalf of We Trust in Jesus, Inc. ("We trust in Jesus"), proposing the assignment of Channel 285A to Hinsdale, New Hampshire. Reply comments were filed by Lyndon State, Simon and Perry, North Country Radio, Radion Wolfeboro, Northeast, Pancoast and Pemigewasset Broadcasters, Inc. ("Pemigewasset"), licensee of Stations WPNH (AM) and WPNH–FM (Channel 261A), Plymouth, New Hampshire.

3. In the *Notice of Proposed Rule Making* (40 FR 34393 (1975)) and the *Further Notice,* we reviewed the demographic data of several of the communities under consideration herein. However, for purposes of comparison, we believe it will be useful to reiterate the information, as follows.

Community	Population[4]	Present service
Concord, N.H	30,022	Stations WKXL (AM), WKXL (FM) (Channel 272A) and WSPS (FM) (non commercial).
Franklin, N.H	7,292	None.
Hinsdale, N.H	3,276	None.
Littleton, N.H	5,290	Station WLTN (AM).
Meredith, N.H	2,904	None.
Wolfeboro, N.H	3,036	Station WASR (AM)—daytime only.
Lyndon, Vt	3,705	None.

[4] Population figures are based upon 1970 U.S. Census data.

Various parties have affirmed their intent to apply for a channel in each of the above communities.[5]

4. Northeast, without taking a position on the three options set out in the *Further Notice,* pointed out in comments and reply comments that the assignment of Channel 232A to Franklin, New Hampshire, is compatible with all three plans outlined in the *Further Notice* and urged that we therefore proceed with this assignment, regardless of the outcome of the other proposals under consideration herein.

5. The comments generally favored option one or three, both of which would involve deletion of Channel 287 from Plymouth. The only party which continued to support retention of Channel 287 at Plymouth was Lakes Region, whose application to use that channel at Meredith is pending. Lakes Region, in comments, reviewed the history of the assignment of Channel 287 to Plymouth. It averred that the retention of the channel there would be the least disruptive of the alternatives, as well as the best way to serve the public interest, since it would afford New Hampshire with its only Class C FM assignment.[6] This mountainous region can receive only fragmented coverage from Class A facilities, according to Lakes Region even though certain communities such as Littleton would be precluded from having their own local station.[7]

6. Reply comments filed by Pemigewasset took issue with several of Lakes Region's assertions. Pemigewasset argued that the four first local Class A FM services, which option three could provide, would best serve the public interest. It favored option three over option one because no interest in a Class A assignment in either Plymouth or Meredith has been manifested, and, lacking such, it would seem unduly burdensome on the Rochester permittee to be required to change frequencies.[8] In addition, Pemigewasset pointed out that Station WHOM is licensed to Mt. Washington, New Hampshire, as a Class C station, so that Lakes Region's proposed facility would not be the first wide area outlet in the state.[9] Indeed, Pemigewasset disputed the need in a small community such as Meredith for a high-powered

[2] The assignment of Channel 244A to Meredith, New Hampshire, would require this substitution.

[3] This substitution would be required by the assignment of Channel 287 to Meredith, New Hampshire, or the assignment of Channel 244A to Plymouth, which was not proposed, but suggested. See *Further Notice,* n. 12.

[5] Simon and Perry seek the assignment of either a Class A or B frequency in Concord, New Hampshire.

[6] Lakes Region apparently failed to notice that Station WHOM operates on Class C Channel 235, Mt. Washington, New Hampshire.

[7] Lakes Region further suggested that the unoccupied Channel 272A could be deleted from Randolph, Vermont, and reassigned to Littleton. However, a late-filed pleading indicated an interest in that channel at Randolph. We also have under consideration a proposal to assign Channel 272A to St. Johnsbury, Vermont. See RM–3354. Since this petition was filed too late to be considered in this proceeding, we are considering it separately.

[8] Strafford, the Rochester permittee, had no objection to changing frequencies; however, its comments stated that its antenna and transmitter for channel 244A had already been ordered previous to the Commission's *Order to Show Cause,* and it feels entitled to reimbursement therefor. It also evinced a desire to go on the air pending the outcome of this proceeding.

[9] Alpine, licensee of Station WHOM, filed comments arguing that the first local services which could be provided by option three makes it by far the most attractive alternative.

facility. Finally, Pemigewasset questioned whether Lakes Region would be able to meet the financial qualifications to obtain a construction permit, in light of the fact that its parent company, Browning Laboratories, Inc., went into receivership in December 1978, and a creditor filed a petition in bankruptcy against Browning in early 1979.[10]

7. North Country Radio reiterated its previously stated objections to changing the frequency of Station WBNC–FM (Channel 228A), Conway, New Hampshire, to Channel 296A.[11] These include alleged interference related to the operation of Station WGAN–TV (Channel 13), Portland, Maine, and Station WBLM (FM) (Channel 298), Lewiston, Maine. In response to the other issues raised in the *Further Notice*, North Country Radio's analysis of the three proposed options favored options one and three. Option one, North Country Radio pointed out, is preferable to option three to the extent that it could provide the first local service to four communities; however, it would impose hardship on the Rochester permittee required to change frequencies, especially absent interest in a Class A facility at Meredith. In comments and reply comments, North Country Radio argued that if Lakes Region were truly interested in serving Meredith, it would be satisfied with a Class A frequency there, a sentiment shared by several of the commenters. North Country Radio also disputed the need for a regional station in the area. Stereo Corporation, licensee of Station WBLM (FM) (Channel 298), Lewiston-Auburn, Maine, also reiterated its opposition to option two, essentially in view of the need for the Conway frequency change.[12]

8. Wolfeboro Radio, in comments and replies, strongly supported the concept of Class A channels for the several communities under consideration herein, favoring option one and noting option three as its second choice, if it is decided that Meredith does not warrant an assignment. Wolfeboro Radio indicated its intent to apply for a construction permit at Wolfeboro and to provide its share of whatever reimbursement is required as a result of substitutions generated by this proceeding.

9. Pancoast supported options one and three, because they both propose the assignment of Channel 288A to Littleton, for which Pancoast would like to apply. Profile's comments took substantially the same position. Lyndon State College, in comments and replies, sought the assignment of Channel 288A to Lyndon, Vermont, instead, and suggested Channel 272A or 292A for Littleton. Pancoast's reply comments indicated that he would apply for either of these frequencies, as well as Channel 288A. Both of these parties advocated deletion of Channel 287 from Plymouth.

10. Simon and Perry, in comments and replies, asked that the Commission assign either Channel 287 or 288A to Concord, New Hampshire, which would require deletion of Channel 287 from Plymouth. Simon and Perry argued that given the comparable sizes of Plymouth and Concord that the assignment of a high-powered facility to Concord would be more justified. They allege that intermixture would not be a problem, since the existing Class A Station WKXL-FM could apply for Channel 287.[13] Although either Concord assignment would preclude the assignment of Channel 288A to Littleton, Simon and Perry assert that Channel 292 could be assigned instead.

11. We Trust in Jesus supported the deletion of Channel 287 from Plymouth, and cited the additional first local FM service to several communities, which this could facilitate, as its reason. It also favored a Class B assignment for Concord, but opposed the Montpelier substitution. North Country Communications, licensee of Station WNCS (FM), Montpelier, Vermont, urged the assigned of Channel 244A to Meredith, and not Plymouth, so that WNCS would not be required to change frequencies from Channel 244A to 276A.

12. The central element in this proceeding is whether or not it would be in the public interest to delete Channel 287 from Plymouth. We have previously reviewed the history of that assignment,[14] and we need not reiterate here. We merely note briefly that Channel 287 was assigned to Plymouth on the basis of Lakes Region's affirmation of its intent to apply to build a facility there. While it is indeed permissible under our rules for Lakes Region to apply to use the frequency at Meredith, we must nevertheless consider the propriety of a high-powered facility at Meredith, in evaluating the broadcast needs of the several communities involved in the instant proceeding. We find convincing the allegation of several parties that Lakes Region's interest in a Class C facility at Meredith stems not from an interest to serve that community, but larger communities in the vicinity. Although Lakes Region was requested to explain its decision to apply for Meredith when it had originally asked for a Plymouth assignment, it failed to do so. In our opinion, a Class A facility would be better suited to a community of 2,904, especially where, as in this case, a higher-powered station could provide only minimal second FM service.[15] However, neither Lakes Region nor any other party has manifested an interest in a Class A assignment at Meredith. Nor does Lakes Region appear to be interested in a Class A facility at Plymouth, which would be more in keeping with the current situation there, i.e., the existence of Class A Station WPNH–FM at Plymouth. Finally, we disagree with Lakes Region's assessment that this area is in need of a regional station. We concur with the characterization of North Country Communications, echoed by several other parties, that northern New England as a region of small communities separated by rough terrain, is an area far better suited to a series of Class A assignments, which can provide local service to individual communities. Local weather reports, for example, would appear to be a greater benefit to the citizens of most of these communities than a high-powered regional facility. While the sentiment in favor of deletion of Channel 287 expressed in the majority of the comments is not conclusive in our judgment, it is persuasive, especially in light of our own belief that first local

[10] We do not as a rule pass judgment on the financial qualifications of potential applicants at the rule making stage; however, we believe that these facts, which appear to be verified by the receivership indenture and bankruptcy petition which Pemigewasset attached to its pleading, are especially significant in this instance, since the ultimate permittee of Channel 287 at either Plymouth or Meredith is already under obligation to provide reimbursement for frequency changes at Skowhegan, Maine, and Newport, New Hampshire. *Winchendon, Mass.* 46 FCC 2d 221 (1974).

[11] An *Order to Show Cause* requesting this information was issued against North Country Radio; the assignment of Channel 228A to Wolfeboro, proposed in option two, required this substitution.

[12] In order to facilitate its desired plan to upgrade its Class B station to Class C facilities on Channel 298, Stereo would be required to relocate its transmitter site from Zone I to Zone II, its attempts to obtain a waiver of the rules having been unsuccessful. Channel 296A in Conway would be short spaced to Stereo's proposed new site.

[13] Citing *Rome, N.Y.*, Docket 20863, 43 FR 10343, March 13, 1978.

[14] See *Further Notice*, paragraph 6; and see *Skowhegan, Maine*, 32 FCC 2d 338 (1972); *Winchendon, Massachusetts*, 46 FCC 2d 221 (1974).

[15] The provision of a second FM service to approximately 600 persons was the primary basis for the Plymouth assignment. However, that assignment would no longer provide nearly that much second FM service due to a transmitter site move by an existing station, the Plymouth Class A assignment and the Franklin Class A assignment adopted herein.

service is an important priority for these communities.

13. Another factor which warrants consideration is the existence of outstanding orders which would require reimbursement by the eventual permittee of Channel 287 at Plymouth or Meredith for the frrequency changes of Station WTOS–FM, Skowhegan, Maine, and Station WCNL–FM, Newport, New Hampshire. Although we are not here called upon to pass judgment on Lakes Region's financial qualifications to obtain a broadcast license, the evidence of the parent company's insolvency, as noted in the comments of Pemigewasset, cannot but cast doubt upon Lakes Region's ability to provide the requisite reimbursement, not to mention finance the construction of a high-powered broadcast facility.

14. On balance, we believe the public interest would be best served by the deletion of Channel 287 at Plymouth and the assignment of Class A channels to those communities in which interest has been manifested, to wit; Concord, Franklin, Hinsdale, Littleton, Lyndon and Wolfeboro. This will provide first FM service for the five latter communities and a second FM outlet for Concord. Since no interest has been affirmed at Meredith, we are not assigning a channel there. We are also not making a second FM assignment at Keene, since Monadnock Broadcasting Corporation, the original petitioner there, did not file comments indicating a continuing interest in the assignment. This leaves Channel 285A available to be assigned to Hinsdale (that channel could not have been assigned to both Keene and Hinsdale, due to spacing requirements). Although deletion of Channel 287 from Plymouth makes it possible to assign that channel to Concord, we believe a Class A channel is more appropriate for that community, in light of the intermixture a Class B facility there would create. Indeed, our general conclusion regarding the need for or desirability of a facility at Plymouth applies equally as well to Concord. The facts of the instant case differ from those in *Rome, New York.* See footnote 13, *supra.* There the Commission made an exception to its policy against intermixture and assigned a Class B channel to a community having one Class A assignment already. This was found to be justified primarily by the fact that there was no other Class A channel available for assignment to the community. In addition, the petitioner for the Class B assignment stated that it would apply for the Class A channel, should the existing Class A licensee choose to modify it operation onto the Class B frequency. Although Simon and Perry liken this situation to their own, the existence of a second Class A channel available for assignment to Concord makes it unnecessary for us to override our policy against intermixture there. Further, the intermixture which would be created there without overriding public benefit such as first or second FM service weighs against the Class B assignment. Instead a second Class A channel for which Simon and Perry have stated they would apply will be assigned as a second FM assignment.

15. Staff analysis has derived the following series of assignments, which, we believe, will best satisfy the various petitioners in this proceeding, as well as best serve the public. Channel 288A can be assigned to Concord, New Hampshire, with a site restriction of 1.3 kilometers (.8 miles) north of Concord. Channel 232A can be assigned to Frankin, New Hampshire, with a site restriction of 10.4 kilometers (6.5 miles) southwest of the community. Channel 285A can be assigned to Hinsdale, New Hampshire, with a site restriction of 6.4 kilometers (4 miles) west/northwest of Hinsdale. Channel 292A can be assigned to Lyndon, Vermont, at a site 9.6 kilometers (6 miles) east of the community.[16] Channel 285A can be assigned to Wolfeboro, New Hampshire. Canadian concurrence has been obtained for all the above assignments. The Commission has received at least one expression of interest in each of them.

16. This plan offers the additional benefit of eliminating the need for frequency changes at Conway or Rochester, New Hampshire, or Brattleboro or Montpelier, Vermont. Further, when Channel 287 was assigned to Plymouth, Station WTOS–FM, Skowhegan, Maine, on Channel 286 was modified to specify Channel 294. Nevertheless, the station did not in fact change frequencies, and continues to operate on Channel 286. The Table of Assignments can now be amended to reflect this fact, and no reimbursement will be required for Skowhegan. However, Station WCNL–FM, Newport, New Hampshire, did change frequencies as a result of the Plymouth assignment, and, as we stated in the *Further Notice,* we would expect the parties benefiting from the deletion of that channel from Plymouth to provide reimbursement for Newport. The direct beneficiaries are the eventual permittees at Concord (Channel 288A), and Wolfeboro (Channel 285A), the assignments which could not have been made without the Plymouth deletion.

17. 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 § 0.281 of the Commission's rules.

18. In view of the foregoing, it is ordered, that, effective November 17, 1980, § 72.202(b) of the Commission's rules, the FM Table of Assignments, is amended as follows, with respect to the following communities:

City and Channel Number

Skowhegan, Maine—286
Concord, New Hampshire—272A, 288A
Franklin, New Hampshire—232A
Hinsdale, New Hampshire—285A
Littleton, New Hampshire—292A
Plymouth, New Hampshire—261A
Wolfeboro, New Hampshire—285A
Lyndon, Vermont—252A

19. It is further ordered that this proceeding is terminated.

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

(Secs. 4, 5, 303, 48 Stat., as amended, 1066, 1068, 1082; (47 U.S.C. 154, 155, 303))

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules, Broadcast Bureau.

[FR Doc. 80-32798 Filed 10-20-80; 8:45 am]

BILLING CODE 6712-01-M

[16] Canadian concurrence has been obtained for this short spaced assignment.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Changes in Shooting Hours for Dove Hunting in Florida, Corrections in California Goose Hunting and Maryland Scaup Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: On August 21, 1980, the Service published in the **Federal Register** seasons, limits, and shooting hours for mourning doves and certain other migratory game birds. At Florida's request, the Service amends § 20.103(a) of 50 CFR Part 20 to allow shooting hours from one-half hour before sunrise to sunset for mourning doves in Florida during the periods November 8 through November 23, 1980, and December 13, 1980, through January 4, 1981. Two minor corrections are made in the final late season hunting regulations for geese in portions of California under § 20.105(d), which was published in the

Federal Register on September 16, 1980, and a correction is made in the special scaup season area of Maryland, under § 20.105(f) of the same **Federal Register** document.

DATE: Effective on October 21, 1980.

FOR FURTHER INFORMATION CONTACT:

John P. Rogers, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Room 555, Matomic Building, 1717 H Street, NW., Washington, D.C., telephone 202–254–3207.

SUPPLEMENTARY INFORMATION: On August 21, 1980, the Service published in the **Federal Register** (45 FR 55960) seasons, limits, and shooting hours for mourning doves and certain other migratory game birds. In the table under § 20.103(a), Mourning Doves—Eastern Management Unit, the shooting hours for Florida were published as 12 noon to sunset. Officials of the Florida Game and Fresh Water Fish Commission have since notified the Service of their desire to change their framework selection from half-day hunting (noon to sunset) to full-day hunting (one-half hour before sunrise to sunset) during their second and third split seasons for mourning doves. The Service concurs with this change as full-day hunting was offered as an option to the States of the Eastern Management Unit in the Final Regulations Frameworks for 1980–81 Early Hunting Seasons on Certain Migratory Game Birds published in the **Federal Register** on July 22, 1980. (45 FR 49063).

This final rulemaking also corrects two minor errors in the final late season hunting regulations for geese in portions of California under § 20.105(d), which was published at 45 FR 61543 in the **Federal Register** dated September 16, 1980. In the Northeastern Zone, for the November 1–Jan. 18 season, the parenthetical limits following "Geese" are corrected to read: "(including no more than 2 dark or 2 white geese)" instead of "(including no more than 2 dark or 2 white geese in the daily bag)". In the Balance-of-the-State Zone, the season dates for dark geese in the San Joaquin Valley Area are corrected to read "November 1–November 22." instead of "November 1–November 23."

A correction is made in the special scaup only season of Maryland under § 20.105(f), which was published at 45 FR 61545. The parenthetical wording "(outside sea duck zone)", following "Maryland", is deleted. Elsewhere in § 20.105(f) reference is made to the applicable areas being described in State regulations.

Exception From Executive Order 12044 and 43 CFR 14

As discussed in the **Federal Register** dated February 29, 1980 (45 FR 13530), the Assistant Secretary for Fish and Wildlife and Parks has concluded that the ever decreasing time frames in the regulatory process are mandated by the Migratory Bird Treaty Act and the Administrative Procedure Act. The regulatory process simply has no remaining flexibility in its timetable between the accumulation of critical summer survey data and the publication of the revised proposed rulemakings. Compliance with the determination of significance and regulatory analysis criteria established under Executive Order 12044 would simply not be possible if the fall hunting season deadlines are to be achieved.

Consequently, the Assistant Secretary for Fish and Wildlife and Parks has approved the exemption of these annual migratory bird hunting regulations from the procedures of Executive Order 12044 and 43 CFR 14 which is provided for in sections 6(b)6 and 14.3(f), respectively.

The Service finds that notice of proposed rulemaking is impractical, unnecessary, and contrary to the public interest. Because of the need to expedite the implementation of this amendment and corrections in order to communicate the regulations changes to hunters in Florida, California, and Maryland, the Service finds that "good cause" exists within the terms of 5 U.S.C. § 553(d)(3) of the Administrative Procedure Act, and these regulations will therefore take effect immediately upon publication.

Authorship

The primary author of this final rule is Henry M. Reeves, Office of Migratory Bird Management, working under the direction of John P. Rogers, Chief.

1. Section 20.103, paragraph (a), is amended as follows:

§ 20.103 Seasons, limits, and shooting hours for mourning and white-winged doves and wild pigeons.

* * * * *

(a) *Mourning Doves—Eastern Management Unit.*

* * * * *

Seasons in—	Dates
* * * * *	
Florida:	
12 noon to sunset	Oct. 4–Nov. 2.
One-half hour before sunrise to sunset.	Nov. 8–Nov. 23 and Dec. 13–Jan. 4.
* * * * *	

2. Section 20.105, paragraphs (d) and (f) are corrected to read as follows:

§ 20.105 Seasons, limits, and shooting hours for waterfowl, coots, and gallinules.

* * * * *

(d) *Waterfowl and coots in Atlantic, Mississippi, Central and Pacific Flyways.*

Pacific Flyway

* * * * * * *

	Season dates	Limits	
		Bag	Possession
Arizona (1):			
* * * * * * *			
California:			
Northeastern Zone:			
Ducks	Oct. 18 to Jan. 18	7	14
Geese	Oct. 18 to Oct. 31	1	1
Geese (including no more than 2 dark or 2 white geese).	Nov. 1 to Jan. 18	3	3
Brant	Jan. 17 to Feb. 22	4	8
* * * * * * *			
Balance-of-State Zone:			
Ducks	Oct. 18 to Jan. 18	7	14
Geese		4	4
Including no more than:			
Dark			
Counties of Del Norte and Humboldt	Closed season		
Sacramento Valley Area (2)	Dec. 15 to Jan. 18	2	4
San Joaquin Valley Area (3)	Nov. 1 to Nov. 22	2	4
Remaining areas	Nov. 1 to Jan. 18	2	4
White	Nov. 1 to Jan. 18	2	4
Brant	Jan. 17 to Feb. 22	4	8

* * * * *

(f) *Scaup only season.*

* * * * *

Seasons in the Atlantic Flyway

* * * * *

Maryland.....Nov. 29–Dec. 13.

* * * * *

Dated: October 15, 1980.

Robert S. Cook,

Deputy Director, U.S. Fish and Wildlife Service.

[FR Doc. 80–32696 Filed 10–20–80; 8:45 am]

BILLING CODE 4310–55–M

Proposed Rules

Federal Register
Vol. 45, No. 205
Tuesday, October 21, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 351

Reduction in Force; Qualifications for Assignment

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: This regulation would clarify the conditions under which agencies may formally designate positions as trainee or development positions for reduction in force purposes. In addition, this regulation would clarify the conditions under which an employee could be assigned to a formally designated trainee or development position in reduction in force competition. This regulation is being proposed in response to requests from agencies that OPM clarify its reduction in force instructions covering trainee and developmental positions.

DATE: Written comments will be considered if received no later than December 22, 1980.

ADDRESS: Send or deliver written comments to Associate Director, Staffing Services, Office of Personnel Management, 1900 E Street NW., Room 6526, Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT: Ted Dow or Tom Glennon, (202) 632–4422.

SUPPLEMENTARY INFORMATION:

Background

OPM receives many inquiries from agencies asking for assistance in determining both (1) which positions may be formally designated as trainee or developmental positions for the purpose of establishing competitive levels under § 351.403, and (2) how trainee and developmental positions are used in the determination of employee assignment rights under Subpart G of part 351 of this title. At present, these provisions are set forth in paragraph 7–6a of FPM Chapter 351.

Explanation of Proposed Regulation

OPM is proposing to set forth the provisions covering trainee and developmental position in Part 351 of this title in order to simplify and clarify how agencies determine employee retention rights. These proposed changes do not represent any change in OPM's reduction in force policies.

Specifically, OPM proposes to add § 351.701(e), which (1) provides that an agency may formally designate a position in a program having specific characteristics as a trainee or developmental position for reduction in force purposes, and (2) sets forth the qualifications which an employee must meet in order to be considered for assignment under Subpart G of Part 351 of this title to a formally designated trainee or developmental position.

OPM has determined that this is a significant regulation for the purposes of E.O. 12044.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

Accordingly, OPM Proposes to amend Title 5, Code of Federal Regulations, by adding § 351.701(e) to read as follows:

§ 351.701 Qualifications for assignment.

* * * * *

(e) An agency may formally designate a position in a program with all of the following characteristics as a trainee or developmental position:

(1) The program must have been designed to meet the agency's needs and requirements for the development of skilled personnel;

(2) The program must have been formally designated, with its provisions made known to employees and supervisors;

(3) The program must be developmental by design, offering planned growth in duties and responsibilities, and providing advancement in recognized lines of career progression; and

(4) The program must be fully implemented, with the participants chosen through standard selection procedures.

To be considered qualified for assignment under § 351.603 to a formally designated trainee or developmental position in a program having all of the characteristics covered in paragraphs (e)(1), (e)(2), (e)(3) and (e)(4) of this section, an employee must meet all of the conditions required for selection and entry into the program.

(5 U.S.C. 1302, 3502)

[FR Doc. 80–32691 Filed 10–20–80; 8:45 am]
BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1944

[FCDA No. 10.410 Low- to Moderate-Income Housing Loans]

Housing-Mobile Home and Mobile Home Site Loans

AGENCY: Farmers Home Administration, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Farmers Home Administration (FmHA) requests public comment and input for regulations for FmHA to implement a program to finance mobile homes and mobile home sites. This advance notice of proposed rulemaking will assist FmHA to more fully implement Section 527 of the Housing Act of 1949. The implementation of this regulation will allow FmHA to make loans for mobile homes and mobile home sites to assist rural families to obtain decent, safe, and sanitary dwellings.

DATES: Comments must be received on or before December 22, 1980.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Directives Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6346, Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Reed J. Petersen, Acting Director, Guaranteed and Special Authorities Loan Division, USDA, FmHA, Room 5349, South Agriculture Building, 14th and Independence Ave. SW, Washington, DC 20250, telephone 202 447–4295.

SUPPLEMENTARY INFORMATION: This proposed action has been reviewed under USDA procedures established in

Secretary's Memorandum 1955 to implement Executive Order 12044 and has been classified significant. This notice is a result of Section 527, Housing Act of 1949, as amended, which defines "housing" for FmHA housing program purposes as including "mobile home and mobile home sites."

With respect to mobile homes and mobile home sites financed, the Secretary of Agriculture shall prescribe minimum property standards to assure the livability and durability of the mobile home and the suitability of the site on which it is to be located and obtain assurances from the borrower that the mobile home will be placed on a site which complies with standards prescribed by the Secretary of Agriculture and with applicable local requirements.

In accordance with Section 527, loans under this program for the purchase of mobile homes and sites shall be made on the same terms and conditions as are applicable under section 2 of the National Housing Act to obligations financing the purchase of mobile homes and lots on which to place such homes.

This instruction does not directly affect any FmHA programs or projects which are subject to A–95 clearinghouse review.

(42 USC 1480; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Assistant Secretary for Rural Development, CFR 270)

Dated: October 15, 1980.

James E. Thornton,

Associate Administrator, Farmers Home Administration.

[FR Doc. 80–32722 Filed 10–20–80; 8:45 am]

BILLING CODE 3410–07–M

FEDERAL RESERVE SYSTEM

12 CFR Part 202

[Reg. B; Docket No. R–0203]

Equal Credit Opportunity; extension of Comment Period

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rulemaking: Extension of comment period.

SUMMARY: By notice published on August 26, 1980 (45 FR 56818), the Board of Governors of the Federal Reserve System requested comment on two interpretations of Regulation B concerning consideration of income and disclosure of reasons for adverse action. The agency has received a number of requests for an extension of the comment period. In light of the Board's desire to encourage public participation in this matter, the comment period is extended to December 22, 1980.

DATES: Effective date: October 14, 1980. The comment period is extended to December 22, 1980.

ADDRESS: Comments (which should refer to Docket No. R–0203) may be mailed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, or may be delivered to Room B–2223 in the Board Building, 20th Street and Constitution Avenue, N.W., Washington, D.C., between 8:45 a.m. and 5:15 p.m. on business days. Comments may be reviewed in Room B–1122 of the Board Building during those same hours.

FOR FURTHER INFORMATION CONTACT: Stanley D. Mabbitt, Staff Attorney, Division of Consumer and Community Affairs (202–452–3867), Board of Governors of the Federal Reserve System.

By order of the Board of Governors, acting through its Secretary under delegated authority, October 14, 1980.

Theodore E. Allison,

Secretary of the Board.

[FR Doc. 80–32733 Filed 10–20–80; 8:45 am]

BILLING CODE 6210–01–M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Dkt. 8940]

Control Data Corp., et al.; Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Consent agreement.

SUMMARY: In settlement of proceedings before the U.S. District Court for the Fourth Division of the District of Minnesota and the F.T.C., regarding alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order, accepted subject to final Commission approval, would require, among other things, two Bloomington, Minn. sellers of training courses to cease misrepresenting the purpose, significance or results of entrance examinations or aptitude tests; the qualifications or prerequisites necessary to obtain employment in the computer field or in any other field; and the cost and effectiveness of their job-placement services. The companies would be required to give prorated refunds to students who fail to complete their courses, or to compute the amount of money owed to them by students on a prorated basis. Students having unresolved complaints against the companies would have to be provided, on a shared-cost basis, with an impartial arbitration service empowered to order payment of refunds to those eligible. Additionally, the order would require that individuals selling training courses display nameplates identifying them as "Sales Representatives;" and that the firms institute a surveillance program designed to detect those parties who fail to comply with the terms of the order.

DATE: Comments must be received on or before December 22, 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: FTC/PM, Walter Gross III, Washington, D.C. 20580. (202) 523–3911.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

Agreement To Settle Litigation

Whereas Control Data Corporation and Automation Institute of America, Inc. (hereinafter referred to jointly as "Plaintiffs") have filed in the United States District Court, District of Minnesota, Fourth Division, a civil action, Docket No. 4–78 Civ. 402, seeking declaratory and injunctive relief against the Federal Trade Commission ("Commission");

Whereas Plaintiffs have previously been served by the Commission with an Administrative Complaint instituting an administrative proceeding known as Docket No. 8940, charging Plaintiffs with violation of Section 5 of the Federal Trade Commission Act and providing Plaintiffs with a form of an Order to Cease and Desist believed warranted by the Commission under the circumstances of the Administrative Complaint; and

Whereas Plaintiffs and the Commission desire to settle the litigation in Docket No. 4–78 Civ. 402

and all administrative proceedings pending against Plaintiffs at the Commission in Docket No. 8940;

Now Therefore, in consideration of the premises, Plaintiffs and the Commission agree as follows:

1. Plaintiff Control Data Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 8100—34th Avenue South in the city of Bloomington, State of Minnesota. Plaintiff Automation Institute of America, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California with its offices and principal place of business located at 8100—34th Avenue South in the city of Bloomington, State of Minnesota.

2. Plaintiffs have been served with the Commission's Complaint charging them with violation of Section 5 of the Federal Trade Commission Act, together with a form of the Order to Cease and Desist the Commission believed warranted in the circumstances.

3. Plaintiffs admit all jurisdictional facts set forth in the Commission's Administrative Complaint.

4. Plaintiffs waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise challenge or contest the validity of the order entered pursuant to this Agreement.

5. This Agreement is for settlement purposes only and does not constitute an admission by Plaintiffs that the law has been violated in any respect, including, but not limited to, the acts and practices alleged in the Commission's Administrative Complaint.

6. This Agreement will be of no force and effect unless and until the United States District Court, District of Minnesota, Fourth Division, approves it as a final and binding settlement of the litigation pending before that court, Docket No. 4–78 Civ. 402.

7. Within 90 days of approval of this agreement by the United States District Court, District of Minnesota, Fourth Division, as a binding settlement of the litigation known as Docket No. 4–78 Civ. 402, the Commission will place on the public record for a period of sixty (60) days (or such other period as the Commission may determine pursuant to its rules) this Agreement, the Order contained herein, and information in respect thereto as provided by Rule 3.25 of the Commission's Rules of Practice, 16 C.F.R. § 3.25. Within a reasonable time from the end of the aforesaid 60-day period, the Commission shall inform Plaintiffs in writing either that it accepts or that it rejects the Order contained herein as a final and complete resolution of all administrative proceedings in Docket 8940 pending against Plaintiffs at the Commission.

8. If the Commission accepts the Order as provided in paragraph 7 above, it will, as soon as is reasonably practicable, issue the Order contained herein in final disposition of the administrative proceedings pending against Plaintiffs. When so issued, the Order Contained herein 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. Mailing of the order to Plaintiffs' principal place of business, certified mail, return receipt requested, shall constitute service. Plaintiffs waive the right to any other manner of service.

9. If the Commission rejects the Order as provided in paragraph 7 above, as soon as is reasonably practicable, it shall either dismiss all proceedings against Plaintiffs or return the administrative proceedings against Plaintiffs to adjudicative status for further administrative procedures pursuant to the Commission's Rules of Practice. In no event shall the Commission assert the existence or efficacy of any former Consent Order proffered by Plaintiffs. If the Commission rejects the Order, nothing contained in this Agreement or in the Order contained herein shall constitute or be deemed to constitute a waiver or relinquishment of any sort by Plaintiffs of any defenses to Commission action heretofore raised by Plaintiffs before the Commission or in Docket No. 4–78 Civ. 402.

10. In construing the terms of the Order contained herein, the Administrative Complaint may be used. No agreement, understanding, representation or interpretation not contained in the Order or in this Agreement may be used to vary or contradict the terms of the Order.

11. Plaintiffs have read the Commission's Administrative Complaint and this Agreement, and they understand that once the Order contained herein has been served, they will be required by law to file one or more compliance reports showing that they have complied with all provisions of that Order and they may be held liable for a civil penalty in the amount provided by law for each violation of the Order after it becomes final.

12. The civil action, Docket No. 4–78 Civ. 402, pending before the United States District Court, District of Minnesota, Fourth Division, shall upon this Agreement become final, be dismissed.

13. In resolution of all administrative proceedings pending against Plaintiffs in Docket No. 8940, the parties hereby adopt for treatment by the Commission as specified above, this Agreement containing the following Consent Order to Cease and Desist.

This Agreement containing Consent Order is adopted for settlement purposes only and does not constitute, and shall not be deemed to constitute, (1) a waiver or relinquishment in whole or in part by Plaintiffs of (i) the right to challenge in accordance with appropriate legal procedures the Commission's Trade Regulation Rule for Proprietary Vocational and Home Study Schools, promulgated by the Commission on December 28, 1978, at 43 Fed. Reg. 60817, 16 C.F.R. Part 438, or (ii) any legal argument or defense of any kind which could now be raised in such a challenge, or (2) a waiver or relinquishment in whole or in part by the Commission of any legal argument or defense it could otherwise raise with regard to a legal challenge to the aforesaid Trade Regulation Rule.

Consent Order To Cease and Desist

Definitions

The terms "course," "course of study," or "course of study, training or instruction," as used in this Order, shall be defined as an entry-level vocational course of instruction, which shall mean the following: any course of instruction designed to prepare the graduates of such course for positions of employment available to persons who possess no prior training or experience other than that gained from the course of instruction. This definition of "course," "course of study," or "course of study, training or instruction," shall not constitute, nor be deemed to constitute, an interpretation or evidence of interpretation of any definition contained in the Commission's Trade Regulation rule governing proprietary, vocational and home study schools (16 CFR § 438.1 (1979)). The definition of "course," "course of study," or "course of study, training or instruction," for purposes of the Order, shall not include any course offered or sold to employers for the use of their employees or their families.

The term "respondents," as used herein, shall mean Control Data

Corporation and Automation Institute of America, Inc.

I

It is ordered that respondents Control Data Corporation, a corporation, and Automation Institute of America, Inc., a corporation, their successors, assigns, officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, franchisee, licensee, distributor or other device, in connection with the creating, advertising, promoting, offering for sale, sale or distribution of any course of study, training or instruction in the field of electronic data processing or any other course offered to the public in any field in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, orally, visually, in writing or in any manner, directly or by implication, that:

(a) College education or training beyond a high school diploma is not necessary or advantageous for the placement of any person as a programmer in the field of electronic data processing, or that any person with only a high school education or its equivalent may achieve employment as a programmer in the electronic data processing field; unless in each and every such instance it is disclosed, in immediate and conspicuous conjunction therewith, that college education or training beyond a high school diploma may be advantageous for placement as a programmer in the field of electronic data processing because some employers require such education or training for programming; or misrepresenting, orally, in writing or in any manner, any qualification or prerequisite necessary to achieve employment in any field or position;

(b) Any entrance examination or aptitude test determines whether or not a person will achieve employment in the field of electronic data processing; or misrepresenting, orally, in writing, or in any manner the meaning, purpose, benefit, significance or use of any entrance examination, aptitude test or the results thereof;

(c) Most people who take any entrance examination or aptitude test do not achieve a passing or qualifying grade or score, or score lower on such test than the particular applicant, unless such respondent so representing has, in each and every instance, statistically valid data to verify such representation; or misrepresenting, orally, in writing, or in any manner the pass or fail rate of any such entrance examination or aptitude test, or the score attained by any individual relative to, or compared with, grades or scores attained by any other or all other persons taking such entrance examination or aptitude test;

(d) Systems Analysis is an entry-level employment objective of any course of instruction offered by either respondent, unless such is the fact; or misrepresenting, orally, in writing, or in any manner, including the use of course names, descriptions or occupational objectives, the nature or type of position for which a graduate of any course of instruction may be qualified or in which such a graduate may achieve employment upon completion of the course of instruction;

(e) It is unnecessary for any graduate of any course of instruction offered by either respondent actively to seek employment through any source other than that made available by such respondent's placement service; or misrepresenting, orally, in writing, or in any manner, the capabilities, functions or performance of any placement service, or the duties, obligations or responsibilities of any person who seeks placement assistance;

(f) The placement assistance furnished by either respondent is free or without cost; or misrepresenting, orally, in writing, or in any manner, the cost of any placement assistance or service;

(g) Any graduate of any course of instruction offered by either respondent is assured of employment in any position for which training has been offered; or misrepresenting orally, in writing, or in any manner, the degree of ease or difficulty associated with obtaining employment or the effectiveness of any placement service in obtaining employment for either respondent's graduates;

(h) Any person engaged in connection with the promotion, offering for sale, sale, distribution or other marketing function for any course of instruction is a vocational counselor or is in any position not associated with marketing such course of instruction; or misrepresenting orally, in writing, or in any manner, the manner of compensation, training, experience, title, status, qualifications, or functions of any such person so engaged; or misrepresenting in any manner the nature of the relationship between anyone associated with the marketing of any course of instruction and any prospective student of such course of instruction.

II

It is further ordered that, if the provisions of Sections 438.4 through 438.6 of the Commission's Trade Regulation Rule for Proprietary Vocational and Home Study Schools (16 CFR § 438 (1979)), pertaining to "Cancellation and Refund Procedures After Cooling-Off Period" are not effective when this Order becomes effective, or are subsequently set aside or otherwise annulled by any court of law or Congressional Act, those provisions, as set forth in Appendix A,[1] shall immediately be incorporated into this Order. Additionally, if the provisions of § 438.3(f) of the Rule are not effective when this Order becomes effective, or are subsequently set aside or otherwise annulled by any court of law or Act of Congress, those provisions, as also set forth in Appendix A, shall immediately be incorporated into this Order but only to the extent that the Section applies to express jobs or earnings claims. The foregoing provisions will remain a part of this Order only for such periods as they, or any requirements which pertain to refunds in the event of cancellation after cooling-off, are not part of any Trade Regulation Rule which may be in effect thereafter. With the exception of the definition of "course" (§ 438.1(c)), all definitions in the Rule necessary to carry out the purpose of the provisions above will be incorporated into the Order in the same manner as set forth above. The requirements of this Part shall be subject to, and governed by, the understandings expressed in Appendix B attached hereto.

III

It is further ordered that: 1. Each respondent shall agree, in writing, in any enrollment contract, or other agreement to furnish educational instruction services, with each enrollee in each course covered by this Order, to and shall:

A. Provide each such enrollee with the right to request, at any time during the period beginning with the date of enrollment and ending ninety (90) days following such enrollee's disenrollment, termination, or graduation from such course of instruction, informal resolution of a claim, filed in the form of a completed, signed Student Complaint Questionnaire, a blank copy of which is attached hereto as Appendix C,[2] which questionnaire must be received by respondent at the address designated on the Questionnaire within such ninety (90) day period, when:

(i) Such claim is based upon an alleged representation or promise, either express or implied, made by a representative of such respondent in connection with such enrollee's enrollment, which representation or promise was allegedly a significant factor in leading such enrollee to enroll in such course of instruction; and

(ii) Such representation or promise allegedly was not fulfilled by such respondent and allegedly resulted in a serious diminution of a significant value or benefit of such course of instruction to such enrollee.

B. Arbitrate, at the election and upon the demand of such enrollee, such claim under the supervision of the American Arbitration Association and in accordance with and subject to the Rules and Procedures for Arbitration, and to the extent not inconsistent therewith, the Rules of the American Arbitration Association, as may be

[1] See 43 FR 60817 (December 28, 1978).

[2] Not reproduced herein for reasons of economy. Copies filed with the original document.

amended from time to time, both attached hereto as Appendix D[2] under the circumstances and subject to the conditions set forth therein;

C. Provide the right, in the event such arbitration results in an award favorable to such enrollee, to have judgment entered upon such award by any court of competent jurisdiction, subject to the right of judicial review.

2. Contemporaneous with the making of the agreement required by Paragraph 1 of this Part of this Order, each respondent shall provide each enrollee in any course described in said Paragraph 1 with the following information in a complete, clear and concise manner (a copy of the document containing such information is attached hereto as Appendix E[2]):

(i) the method for initiating the complaint resolution procedures described in Paragraphs 1 and 3 of this Part of this Order;

(ii) the cost and consequences of such complaint resolution procedures;

(iii) the designation of the location where the "Student Complaint Questionnaire" form, described in said Paragraph 3, may be obtained;

(iv) the name and mailing address of the person or persons designated by such respondent to receive such completed, signed Questionnaire;

(v) the instruction that any Questionnaire submitted to such designee or any acceptance of alternative or partial relief should be submitted, via certified mail, return receipt requested, to provide such enrollee with a record of the date such correspondence was received by such designee; and

(vi) the complete text of the Rules and Procedures for Arbitration, and to the extent not inconsistent therewith, the Rules of the American Arbitration Association, as may be amended from time to time, both attached hereto as Appendix D.

3. A. Each respondent shall (i) provide, upon request, such Student Complaint Questionnaire to any enrollee in any course of instruction described in Paragraph 1 of this Part of this Order and (ii) make available for such enrollee's inspection and copying the isntructions and explanation, attached hereto as Appendix E, and a copy of the Rules and Procedures for Arbitration, and to the extent not inconsistent therewith, the Rules of the American Arbitration Association, as may be amended from time to time, both attached hereto as Appendix D, at a designated, accessible location at each of their educational facilities offering any such course of instruction.

B. In the event a designated representative of either respondent receives a completed, signed Questionnaire from any such enrollee, such respondent shall, within five (5) business days following such designee's receipt of such Questionnaire, mail a written acknowledgment of receipt to such enrollee stating the date on which such Questionnaire was received.

C. Within thirty (30) days of said designee's receipt of a completed, signed Questionnaire, such respondent shall elect to grant and/or deny in whole or in part the relief requested by such enrollee and shall mail to such enrollee a written statement of its decision. In the event said decision denies the relief requested, either in whole or in part, and/or offers a form of relief other than that requested, said written statement shall also include a brief statement of the reasons for such denial and/or offer of alternative relief. In the event such respondent elects to grant part of the requested relief or a form of relief other than that requested, such respondent shall grant such enrollee at least fifteen (15) days within which to place in the mail written notification of his or her acceptance of such proffered relief in full satisfaction of such enrollee's claim, and shall so inform such enrollee.

D. In the event such respondent elects to grant all of the relief requested by such enrollee, such respondent shall effect the granting or, as the facts require, commence the granting of such relief within forty-five (45) days of its designee's receipt of the completed, signed Questionnaire. In the event such enrollee elects to accept partial or alternative relief, such respondent shall effect or, as the facts require, commence the granting of such relief within fifteen (15) days of receipt of such enrollee's acceptance of such relief.

4. Neither respondent shall fail to: A. Within the time periods provided in this Part of this Order, make refund, effect cancellation of future monetary obligation(s), or provide such other relief as such respondent may offer and which the enrollee accepts:

(i) to any enrollee who complies with the procedures for filing a claim as set forth in this Part, and to whom such respondent agrees to provide relief; or

(ii) to any student who invokes arbitration pursuant to this Order, and who receives an award pursuant thereto which is not moved for judicial review by either party within the time limit prescribed by applicable state law; or

B. Adhere to the Rules and Procedures for Arbitration, and to the extent not inconsistent therewith, the Rules of the American Arbitration Association, as may be amended from time to time, both attached hereto as Appendix D, which are incorporated by reference within the terms of this Order.

C. Create and maintain, for a period ending three (3) years after the use of the enrollment contract or agreement described below is terminated, or after an enrollee executes a document acknowledging receipt of the instructions and explanation described below, and during such time period make available for inspection and copying by Commission staff members upon reasonable notice and during regular business hours, and after compliance with any federal law concerning the privacy or confidentiality of student records when applicable and necessary to do so:

(i) a copy of each different form of enrollment contract, or other agreement to furnish educational instruction services for each course covered by Parts I and II of this Order;

(ii) a copy of each different document containing any information incorporated by reference in such contract or agreement pertaining to the requirements of this Part of this Order; and

(iii) for each enrollee in each such course of instruction, a copy of the document executed by such enrollee at the time of enrollment acknowledging receipt of the instructions and explanation, described in Paragraph 2 of Part III of this Order and attached as Appendix E, for initiating the complaint resolution procedures set forth in this Part of this Order.

D. Create for each enrollee who has initiated the complaint resolution procedures set forth in this Part of this Order each adequate record described below, where applicable to fully document each action taken in such complaint resolution procedure, and maintain such records for a period of three (3) years after the last action taken in connection with such enrollee's initiation of such procedures, and within said time period make each such record available for inspection and copying by Commission staff members upon reasonable notice and during regular business hours and after compliance with any federal law concerning the privacy or confidentiality of student records, when applicable and necessary to do so:

(i) which reveal the full and complete content of: (a) the completed, signed Student Complaint Questionnaire submitted by such enrollee to either respondent as described in Paragraph 3.B. of this Part of this Order, and

(b) each item of correspondence required or described in this Part of this Order respecting such Questionnaire,

and which reveal the dates each such item of correspondence was mailed and/or received, as required by this Part of this Order;

(ii) which demonstrate that any relief granted in connection with such Questionnaire pursuant to Paragraph 3.D. of this Part of the Order was effected or commenced within the time periods prescribed in said Paragraph;

(iii) which reveal the full and complete content of the notice of initiation of arbitration proceedings by such enrollee pursuant to this Part of this Order, received by such respondent from the American Arbitration Association, including full and complete content of the copy of the Student Complaint Questionnaire submitted by such enrollee to initiate arbitration and of all documents attached thereto;

(iv) which reveal the full and complete content of each document submitted to the arbitrator by such respondent in connection with such arbitration proceeding and, when a copy is provided to such respondent, each document submitted by such enrollee to the arbitrator in connection with such arbitration proceeding;

(v) which reveal the full and complete content of the written award of the arbitrator concluding such arbitration proceeding, including any simple statement of reasons accompanying such award;

(vi) which reveal the full and complete content of each petition filed by such respondent or such enrollee to have such award reviewed by any court of competent jurisdiction, and the final decision of such court in disposition of such petition; and

(vii) which demonstrate that such respondent has timely effected the granting of the relief awarded to such enrollee by the arbitrator in such arbitration proceeding.

IV

1. *It is further ordered that:* (a) Respondents herein deliver a copy of this Decision and Order to each of their present and future franchisees, licensees, employees, sales representatives, agents, solicitors, independent contractors and any other person who promotes, offers for sale, sells or distributes any course of instruction included within the scope of this Order, provided, however, that respondents shall have no obligation to deliver a copy of this Decision and Order to:

(i) Any public or non-profit, degree-granting educational institution; any professional or trade association; any federal, state or local governmental agency; or any employer when and to the extent that a course is offered or sold to employers for the use of employees or their families; or

(ii) Any person or entity whose sales, marketing, advertising and promotional practices are not directed, controlled or approved by either respondent or subject to either respondent's direction, control, or approval; or

(iii) Any person or entity that does not receive any sales, marketing, advertising or promotional advice, instrumentalities, training or materials from either respondent, directly or indirectly, *excepting* sales, marketing, advertising and promotional advice, instrumentalities, training and materials solely relating to and concerning (A) the technical aspects, features, characteristics or properties of any equipment, including any programing materials, received from either respondent, or (B) the content, organization or educational purpose (other than achieving or obtaining employment) of any course of instruction, including any tests or other similar teaching or educational materials, received from either respondent;

provided, further, however, and notwithstanding the foregoing exemptions, that respondents shall deliver a copy of this Decision and Order to:

(i) Any person or entity, other than those referenced in subparagraph 1(a)(i) above, that either respondent licenses to use any of the names Control Data Corporation, Control Data, Control Data Institute, or Automation Institute, or any other name either respondent may designate its corporate entity or any franchised educational facility offering a course of study, training, or instruction, as all or part of the name of such person's or entity's educational institution; or

(ii) Any person, or any entity formed by any such person or persons, who purchases any of respondents' Control Data Institutes, Automation Institutes or any other facility offering any course covered by Parts I and II of this Order, and who prior to such purchase was engaged as an employee or agent of either respondent in managing, controlling, administering, or in selling, marketing, advertising, or promoting for the headquarters management or any facility of Control Data Institute or Automation Institute.

(b) Respondents herein provide each person or entity not exempted from subparagraph (a) of this Paragraph with a form statement, a copy of which shall be signed by such person or on behalf of such entity and returned to respondents, clearly stating their intention to be bound by and to conform their business practices to the requirements of this Order; retain such statement during the period such person or entity is so engaged; and, upon reasonable notice and during regular business hours, make such statement available to the Commission's staff for inspection and copying;

(c) Respondents herein inform each of the persons or entities subject to subparagraph (a) of this Paragraph that respondents will not use or engage or will terminate the use or engagement of the services relating to matters within the scope of this Order of any such person or entity unless such person or entity agrees to and does file notice with respondents that they will be bound by the provisions contained in this Order;

(d) If any person or entity subject to subparagraph (a) of this Paragraph fails to agree to file the form provided for in subparagraph (b) of this Paragraph with respondents and be bound by the provisions of this order, respondents shall not use or engage, or continue the use or engagement of, said person or entity to promote, offer for sale, sell or distribute any course of instruction included with the scope of this Order;

(e) Respondents herein inform each of the persons or entities subject to subparagraph (a) of this Paragraph that respondents are obligated by this Order to discontinue dealing with or to terminate the use or engagement of persons or entities, to provide, offer for sale, sell or distribute any course of instruction within the scope of this Order, who continue the use of any deceptive acts or practices prohibited by this Order;

(f) Respondents herein institute a program of continuing surveillance designed to reveal whether the business practices of each such person or entity subject to subparagraph (a) of this Paragraph conform to the requirements of this Order; and

(g) Respondents herein discontinue dealing with or terminate the use or engagement of any person or entity subject to subparagraph (a) of this Paragraph, to promote, offer for sale, sell or distribute any course of instruction within the scope of this Order, as revealed by the aforesaid program of surveillance, who continues any act or practice prohibited by this Order.

2. It is further ordered that respondents, in connection with the advertising, promotion, offer for sale, sale or distribution of any course of study, training or instruction:

(a) provide each of their sales representatives with a name plate clearly and conspicuously bearing the

sales representative's name and legend "Sales Representative," and place said name plate in each such sales representative's office in a conspicuous manner so that it will be clearly visible to any applicant communicating with such sales representative; and

(b) present to each applicant or prospective student, immediately prior to the commencement of the initial interview or sales presentation with any sales representative of either respondent during which the purchase of or enrollment in any such course of instruction offered by either respondent is discussed, a business card containing, in a clear and conspicuous manner, located in the approximate center of said card, in eleven-point type of the same style and in the same color ink, the following information and none other:

(i) the name of the sales representative; and

(ii) the designation, "Sales Representative,"

except that such card may also contain in the approximate lower half of such card, the logo-type of the appropriate respondent and, in not more than eight-point type, the name of such respondent and the name, address and telephone number of the educational facility.

3. *It is further ordered* that Part I of this Order shall become effective immediately upon this Order becoming final; and that all other parts of this Order shall become effective 90 days after this Order becomes final.

4. *It is further ordered* that the respondents shall forthwith distribute a copy of this Order to each of their domestic operating divisions.

5. *It is further ordered* that the respondents notify the Commission at least thirty (30) days prior to any proposed change in either of the corporate respondents 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 respondents which may affect compliance obligations arising out of this Order.

6. *It is further ordered* that, in addition to all other reports required by this Order, the respondents, within sixty (60) days after service upon them of this Order, shall file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

Control Data Corp., et al. (Docket No. 8940)

Analysis of Provisionally Accepted Consent Order To Aid Public Comment

The Complaint was issued on October 3, 1973 against Control Data Corporation and its wholy-owned subsidiary, Automation Institute of America, Inc., both located at 8100 34th Ave., South Bloomington, Minnesota. The matter was withdrawn from adjudication for the purpose of allowing the Commission to consider an Order to Cease and Desist which was offered by the parties in the settlement of the case. After additional negotiation, the Commission has considered an Agreement and has provisionally accepted it.

The proposed Consent Order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period 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 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 proposed Agreement and Order or to modify in any way their terms.

Allegations in the Complaint

The Complaint alleges that in 1969 through 1971 respondents represented, contrary to fact, through advertising and/or by the statements of sales personnel:

That there is an urgent need or demand for respondents' graduates in positions for which respondents trained them, and that respondents had a reasonable basis for such representation;

That all or substantially all of respondents' graduates are able to secure positions for which respondents trained them;

That respondents has a reasonable basis to conclude that a substantial number of respondents' graduates would be hired by certain industrial corporations and government agencies;

That a college education is not necessary or advantageous for placement of respondents' graduates in positions for which they were trained;

That the position of systems analyst is an entry-level employment objective of respondents' course of instruction;

That the only thing necessary for placement of respondents' graduates as programmers in scientific applications is the completion of respondents' course of instruction in computer programming;

That respondents' entrance examination tests determine whether a person has the aptitude to sucessfully work as a programmer or a technician;

That respondents have a reasonable basis to conclude that persons who take respondents' aptitude tests fail to qualify or show less aptitude for respondents' courses of instruction than the particular applicant being tested;

That respondents have a reasonable basis to conclude that a substantial percentage of persons graduating from respondents' courses earn twice as much as they were earning when they enrolled in respondents' courses;

That respondents have a reasonable basis to conclude that a substantial percentage of persons graduating from respondents' courses earn salaries that match or exceed the salaries of college graduates; and

That the placement service furnished by respondents is free.

The Complaint further alleges that respondents have held out commissioned sales persons to be qualified or trained vocational counselors. The Complaint also alleges that respondents have used misleading course names and descriptions. The Complaint further alleges that respondents have offered their courses of instruction without disclosing the following material facts: placement of graduates, identifies of employers hiring such graduates, intital salaries earned by such graduates and attrition rates for courses of instruction.

The complaint further alleges that respondents' failure to disclose material facts and the use of unfair or deceptive acts and practices have caused persons to enroll in courses of instruction whose value to such persons for future employment was virtually worthless.

Proposed Consent Agreement

This order applies to entry-level courses of vocational instruction, i.e. courses designed to prepare persons for positions of employment where they do not have prior training or experience.

Part I

Part I of the Consent Agreement contains provisions regulating the use of the representations alleged in the Complaint to be false, misleading and deceptive. Paragraph 1, subparagraphs (a)–(i) restricts the manner in which respondents may make certain representations to the public. Respondents must cease and desist from representing, directly or by implication, that:

College, advanced training or other prerequisites are not advantageous when, in fact, they are;

An aptitude test determines a person's potential for achievement when this is not the case;

Most people who take a similar aptitude test score lower than the particular applicant, when such is not the case;

Systems analysis is an entry-level employment objective of any course of instruction offered by respondents, unless this is the case, or otherwise misrepresent the extent or nature of a graduate's qualifications for achieving employment in the field of study;

Graduates do not need to seek employment assistance by any other means than the school's placement service, or misrepresent the extent or nature of placement assistance provided;

The placement assistance is without cost, when this is not the case;

Graduates are assured of employment, when such is not the case, or

A person offering courses for sale is anything other than a person offering courses for sale.

Part II

Part II of the Consent Agreement automatically incorporates the pro rata refund provision and the requirement for prior substantiation of job demand claims contained in the 1978 Vocational School Trade Regulation Rule when the rule is not in effect. All provisions of this proposed rule pertaining to cancellation and refund procedures after the cooling-off period are therefore incorporated into this order regardless of whether the rule, in whole or in part, becomes effective. Under this part, respondents will be bound to calculate the obligation of a student who drops out of a course on a strict pro rata basis. This means that the student only has to pay for that part of the course which came before he or she dropped out.

Part III

Part III of the Consent Agreement includes dispute resolution and arbitration procedures. This part invests in enrollees the right to request informal resolution of claims from the date of enrollment to ninety days after graduation or termination.

Complaints for which a student may follow this course of action include claims based upon express or implied promises or representations used to induce students to enroll which were not fulfilled.

Paragraph 2 of this part further obligates respondents to arbitrate if requested by the enrollee. Information on procedures for initiating complaints and related costs must be provided by respondents to all enrollees.

Paragraph 3 further outlines respondents' responsibilities to make information available, acknowledge receipt of complaints, make timely decisions as to the relief requested and notify the enrollee promptly of the decision.

Under Paragraph 4 respondents must provide the relief agreed upon and must adhere to the dispute resolution procedures described. Respondents must also keep records documenting each action taken according to these complaint resolution procedures.

Part IV

This part contains the compliance provision of the consent agreement.

Paragraph 1 orders respondents to deliver copies of the consent agreement to present and future franchisees, other employees and to other parties related to respondents' business, as detailed in this Part.

Paragraph 2 orders that sales representatives be conspicuously represented as such, partially through display of name plates and business cards which bear the designation, "Sales Representative."

Paragraph 3 makes Part I of the Order effective upon becoming final and makes the entire order final 90 days thereafter.

Paragraph 4 orders respondents to distribute a copy of this Order to each of their domestic operating divisions.

Paragraph 5 requires respondents to notify the Commission 30 days prior to corporate changes such as dissolution, creation of subsidiaries, or other changes in corporate status which may affect compliance with this Order.

Finally, Paragraph 6 requires that within 60 days after service respondents must file a report detailing the manner and form of their compliance.

Carol M. Thomas,

Secretary.

Appendix A

Note.—Appendix A filed as part of the original document.

Appendix B

The Consent Order to which this Appendix B is attached has been entered into in reliance on, and shall be governed by, the following understandings:

(1) References in the provisions of the Trade Regulation Rule incorporated in Part II (or in the mandated notices or contractual provisions they prescribe) to cooling-off requirements, to disclosure requirements, or to other requirements contained in other sections of the Trade Regulation Rule not incorporated in Part II, shall not be deemed to impose by implication or otherwise any obligations on Control Data Corporation or Automation Institute of America, Inc.

(2) Control Data offers a number of courses which are described in terms of number of hours the average student takes to complete the course. Pro rata refunds for such courses will be calculated on the basis of such numbers of hours. When a student completes all the academic requirements of the course in fewer than such hours, no pro rata refund will be required.

(3) The constructive notice provisions of the Trade Regulation Rule, as incorporated in the Consent Order, are not intended to limit or preempt school academic requirements. Thus, a student absent without excuse or permission for five consecutive days could be, under applicable school rules, no longer in good standing, and readmission would not be required.

(4) The notice requirement of § 438.6 of the Trade Regulation Rule, as incorporated in the Consent Order, is satisfied by the mailing of a copy of the contract containing the cancellation provisions prescribed by § 438.5.

Appendix C

Appendix D

Appendix E

Note.—Appendices C, D, and E are filed as part of the original document.

[FR Doc. 80-32783 Filed 10-20-80; 8:45 am]

BILLING CODE 6750-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 230

[Release No. 33-6247, File No. S7-857]

Exemption From Registration of Interests and Participations in Certain H.R. 10 Plans

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to adopt a rule that would provide an exemption from the registration requirements of the Securities Act of 1933 for interests and participations issued in connection with the tax-qualified retirement plans commonly called "H.R. 10" plans of certain partnerships that meet the criteria set forth in the proposed rule. Because H.R. 10 plans are not entitled to the exemption from registration available to the tax-qualified retirement plans of certain employers, many such plans have applied for and received

exemptions from such registration requirements. The proposed rule, if adopted, would obviate the need for such applications for H.R. plans that meet the criteria set forth in the rule.

DATE: Comments should be submitted on or before December 15, 1980.

ADDRESSES: Persons wishing to submit written comments should file 10 copies thereof with George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Room 892, 500 North Capitol Street, Washington, D.C., 20549. All submissions should refer to File No. S7–857 and will be available for public inspection at the Commission's Public Reference Room, Room 6101, 1100 L Street, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Mary A. Cole, (202) 272–2057, Office of Compliance and Insurance Products, Division of Investment Management, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission is publishing for comment Proposed Rule 180 (17 CFR 230.180) under the Securities Act of 1933 (the "Act") (15 U.S.C. 77a–77aa). Proposed Rule 180, if adopted, would provide an exemption from the registration requirements of Section 5 of the Act (15 U.S.C. 77e) for interests and participations issued in connection with the H.R. 10 plans of partnerships that meet certain criteria.

Background

Section 3(a)(2) of the Act (15 U.S.C. 77c(a)(2)) provides an exemption from the registration requirements of the Act for interests and participations issued in connection with certain employee benefit plans qualified under Section 401 of the Internal Revenue Code (the "Code"). However, the exemption does not apply to plans that cover self-employed persons as defined in Section 401(c)(1) of the Code. Plans covering such self-employed persons are generally referred to as "Keog" or "H.R. 10" plans. Plans of partnerships are generally H.R. 10 plans since partners are self-employed persons within the meaning of Section 401(c)(1). Section 3(a)(2) of the Act provides, however, that the Commission may exempt from the provisions of Section 5 of the Act, by rule, regulation or order, any interest or participation issued in connection with a pension or profit-sharing plan that covers such self-employed persons, if and to the extent that the Commission determines this to be necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. The Commission itself has exercised its exemptive authority with respect to such plans five times, granting orders of exemption to three law firms, an accounting firm, and an investment banking firm, each of which is organized as a partnership. Under a grant of delegated authority, the Commission's Division of Investment Management (the "Division") has issued to approximately 70 large partnerships, mostly law firms, orders of exemption from Section 5 of the Act for interests or participations in their pension or profit-sharing plans. If the proposed rule is adopted, the need for such applications should be greatly reduced.

Summary of the Proposed Rule

The proposed rule is divided into two parts. Part (a) deals with the participation interests of plans in the collective investment vehicles in which such plans invest their assets, and part (b) deals with the participation interests of employees in their respective plans.[1]

Paragraph (a) of Proposed Rule 180 would exempt interests or participations in certain investment media sold to H.R. 10 plans where: (1) The plan covers employees of a single employer or is a single plan covering employees of interrelated partnerships; and (2) either (i) the employer is a financially sophisticated law firm, accounting firm or investment banking firm, or (ii) the employer has secured independent expert advice in connection with its plan.[2] The investment media covered by paragraph (a) are: (1) Any single trust; (2) a collective trust fund maintained by a bank; and (3) a separate account maintained by an insurance company.[3]

Paragraph (b) of Proposed Rule 180 would exempt any interest or participation in an H.R. 10 plan if the assets of such plan are invested in a single trust, a collective trust fund maintained by a bank, separate account maintained by an insurance company, or in an annuity contract funded through the general account of an insurance company. The H.R. 10 plan would be entitled to the exemption provided for in paragraph (b) only if interests or participations in the funding media in which the plan invests are exempt from the registration requirements of the Act pursuant to paragraph (a) of Proposed Rule 180 or any other rule, regulation or provision of the Act or if such interests or participations are registered under the Act.

Discussion of Proposed Rule 180

Two Interests Exempted

The proposed rule recognizes that two securities are created when a plan invests in a trust or separate account. These are the interest of the beneficiary in the plan and the interest of the plan in the trust or separate account in which plan assets are invested.

Over the past four years, the Commission and, pursuant to delegated authority, the Division have granted exemptive relief under Section 3(a)(2) to such plans for interests in the plans. Typically, applications for orders under Section 3(a)(2) are filed on behalf of the plans themselves and not on behalf of the underlying funding media.

In order to resolve any uncertainty regarding the status of either interests or participations in plans or interests of plans in funding media, the proposed rule exempts both from the Section 5 registration requirements. The Commission believes that the language of the statute is broad enough to authorize it to adopt a rule recognizing that two securities are created, and providing means for exempting both.[4]

Funding Media

Section 3(a)(2) of the Act exempts "any interest or participation in a single or collective trust fund maintained by a bank." The language makes it unclear whether a single trust must be maintained by a bank in order for the exemption to be available. However, the legislative history makes clear that Congress intended, in drafting this section, to conform it in all material respects to Section 3(c)(11) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(c)(11)). Since that provision clearly exempts single trusts whether or not maintained by a bank, the

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[1] A bill recently passed by Congress (H.R. 7554, 96th Cong. 2d Sess., § 701, 126 Cong. Rec. 10207, October 1, 1980) would amend Section 3(a)(2) of the Act in several respects. If the bill is enacted into law, the Commission will amend Proposed Rule 180 to reflect the changes in Section 3(a)(2).

[2] The Commission understands that, since most, if not all, H.R. 10 plans are covered by the Employee Retirement Income Security Act of 1974 ("ERISA"), the reporting and disclosure requirements and fiduciary standards thereof will provide a partial substitute for the protections registration under the Act would provide.

[3] H.R. 7554 referred to in Footnote 1 would amend Section 3(a)(2) of the Act to make the exemption available to insurance company general account contracts.

[4] Specifically, the applicable language of Section 3(a)(2) reads:

"The Commission, by rules, regulations or order, shall exempt from the provisions of Section 5 of this title any interest or participation issued in connection with a pension, profit-sharing, or annuity plan * * *"

In this connection, see Securities Act Release No. 6188 (February 1, 1980) published in the **Federal Register** at 45 FR 8960 (Feb. 11, 1980), in which the Commission's Division of Corporation Finance expressed the view that two securities are issued in connection with H.R. 10 plans.

Commission has interpreted Section 3(a)(2) as not requiring that a single trust be maintained by a bank. The Commission believes it desirable that Proposed Rule 180 leave no doubt on the issue; therefore, the proposed rule applies to "(a)ny interest or participation in a single trust or in a collective trust fund maintained by a bank * * *."[5]

Single Plan

The legislative history of Section 3(a)(2) of the Act indicates that, in excluding interests in H.R. 10 plans from the exemption from registration provided by that provision, Congress was primarily concerned with interests in collective investment vehicles for the assets of H.R. 10 plans of more than one employer.[6] The concern was that sponsoring financial institutions would mass market their products to numerous unrelated self-employed persons for whom such prototype plans might not be suitable. Recognizing this concern, the Commission has included in the proposed rule a condition that the plan cover employees of a single employer. However, the proposed rule treats the plans of interrelated partnerships as plans of single employers. The Commission has granted exemptive orders under Section 3(a)(2) to several partnerships which encompass individual offices in various cities because they do not appear to present the risks with which Congress was concerned.

Financial Sophistication

Subsection (a)(2) of the proposed rule sets as a condition for exemption either that the employer be a "law firm, accounting firm or investment banking firm that is engaged in furnishing services of a type that involves such knowledge and experience in financial and business matters that the employer is able to represent adequately its interests and those of its employees," or that the employer obtain "the advice of an expert that (A) is not affilitated directly or indirectly with the employer and (B) is, by virtue of its knowledge and experience in financial and business matters, able to represent adequately the interests of the employer and its employees."

Congress gave a statutory exemption from Securities Act registration with respect to certain types of qualified plans, but left it to the Commission to determine whether, and to what extent, to exempt H.R. 10 plans. The legislative history indicates that H.R. 10 plans were not exempted automatically "because of their fairly complex nature as an equity investment and because of the likelihood that they could be sold to self-employed persons, unsophisticated in the securities field." [7] Accordingly, in processing applications with respect to H.R. 10 plans, the Commission and the Division have sought assurance that applicants were sufficiently sophisticated to be able to protect adequately their interests and those of their employees or that they received the advice of experts who were financially sophisticated. In practice, the bulk of the applications filed for exemptive orders have involved law firms, accounting firms, and investment banking firms where the plans cover principals of the partnerships who are professionals offering legal or financial services which necessarily involve financially sophisticated and complex matters and which plans, therefore, do not appear to present the risks with which Congress was concerned. In addition, an exemptive order has been granted to another type of partnership that secured the advice of an independent expert.[8]

The proposed rule is intended to codify the Commission's administrative experience and, therefore, is drafted to cover those types of entities with respect to which exemptions have been granted: Law firms, accounting firms, investment banking firms, and other firms which rely on independent experts. The substantive requirement of knowledge and experience in financial and business matters sufficient to enable adequate representation of the interests of plan participants addresses the concerns of Congress as indicated in the legislative history. That standard is similar to that which Rule 146 under the Act (17 CFR 230.146) establishes with respect to offerees and offeree representatives.

Text of Proposed Rule 180

Part 230 of Chapter II of Title 17 of the Code of Federal Regulations is proposed to be amended by adding § 230.180 to read as follows:

§ 230.180 Exemption from registration of interests and participations in certain H.R. 10 plans.

(a) Any interest or participation in a single trust or in a collective trust fund maintained by a bank or in a separate account maintained by an insurance company, issued in connection with a pension or profit-sharing plan that meets the requirements for qualification under Section 401 of the Internal Revenue Code of 1954 or an annuity plan that meets the requirements for the deduction of the employer's contribution under section 404(1)(2) of such Code, which plan covers employees, some or all of whom are employees within the meaning of section 401(c) of such Code, shall be exempt from the provisions of section 5 of such Act if each of the following terms and conditions is met:

(1) The plan covers employees of a single employer or the plan is a single plan covering employees of interrelated partnerships;

(2)(i) the employer is a law firm, accounting firm or investment banking firm that is engaged in furnishing services of a type that involves such knowledge and experience in financial and business matters that the employer is able to represent adequately its interests and those of its employees; or (ii) in connection with the plan, the employer has obtained the advice of an expert that (A) is not affiliated directly or indirectly with the employer and (B) is, by virtue of its knowledge and experience in financial and business matters, able to represent adequately the interests of the employer and its employees.

(b) Any interest or participation in a pension or profitsharing plan which meets the requirements for qualification under section 401 of the Internal Revenue Code of 1954 which covers employees, some or all of whom are employees within the meaning of section 401(c)(1) of such Code, shall be exempt from the provisions of section 5 of the Act if all the assets of the plan are held in a single trust, in a collective trust fund maintained by a bank, in a separate account maintained by an insurance company or by a life insurance company under an annuity contract issued to the plan or its trustee, *Provided,* That the interests or participations held by the plan in each of the said issuers are either registered under section 5 of the Act or exempt from the provisions of said section 5 under paragraph (a) of this section or by statute or other rule or regulation.

Statutory basis: Rule 180 is proposed pursuant to the provisions of section 3(a)(2) (15 U.S.C. 77c(a)(2) of the Act.

[5] H.R. 7554 referred to in Footnote 1 would amend Section 3(a)(2) of the Act to make clear that the exemption is available to single trust funds whether or not maintained by a bank.

[6] S. Rep. No. 194, 91st Cong., 2d Sess. 27–28 (1970); H.R. Rep. No. 1382, 91st Cong., 2d Sess. 44 (1970).

[7] S. Rep. No. 194, 91st Cong., 2d Sess. 27–28 (1970); H.R. Rep. No. 1382, 91st Cong., 2d Sess. 44 (1970).

[8] Monroe Clinic Employees' Retirement Plan, Securities Act Release No. 6174 (January 9, 1980) published in the SEC Docket, Vol. 19, No. 3 (January 22, 1980) p. 142.

By the Commission.
October 14, 1980.
George A. Fitzsimmons,
Secretary.
[FR Doc. 80-32694 Filed 10-20-80; 8:45 am]
BILLING CODE 8010-01-M

17 CFR Part 270

[Release No. IC-11391, File No. S7-854]

Individualized Investment Management Services

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rulemaking.

SUMMARY: The commission proposes to adopt a rule under the Investment Company Act of 1940 which would deem investment management services which provide their clients with individualized treatment not to be investment companies. The proposed rule would provide a "safe habor" for any investment manager affording its clients individualized treatment. Under such circumstances, regulation of investment management services under the Investment Company Act of 1940 would appear to be unnecessary.

DATE: Comments must be received by January 9, 1981.

ADDRESSES: Send comments in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549. (Refer to File No. S7-854.) All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 1100 L Street, NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Arthur J. Brown, Special Counsel, (202) 272-2048, or Mark J. Mackey, Esq., Investment Company Act Study Group, Division of Investment Management, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549, (202) 272-3041.

SUPPLEMENTARY INFORMATION: The Commission today proposed for public comment a new rule 3a-4 (17 CFR 270.3a-4) under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.) ("Act"), concerning individualized investment management services. The proposed rule was developed by the Division of Investment Management's Investment Company Act Study Group in the context of its re-examination of the regulation of investment companies.

Background

In 1970, the Commission instituted an injunctive action against First National City Bank's ("FNCB") Special Investment Advisory Service ("SIAS"). The SIAS arrangement involved discretionary accounts managed so that clients who shared the same general investment objective received substantially the same investment advice. Although each client had his own account with the broker used by SIAS and each owned specified securities, the Commission alleged that SIAS was an investment company within the meaning of section 3(a) of the Act, and that participations in the arrangements were securities required to be registered under the Securities Act of 1933 (15 U.S.C. 77a et seq.) ("Securities Act").[1]

Subsequently, in response to no-action requests, the Commission's staff took the position that registration under the Act would be required if an investment adviser provided substantially the same or substantially overlapping advice, on a discretionary basis, to each account or to a discernible group of accounts.[2] This position was taken generally in connection with the offering of small account investment management services which had been made economically feasible through the increased use of computers, and reflected the staff's concern that computer systems not be used to facilitate the operation of small account investment management services in a manner that would make them the functional equivalent of investment companies without providing the investor protections afforded by the Act.

As a result of these developments, the Advisory Committee on Investment Management Services for Individual Investors ("Advisory Committee") was formed to assist the Commission in developing clearer policies and guidelines.[3] The Advisory Committee identified the significant distinctions between individualized and non-individualized services. It concluded that the promotion and operation of a discretionary investment management service may involve a public offering of securities which should be registered under the Securities Act if the service generally solicits clients and gives substantially the same advice to all clients.[4] However, the Advisory Committee also concluded that registration under the Securities Act should not be considered necessary when investment management services are individualized. It was the Advisory Committee's view that "a client of an investment manager who receives the full complement of fiduciary attention and protection does not need the protection of a Securities Act prospectus."[5] However, with respect to the Act, it was the Advisory Committee's view that, whether or not individualization is afforded, an investment company is not created where clients retain all the incidents of ownership of the securities in their portfolios, and there is thus no pooling of assets in the conventional sense.[6]

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[1] See SEC v. First National City Bank, SEC Litigation Release No. 4534 (Feb. 6, 1970). FNCB agreed to a stipulation and consent order providing for the discontinuance of SIAS, but it was permitted to operate a non-discretionary service for small investors who could select from among three or more brokers to carry their accounts rather than be limited to a single specified broker.

[2] Wheat & Co., Inc., (1971-1972 Transfer Binder) Fed. Sec. L. Rep. (CCH) ¶78,358; Finanswer America Investment, Inc., (1970-1971 Transfer Binder) Fed. Sec. L. Rep. (CCH) ¶78,111; Jacobs Persinger & Parker, (1970-1971 Transfer Binder) Fed. Sec. L. Rep. (CCH) ¶78,053.

[3] Investment Company Act Release No. 7423 (Oct. 12, 1972). The Advisory Committee's report was published in January 1973.

[4] Advisory Committee Report at 23. In this connection, the Advisory Committee stated:

A service which purports to furnish investment management but does not tailor the advice given to the particular needs of the client creates an impersonal relationship. The fortunes of the client depend on no factors other than the ability of the investment adviser to make a profit. The client stands in substantially the same position as other clients. Such an arrangement is basically an investment in a common enterprise for profit. The person offering such a service is acting as a promoter of discretionary accounts. That situation is in stark contrast to the confidential professional relationship between the investment manager and the client where the manager is furnishing investment advice on the basis of the individual needs of each client.

Advisory Committee Report at 23-24.

[5] Advisory Committee Report at 24. In this connection, the Advisory Committee suggested various criteria to assist in the determination of what constitutes individualized service or advice. It also recommended that clients of those services not subject to Securities Act registration receive an information statement disclosing material facts concerning the service offered.

[6] The Advisory Committee urged that any investor protection problems presented by such non-pooled investment management services be dealt with by appropriate disclosure and other guidelines and rules under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.) ("Advisers Act").

Subsequently, the Commission brought an administrative proceeding against a registered investment adviser for violations of the antifraud provisions of the Advisers Act and the Securities Exchange Act of 1934, alleging that the adviser did not provide its clients with personalized treatment despite representations by the adviser to the contrary. In its offer of settlement, which was accepted by the Commission, the adviser, among other things, agreed to develop standards and procedures designed to assure that each advisory client would receive individualized treatment. Investment Advisers Act Release No. 449 (Mar. 28, 1975). Similarly, the Commission recently censured another registered investment adviser for violation of section 206 of the Advisers Act in an administrative proceeding in which it was alleged that the adviser failed to accurately disclose to its clients the amount of individualized treatment they would receive, and the extent to which investment decisions for those clients would be based upon "model portfolios." Investment Advisers Act Release No. 658 (Jan. 16, 1979).

Discussion

The Commission is aware that the law is unclear on the issue of whether discretionary advisory arrangements between investors and an investment adviser are securities. This conflict results from differing interpretations afforded the words "common enterprise" which appear in the definition of the term "investment contract" expounded in *SEC* v. *W. J. Howey Co.*[7] Some courts require a pooling of clients' funds in order for a common enterprise, and thus a security, to exist.[8] However, other courts have defined a common enterprise to be "one in which the fortunes of the investor are interwoven with and dependent upon the efforts and success of those seeking the investment or of third parties."[9] The Commission notes that an investment management service operating in a jurisdiction following this latter approach might be held to be an "issuer" of securities, which, in turn, would be an "investment company" if it were found to be engaged primarily in the business of investing and trading in securities.[10] However, faced with an identical factual situation, a court in a jurisdiction which requires a pooling of funds for a common enterprise to exist might arrive at a different conclusion.

On the other hand, in the context of investment management services, a group of advisory accounts under common investment management would appear to satisfy the common enterprise element of the *Howey* test under all the facts and circumstances when they have the following characteristics: First, the advisory accounts are discretionary;[11] second, the investors receive substantially the same or substantially overlapping investment advice; third, the investment advice is not "individualized."[12] An adviser must often provide its clients with nonindividualized advice to make an investment management service economically feasible.

Therefore, an investment management service having those characteristics should be found to be an issuer of securities to its clients which is engaged primarily in the business of investing, reinvesting and trading in securities. Nevertheless, because the law in this area has not yet been fully developed, the Commission does not believe it would be appropriate at this time to adopt a rule defining which investment management services must register as investment companies under the Act.[13] Instead, the Commission has decided to propose a rule which would provide a safe harbor for any investment management service affording its clients individualized treatment. When an investment manager differentiates among its clients based upon their unique goals and needs, the likelihood is substantially reduced of a common enterprise existing *de facto* amongst all investment adviser's clients. In this respect, the economic relationship created is more closely akin to a personal service contract than to a participation in a business venture.[14]

Proposed Rule

The Commission proposes to adopt rule 3a–4 under the Act which would deem an investment management service providing its clients with individualized treatment not to involve the creation of an investment company, notwithstanding that the accounts managed by the service are discretionary and receive substantially the same investment advice.[15] The relief provided by the proposed rule would be available to any investment management service which meets the rule's requirements, regardless of the size of the accounts managed by the service.

The proposed standards of individualization were modeled after, generally, the treatment investment counselors have traditionally provided their clients.[16] Specifically, the proposed rule would require the service to furnish continuous advice as to the investment of funds on the basis of the individual needs of each such client.[17] This requirement would ordinarily entail consideration, before a transaction is effected, of each client's account and his financial and personal data in order to determine whether the transaction

[7] "The test is whether the scheme involves an investment of money in a common enterprise with profits to come solely from the efforts of others." 328 U.S. 293, 301 (1946).

[8] See, e.g., *Hirk* v. *Agri-Research Council, Inc.*, 561 F.2d 96 (7th Cir. 1977); *Curran* v. *Merrill Lynch, Pierce, Fenner and Smith, Inc.*, No. 77–1300 (6th Cir. May 12, 1980).

[9] See, e.g., *SEC* v. *Continental Commodities Corp.*, 497 F.2d 516, 522 (5th Cir. 1974).

[10] See section 3(a)(1) of the Act which defines "investment company" as any issuer which is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities; section 2(a)(22) of the Act which defines an "issuer" as every person who issues or proposes to issue any security, or has outstanding any security which it has issued; section 2(a)(28) of the Act which provides that "person" means a natural person or a company; and section 2(a)(8) of the Act which defines "company" to include a corporation, a partnership, an association, a joint stock company, a trust, a fund or any organized group of persons whether incorporated or not. In this regard, the discretionary advisory accounts, taken together, might be "an organized group of persons" and therefore a "company." See *Prudential Insurance Co.* v. *SEC*, 326 F.2d 383 (3d Cir.), cert. denied, 377 U.S. 953 (1964); and *SEC.* v. *First National City Bank*, supra.

[11] As used herein, discretionary accounts refer to all accounts other than those in which the investor both has the authority to accept or reject the investment manager's recommendations, and in fact exercises a judgment with respect to each such recommendation, regardless of whether the arrangement is labelled "discretionary" or "nondiscretionary."

[12] The concept of individualization has a basis in the term "investment supervisory services" which is defined in section 202(a)(13) of the Advisers Act as "the giving of continuous advice as to the investment of funds on the basis of the individual needs of each client." This definition has been interpreted to some extent by Item 1(a) of Form ADV Part II for registration under the Advisers Act, which lists various factors an adviser rendering such services considers in formulating its advice, such as the nature and amount of other assets, investments and insurance, and the nature and extent of the personal and family obligations of each client. It is also relevant that the personal and confidential relationship between an investment manager and his clients was emphasized by members of the industry at the Congressional hearings in 1940. See, e.g., Hearings on S. 3580, Subcomm. on Securities and Exchange, Senate Comm. on Banking and Currency, 76th Cong., 3d Sess., pt. 2 at 713, 719 (1940).

[13] However, the Commission is prepared to take appropriate enforcement action against those investment management services which it believes, under all the facts and circumstances, have created unregistered investment companies within the meaning of the Act.

[14] The Commission is aware that investment management services for large accounts traditionally have been offered to the public without registration under either the Securities Act or the Act, apparently on the basis of their clients receiving individualized treatment and the investment manager being sufficiently aware of each client's needs that he can properly fulfill his fiduciary duties.

[15] In this connection, the Commission's Division of Corporation Finance has indicated that, if the proposed rule were adopted, that Division would take the view that discretionary advisory arrangements meeting the requirements of the rule should not be regarded themselves as securities for purposes of the Securities Act.

[16] The Advisory Committee recommended various criteria to assist in the determination of what constitutes individualized treatment or advice. Among other things, the criteria would include adequate screening by the investment manager of prospective clients to determine whether the service is appropriate for them and to ascertain and suggest reasonable investment objectives for clients. In order to do this, investment managers would have to obtain comprehensive financial and other information from prospective clients and make sure that such information is kept current. The investment manager would be required to give clients reasonable access to information on the status of their accounts and some leeway in excluding certain types of securities from their portfolios (e.g., liquor, drugs and tobacco company stocks). Any across-the-board or other mechanical methods for selection of securities for accounts would be precluded. However, the use of a model portfolio by an investment manager would not be necessarily inconsistent with the rendering of individual treatment, if it is used only as a guide for selecting securities for clients. Advisory Committee Report at 27–32.

[17] Proposed rule 3a–4(a). In this regard, the Commission expects that the client's account would be managed by persons capable of analyzing those individual needs in the context of making the investment decision.

would be appropriate for that particular client.[18]

Since in most cases model portfolios do not take the individual needs and goals of each client into consideration, their use would appear to be presumptively inconsistent with individualized treatment. Similarly, the practice of simply categorizing clients in terms of general investment objectives, and mechanically treating clients within the same category in the same fashion, would also appear to be presumptively inconsistent with individualized treatment. However, the mere existence of portfolio similarities among accounts would not necessarily establish that the investment manager was not rendering investment advice on the basis of the individual needs and goals of each client. In this regard, the Commission is aware that providing dissimilar treatment merely to avoid the appearance of nonindividualized treatment could detract seriously from the quality of investment management by causing possibly unsuitable recommendations to be made to some accounts.

To ensure that the investment manager is in a position to evaluate the portfolios of his clients in light of their changing needs and circumstances, the proposed rule would require a significant amount of contact between the investment manager and his client.[19] Having such contact would not necessarily result in an investment manager providing individualized treatment; that would depend on the actual operation of the investment management service. However, having such contact should enable the investment manager to provide individualized treatment to advisory clients. In this regard, the proposed rule would require the investment manager to provide prospective clients with an initial interview.[20] This interview would give the investment manager an opportunity, among other things, to discuss with the client any financial or other personal information he furnished to the manager in writing, to ascertain the degree of risk the client is willing to take, and to discover other factors which would be difficult to obtain from a written report. Where practical, such an interview should be conducted in person.

Beyond the initial interview, the proposed rule would require that the investment manager interview his clients at least annually, determine at least quarterly whether there have been changes in the client's financial status, and provide the client with a statement of the account on a quarterly basis.[21] Moreover, under the proposed rule, the investment manager would be required to be available on a reasonable basis both for consultation (e.g., if a client needs cash for some purpose, he should be able to obtain the investment manager's recommendation on how to obtain the needed money) and to answer questions from clients who desire explanations concerning the administration of their accounts and their financial situation or investment needs.[22]

Finally, the proposed rule would require that each client of the service maintain to the extent reasonably practicable every indicia of ownership over the funds that the client placed under management, including the right to withdraw, hypothecate, vote or pledge securities [23] and the receipt of a notification (such as a confirmation) of each security transaction for his account.[24] Similarly, the client would have to be given the opportunity and authority to determine whether to refrain from purchasing particular securities otherwise generally purchased by the investment manager.[25]

The Commission is aware that compliance with the proposed standards of individualization might make it difficult to mange profitably accounts below a certain dollar amount. However, in view of the wide variations in efficiency among investment management service, the Commission does not propose to specify a minimum account size which must be maintained; rather, the Commission believes that any such minimum account size should be determined by each adviser in the context of its own circumstances.[26]

Text of Proposed Rule

It is proposed to amend Part 270 of Chapter II of Title 17 of the Code of Federal Regulations by adding § 270.3a–4 to read as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

§ 270.3a–4 Individualized investment management services.

Notwithstanding section 3(a) of the Act, an investment manager will be deemed not to create an investment company within the meaning of the Act: *Provided,* That:

(a) Such investment manager furnishes continuous advice as to the investment of funds on the basis of the individual needs of each client;

(b) A person who is authorized to make investment decisions regarding the client's account:

(1) At the opening of the account, and at least annually thereafter, interviews the client regarding the client's financial situation and individual needs;

(2) At least quarterly, attempts to determine whether there has been any change in the client's financial situation and individual needs;

(3) At least quarterly, provides the client with a statement of the account; and

(4) During normal business hours, is reasonably available to the client for consultation regarding the administration of the client's account and financial situation or investment needs;

(c) Each client of the investment manager maintains to the extent reasonably practicable every indicia of ownership of such funds, including:

(1) The right to withdraw, hypothecate, vote or pledge securities; and

(2) The receipt of a notification of each security transaction; and

(d) Each client of the investment manager has the opportunity and authority to instruct the adviser to refrain from purchasing particular

[18] In certain cases, such as an investment manager's research indicating that a particular security held by several clients will almost certainly decline in value quickly, it may be appropriate to sell that security on behalf of all accounts without first reviewing the status of each such account. The Commission does not believe such "emergency" situations are necessarily inconsistent with providing individualized service.

[19] Such contact should be directly between the investment manager and his client. The use of intermediaries by the investment manager, such as having clients direct inquiries through brokers, appears to be inconsistent with the concept of individualized investment management services.

[20] Proposed rule 3a–4(b)(1).

[21] Proposed rule 3a–4(b)(1), (2) and (3). If a client does not avail himself of the opportunity to initiate contact with the investment manager, the manager would be expected to make reasonable efforts to contact that client for the purpose of maintaining current information. At a minimum, the investment manager should write the client requesting current information on that client's financial status, and, if there is no response, the manager should follow-up the letter with a telephone call.

[22] Proposed rule 3a–4(b)(4).

[23] Proposed rule 3a–4(c)(1).

[24] Proposed rule 3a–4(c)(2).

[25] Proposed rule 3a–4(d). For example, the client would have to be able to elect whether to exclude securities such as liquor, drug and tobacco company stocks from his account, or to decide whether his account should invest in fewer numbers of securities than the number the investment manager typically invests in for his clients.

[26] In addition, the ratio of investment managers to clients can be an important indication of whether individualized treatment is being provided. Here too, however, in view of the variables involved in the administration of accounts, such as the number and quality of support and research personnel which may be available to assist the investment manager, the Commission does not propose specifying a maximum number of accounts per investment manager.

securities which otherwise might be purchased.

Statutory Basis: Proposed rule 3a–4 is promulgated pursuant to the provisions of section 6(c) (15 U.S.C. 80a–6(c)) and 38(a) (15 U.S.C. 80a–37(a)) of the Act.

By the Commission.

George A. Fitzsimmons,

Secretary.

October 10, 1980.

[FR Doc. 80–32693 Filed 10–20–80; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 732

Procedures and Criteria for Approval or Disapproval of State Program Submissions

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Cancellation of public hearing.

SUMMARY: The Office of Surface Mining has cancelled the public hearing scheduled for October 21, 1980, on the proposed rule to amend 30 CFR Part 732 to allow States to enact laws and regulations after the deadline for resubmission of an initially disapproved program.

DATE: The public comment period on the proposed rule remains open until October 31, 1980.

FOR FURTHER INFORMATION CONTACT: Andy Caraker, State and Federal Programs, Telephone (202) 343–5335.

SUPPLEMENTARY INFORMATION: On October 1, 1980, the Department of the Interior published a proposed rule to amend 30 CFR 732.13 to allow a State to enact laws and regulations until the date established for the Secretary to make the final decision on its revised program, provided that the law or regulation is submitted to the appropriate OSM Regional Director at least fifteen days prior to that date in the exact from in which it has been or will be enacted (45 FR 64961–64962). The proposed rule also provides a public review and comment period of at least ten days on such laws or regulations prior to the Secretary's decision.

A public hearing on the proposed rule was scheduled for October 21, 1980, contingent upon one or more persons expressing to OSM by October 16, 1980, an interest in participating (*see* 45 FR 64961). As of the close of business October 16, 1980, no person had expressed such an interest. Accordingly, the public hearing is cancelled.

Dated: October 16, 1980.

Toney Head, Jr.,

Assistant Director, Management and Budget.

[FR Doc. 80–32821 Filed 10–20–80; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–1–FRL 1637–5]

Approval and Promulgation of Implementation Plans; State of Vermont; Lead State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking

SUMMARY: Revisions to the Vermont State Implementation Plan (SIP) have been submitted to the Environmental Protection Agency (EPA) by the Governor's designee. The intended effect of these revisions is to provide for the attainment and maintenance of the National Ambient Air Quality Standard for lead in Vermont. EPA is proposing to approve the revisions.

The EPA invites public comments on these revisions and the consistency of the revisions with respect to the requiements of the Clean Air Act.

DATES: Comments may be submitted up to November 20, 1980.

ADDRESSES: Comments may be sent to: John Hanisch, Chief, Mobile Source Section, Room 1903, J. F. Kennedy Federal Building, Boston, Massachusetts 02203.

Copies of the proposed revisions are available for public inspection during normal business hours at the following locations: Air and Hazardous Materials Division, Room 1903, J. F. Kennedy Building, Boston, Massachusetts 02203; Air and Solid Waste Programs, State Office Building, Montpelier, Vermont 05602 and the Public Information Reference Unit, Room 2404 (EPA Library), 401 M Street, S.W., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: John Hanisch, Chief, Mobile Source Section, Room 1903, J. F. Kennedy Federal Building, Boston, Massachusetts 02203, (617) 223–5630

SUPPLEMENTARY INFORMATION:

Background

On October 5, 1978 EPA promulgated primary and secondary National Ambient Air Quality Standards for lead (43 FR 46246). Section 110 of the Clean Air Act, amended in August 1977, Pub. L. No. 95–95, requires States to adopt and submit to the EPA Administrator, within nine months after promulgation of a National Ambient Air Quality Standard, a plan for attainment and maintenance of the Standard in their area. EPA has set forth the requirements of an approvable lead State Implementation Plan in 40 CFR Part 51 (43 FR 46246). These provisions require the submission of air quality data, emissions data, a control strategy, air quality modeling, and a demonstration that the Standard will be attained within the time frame specified by the Clean Air Act.

Description of the Proposed SIP Revisions

On June 24, 1980, the Secretary of the Agency of Environmental Conservation, the Governor's official designee, submitted revisions to Vermont's State Implementation Plan to attain and maintain the federal standard for lead. The revisions include a discussion of measured lead air quality data, a base year emission inventory for stationary, mobile and areas sources, a projected emissions inventory for mobile and area sources and a control stategy for reducing ambient lead emissions.

The summary presented indicates that Vermont is attainment for the lead standard. the control strategies for reducing lead emissions and maintaining the standard are a phase-down in the lead content of gasoline, improved fleet economy and the phaseout of older vehicles. Mobile and area source projections from the base year of 1975 (used instead of 1974 because this is the year the state had its most comprehensive data base for computation of these sources) to 1990 show a marked decline in lead emissions.

The base year inventory for stationary sources shows that only one point source exists in Vermont and no significant growth in this category is anticipated. Monitoring at this source, Globe Union in Bennington, which manufacturers lead acid storage batteries, indicates that emissions are not violating the lead standard. However, dispersion modelling predicts a possible violation. Because of the discrepancy, two hi-volume sampling monitors have been placed at the site to assist in calibrating the model and in verifying the attainment status of the area. They are run on a 3 day schedule and a determination of the quantities on the filters will be made using the Reference Method in 40 CFR Part 60, Appendix G. An evaluation of the

results of this study should be submitted to EPA in 1981.

The plan does not, in itself, contain a regulation for the review of new sources of lead emissions, as required by 40 CFR 51.18. However, Vermont intends to review new lead sources and modifications of existing lead sources under the new source review regulations which were approved by EPA as part of the Vermont SIP at 45 FR 10775 (February 19, 1980). Authority to review new and modified sources of lead emissions is provided by Vermont regulation 5–231 (4), which has also been approved by EPA. A letter indicating the state's intent to subject to review any point source which emits 5 tons or more of lead is included with the submittal.

EPA's Proposed Action

EPA has evaluated the Vermont plan by comparing it with the requirements for an approvable lead SIP, as set forth in 40 CFR Part 51. As a result of this evaluation, EPA proposes to approve the plan.

The requirements of 40 CFR 51.80 provide that the plan must contain a demonstration of attainment for any area which has exceeded the Standard since January 1, 1974, including a demonstration that the measures, rules, and regulations contained in the plan are adequate to attain the Standard within the time frame specified in the Clean Air Act. As discussed above, Vermont is currently in attainment for the lead standard although a special study is underway in Bennington and an evaluation including an attainment demonstration or control stategies will be submitted to EPA in 1981.

Public Comments

Under Section 110 of the Clean Air Act as amended, and 40 CFR Part 51, the Administrator is required to approve or disapprove the regulations submitted as revisions to the SIP. The Regional Administrator hereby issues this notice setting forth these revisions as proposed rulemaking and advises the public that interested persons may participate by submitting written comments to the Region I Office. Comments received on or before (30 days after publication) will be considered. Comments received will be available for public inspection at the EPA Region I Office and at the locations listed in the Addresses Section of this notice.

The Administrator's decision to approve or disapprove the proposed revisions will be based on the comments received and on a determination whether the amendments meet the requirements of Section 110(a)(2) of the Clean Air Act and 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of State Implementation Plans.

The Agency of Environmental Conservation has certified that the public hearing requirements of 40 CFR 51.4 have been met.

EPA has determined that this regulation is "specialized" and therefore, not subject to the procedural requirements of Executive Order 12044.

(Sections 110 and 301(a) of the Clean Air Act as amended (42 U.S.C. Sections 7410 and 7610(a)))

Dated: October 8, 1980.

Leslie A. Carothers,

Acting Regional Administrator.

[FR Doc. 80-32746 Filed 10-20-80; 8:45 am]

BILLING CODE 6560-26-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-5047]

National Flood Insurance Program; Revision of Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Town of Merrillville, Lake County, Indiana.

Due to recent engineering analysis, this proposed rule revises the proposed determinations of base (100-year) flood elevations published in 44 FR 6451 on or about February 1, 1979, and hence supersedes those previously published rules.

DATES: The period for comment will be ninety (90) days following the second publication of this notice in a newspaper of local circulation in each community.

ADDRESSES: Maps and other information showing the detailed outlines of the floodprone areas and the proposed flood elevations are available for review at the Planning and Building Department, Town Hall, 13 West 73rd Street, Merrillville, Indiana.

Send comments to: Honorable Richard Wayte, President of the Merrillville Town Board, 13 West 73rd Street, Merrillville, Indiana 46410.

FOR FURTHER INFORMATION CONTACT:
Mr. Robert G. Chappell, Federal Emergency Management Agency, Federal Insurance Administration, National Flood Insurance Program, (202) 426–1460 or Toll Free Line (800) 424–8872, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: Proposed base (100-year) flood elevations are listed below for selected locations in the Town of Merrillville, Lake County, Indiana, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a).

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations are:

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)
Indiana	Merrillville, Town, Lake County	Deep River	Downstream Corporate Limits	*647
			Upstream side of Randolph Street	*654
			Upstream side of Grand Boulevard	*661
			Upstream side of Chessie System	*664
			Upstream side of Clay Street	*668
			Upstream side of Colorado Street	*672
			101st Avenue	*675

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)
		Turkey Creek	Interstate Route 65	*613
			Upstream side 61st Avenue	*614
			Upstream side of State Route 53	*616
			Upstream side of Grand Trunk Western Railroad	*620
			Upstream Corporate Limits	*625
		Meadowdale Lateral	Confluence with Turkey Creek	*620
			Upstream side of Grand Trunk Western Railroad	*625
			61st Avenue	*625
		Chapel Manor Lateral	Confluence with Turkey Creek	*618
			Upstream side of 68th Place	*625
			Upstream side of Chessie System	*633
			Upstream side of State Route 53	*640
			Upstream side of Highland Road	*649
			Downstream side of Delaware Place	*654
			Upstream side of 80th Place	*654
			750' upstream of 80th Place	*666
		Kaiser Ditch	Confluence with Turkey Creek	*621
			Upstream side of 73rd Avenue	*628
			1,450' upstream of 73rd Avenue	*630

Maps available at the Planning and Building Department, Town Hall, 13 West 73rd Street, Merrillville, Indiana.

Send comments to the Honorable Richard Wayte, President of the Merrillville Town Board, 13 West 73rd Street, Merrillville, Indiana 46410.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: September 18, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-32540 Filed 10-20-80; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA 5917]

National Flood Insurance Program; Proposed Base Flood Elevation and Zone Designation for the City of Attleboro, Mass.

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevation and zone designation described below. The proposed base flood elevation and zone designation will be the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Map and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevation and zone designation are available for review at the Mayor's Office, City Hall, Attleboro, Massachusetts. Send comments to: The Honorable Gerald J. Keane, Mayor, City of Attleboro, City Hall, 29 Park Street, Attleboro, Massachusetts 02703.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, Acting Assistant Administrator, Program Implementation and Engineering Office, National Flood Insurance Program, 451 Seventh Street, S.W., Washington, D.C. 20410, (202) 755–6570 or toll free line (800) 424–8872 or (800) 424–8873.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed base flood elevation (100-year flood) and zone designation for the City of Attleboro, Massachusetts in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR 67.4 (a) (presently appearing at its former Section, 24 CFR 1917.4 (a)).

The base flood elevation and zone designation together with the flood plain management measures required by Section 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities. The proposed elevation and zone will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed 100-year flood elevations and zone designation for selected locations are:

Source of flooding	Location	Elevation in feet	Zone
Sweedens Swamp...	Between Newport Avenue, Washington Street and Interstate 95.	77	A4

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator.)

Issued: September 5, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-32551 Filed 10-20-80; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA 5918]

National Flood Insurance Program; Proposed Boundaries, Base Flood Elevations and Zone Designations for the City of South Fulton, Tenn.

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed boundaries, base flood elevations and zone designations described below. The proposed boundaries, base flood elevations and zone designations will be the basis for the flood plain managment measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Map and other information showing the detailed outlines of the flood-prone areas and the proposed boundaries, base flood elevations and zone designations are available for review at the Mayor's Office, City Hall, South Fulton, Tennessee. Send comments to: The Honorable Paul Blalock, Mayor, City of South Fulton, 134 Broadway, Post Office Box 639, South Fulton, Tennessee 42401.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, Acting Assistant Administrator, Program Implementation and Engineering Office, National Flood Insurance Program, 451 Seventh Street SW., Washington, D.C. 20410 (202) 755–6570 or toll free line (800) 424–8872 or (800) 424–8873.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed boundaries, base flood elevations (100-year flood) and zone designations for the City of South Fulton, Tennessee, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR 67.4 (a) (presently appearing at its former Section, 24 CFR 1917.4 (a)).

The boundaries, base flood elevations and zone designations together with the flood plain management measures required by Section 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities. The proposed boundaries, elevations and zones will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed 100-year flood elevations and zone designations for selected locations are:

Source of flooding	Location	Elevation in feet (NGVD)	Zone
Harris Fork Creek and South Fulton Branch.	Between Jackson Purchase Place and the north-eastern corporation limit.	350–369	A3

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator.)

Issued: September 5, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80–32553 Filed 10–20–80; 8:45 am]

BILLING CODE 6718–03–M

44 CFR Part 67

[Docket No. FEMA–5912]

National Flood Insurance Program; Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) elevations listed below and proposed changes to base flood elevations for selected locations in the nation. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program, (202) 426–1460 or Toll Free Line (800) 424–8872 (in Alaska and Hawaii call Toll Free Line (800) 424–9080), Federal Emergency Management Agency, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determination of base (100-year) flood elevations for selected locations in the nation, in accordance with section 110 and Section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR Part 67.4(a) (presently appearing at its former Title 24, Chapter 10, Part 1917.4(a)).

These elevations, together with the flood plain management measures required by section 60.3 (formerly Section 1910.3) of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Proposed Base (100-Year) Flood Elevations

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Louisiana	Unincorporated areas of Acadia Parish.	Bayou des Canes	Just upstream of Louisiana State Highway 100	*16
		North Bayou Mallet	Just upstream of L.A. Highway 3123	*36
		Eunice South Ditch	Just downstream of Louisiana State Highway 3116	*38
		Morse Lateral	Just upstream of Louisiana Highway 1115	*12
			Just upstream of Louisiana Highway 92	*14
		Mermentau River	Just downstream of the Town of Mermentau's Corporate limits	*13
		Bayou Plaquemine Brule	Just upstream of Louisiana Highway 13	*21

Maps available for inspection at Acadia Parish Secretary's Office, Parish Courthouse Building, Court Circle, Third Floor, Crowley, Louisiana.

Send comments to Honorable Howard A. Duncan, President Policy Jury, or Mr. Terry LaConte, Secretary of Police Jury, P.O. Box 370, Crowley, Louisiana 70526.

Louisiana	Town of Coushatta, Red River Parish.	Channel 1	Just upstream of Coushatta Red Oak Road (State Highway 410	*133
			Just upstream of U.S. Highway 84	*140
		Channel 2	Approximately 350 feet upstream of confluence with Channel 1	*142
		Channel 3	Approximately 650 feet upstream of confluence of Channel 5	*142
		Channel 4	Approximately 150 feet upstream of confluence with Channel 1	*141
		Channel 5	Approximately 400 feet upstream of confluence with Channel 3	*142

Maps available for inspection at City Hall, Alonzo Street, Coushatta, Louisiana 71019.

Send comments to Mayor Truman Crawford, City Hall, Alonzo Street, Coushatta, Louisiana 71019.

Louisiana	Unincorporated areas of Pointe Coupee Parish.	Bayou Pond	Approximately 1,000 feet upstream of confluence with Portage Canal	*31
		Bayou Pond Lateral Number 3	Approximately 1,000 feet upstream of confluence with Portage Canal	*31
		False Bayou	Just upstream of Louisiana 413 Bridge	*22
			Just upstream of Texas and Pacific Railroad Bridge	*29
		False Bayou Lateral	Approximately 1,000 feet upstream of confluence with False Bayou	*29
		Patin Dyke Lateral	Just upstream of confluence with False Bayou	*21
		Discharge Bayou	Just upstream of Louisiana 413 Birdge	*21
		Bayou Grosse Tete	Just upstream of confluence with Bayou Fordache	*19
		Bayou Fordoche	Approximately 2,000 feet upstream of confluence with Bayou Grosse Tete.	*20
		Bayou Black	Just upstream of Missouri Pacific Railroad Bridge	*26
			Just upstream of U.S. 190	*28

Maps available for inspection at the Office of the President of the Pointe Coupee Police Jury, Parish Courthouse, New Roads Road, to Mr. Martin's Office, President, New Roads, Louisiana 70760.

Send comments to Mr. Martin, President of Pointe Coupee Police Parish or Mr. Junies W. Hursh, Vice President of Parish Police Jury, Pointe Coupee Parish Courthouse, P.O. Drawer J. New Roads, Louisiana 70760.

Louisiana	City of Ruston, Lincoln Parish	Chautauqua Creek	Just upstream of West Kentucky Avenue	*202
		Choudrant Creek	Just upstream of Illinois Central Railroad	*211
		Colvin Creek	Just upstream of Frazier Road	*188
			Just upsteam of East Kentucky Avenue	*208
		Colvin Creek Tributary	Just upstream of East Kentucky Avenue	*205
		Shephard Creek	Just upstream of Vaughn Avenue	*267

Maps available for inspection at Inspection Station, City Hall, 401 N. Trenton St., Ruston, Louisiana 71270.

Send comments to Mayor John W. Perritt, City Hall, 401 N. Trenton Street, Ruston, Louisiana 71270.

Louisiana	City of Springhill, Webster Parish	Little Crooked Creek	Just upsteam of 7th Street Southeast	*217
			Just upstream of Machen Drive	*226
			Just upsteam of Welcome Road	*230
		West Branch of Little Crooked Creek.	Just downstream of Kansas City Southern Railroad	*227
			Just downstream of 7th Street Southwest	*237
		East Branch of Little Crooked Creek.	Approximate 250 feet upstream of Jessica Drive	*233

Maps available for inspection at City Hall, 101 Machen Drive, Springhill, Louisiana 71075.

Send comments to Mayor Johnny Herrington, or Mayor Pro-Tem, Ernest Gore, City Hall, 101 Machen Drive, Springhill, Louisiana 71075.

Louisiana	Town of Vinton, Calcasieu Parish	Hampton Coulee	Just upsteam of Southern Pacific Railroad	*12
			Just upstream of West Street	*14
		Vinton Drainage Canal	Just downstream of West Street	*11

Maps available for inspection at Town Hall, 1200 Horridge Street, Vinton, Louisiana 70668.

Send comments to Mayor Raywood LeMaire or Mr. E. L. Bahnsen, Superintendent of Public Works, Town Hall, 1200 Horridge Street, Vinton, Louisiana 70668.

Maine	North Yarmouth, Town, Cumberland County.	Royal River	Downstream Corporate Limits	*84
			Upstream of State Route 9	*89
			Upstream of Mill Road	*94
			Upstream Corporate Limits	*96

Maps available at the North Yarmouth Town Hall, R.F.D. 2, Cumberland Center, Maine.

Send comments to Honorable Scott W. Seaver, Chairman of the North Yarmouth Board of Selectmen, R.F.D. 2, Cumberland Center, Maine 04021.

Maine	South Portland, City, Cumberland County.	Atlantic Ocean	East Shoreline	*9
			Mouth of Fore River	*9
			Upstream Corporate Limits	*10
		Long Creek	Confluence with Fore River	*10
			Upstream Clark Pond Dam	*25
			Upstream Foden Road	*33
			Upstream Maine Turnpike	*44
			Upstream Corporate Limits	*46

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Red Brook	Confluence with Long Creek	*25
			Upstream of Interstate 295	*38
			Upstream of Corporate Limits	*47
		Trout Brook	Confluence with Fore River	*10
			Upstream of Broadway Avenue	*16
			Upstream of Fessenden Avenue	*26
			Upstream of Boothby Avenue	*32
			Upstream of Providence Avenue	*46
			Upstream of Sawyer Street	*51
			Upstream of Spurwick Avenue	*53
	Maps available at the City Hall, 25 Cottage Road, South Portland, Maine.			
	Send comments to the Honorable Sidney Schwartz, Mayor of South Portland, South Portland Town Hall, 25 Cottage Road, South Portland, Maine.			
Massachusetts	Fall River, City, Bristol County	Mount Hope Bay	At Tiverton	*15
			Fall River Corporate Limits to U.S. Route 6 Bridge	*15
		Taunton River	U.S. Route 6 Bridge to Fall River Corporate Limits	*15
	Maps available at the City Clerk's Office, Fall River City Hall, 1 Government Center, Fall River, Massachusetts.			
	Send comments to the Honorable Carlton Viveiros, Mayor of Fall River, Fall River City Hall, 1 Government Center, Fall River, Massachusetts 02722.			
Massachusetts	(C), Gardner, Worcester County	Otter River	About 475 feet downstream confluence of Bailey Brook (at downstream corporate limit).	*894
			Just downstream of Turner Street	*900
			Just downstream of Otter River Dam	*904
			Just upstream of Otter River Dam	*914
			Just upstream of West Broadway Street	*922
			About 160 feet upstream confluence of Mahoney Brook (at upstream corporate limit).	*923
		Perley Brook	At confluence with Otter River	*918
			Just downstream of Parker Pond Dam	*959
			Just upstream of Parker Pond Dam	*966
			Just downstream of Perley Brook Reservoir lower dam	*976
			Just upstream of Perley Brook Reservoir lower dam	*986
			At downstream end of Clark Street culvert	*987
			Just upstream of Clark Street	*1,026
			About 100 feet downstream of abandoned railroad bridge	*1,036
			Just upstream of abandoned railroad bridge	*1,044
			Just upstream of Stone Street bridge	*1,054
			Just downstream Wheeler Street	*1,054
		Pond Brook	At confluence with Otter River	*923
			Just downstream of Mancia Drive	*952
			Just upstream of Mancia Drive	*962
			Just downstream of Risley Street bridge	*982
			Just upstream of Risley Street	*985
			About 940 feet upstream of Risley Street	*987
			About 980 feet upstream of Risley Street	*992
		Mahoney Brook	At confluence with Otter River	*923
			Just downstream of Mahoney Brook Dam	*947
			Just upstream of Mahoney Brook Dam	*953
			Just downstream of Ramsdale Pond Dam	*992
			Just upstream of Ramsdale Pond Dam	*1,000
			Just upstream of unnamed road (upstream of Winter Street)	*1,012
			Just downstream of Traverse Street	*1,014
			Just upstream of Traverse Street	*1,019
			Just upstream of covered bridge	*1,029
			About 0.4 mile upstream Partridge Street (downstream of dirt road culvert).	*1,061
			Just upstream of dirt road culvert	*1,067
			Just upstream of Partridge Street (upstream crossing)	*1,073
		Wilder Brook	At confluence with Perley Brook	*966
			Just upstream of Keys Road bridge	*973
			Just upstream of Clark Street bridge	*981
			About 800 feet upstream of Clark Street bridge	*981
		Baker Brook	At confluence with Mahoney Brook	*1,000
			Just upstream of Union Street	*1,003
			Just downstream of Providence and Worcester Railroad	*1,003
			Just upstream of Providence and Worcester Railroad	*1,009
			About 0.17 mile upstream Baker Brook Dam	*1,009
		Foster Brook	At confluence with Mahoney Brook	*1,025
			Just upstream of Temple Street	*1,046
			Just downstream of Murdock Pond Dam	*1,048
			Just upstream of Murdock Pond Dam	*1,055
			Just upstream of Betty Springs Road	*1,093
			About 500 feet upstream of Betty Springs Road	*1,094
			About 550 feet upstream of Betty Springs Road	*1,102
		Greenwood Brook	At confluence with Mahoney Brook	*1,052
			About 160 feet upstream of Partridge Street	*1,052
	Maps available for inspection at the City Clerk's Office, City Hall, Gardner, Massachusetts.			
	Send comments to Honorable Gerald St. Hillairre, Mayor, City of Gardner, City Hall, Gardner, Massachusetts 01440.			

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Massachusetts	New Marlborough, Town, Berkshire County.	Lake Buel	Entire Shoreline within Community	*913
		Konkapot River	Approximately 150' downstream Mill River-Southfield Road	*815
			Downstream Granite Block Dam	*830
			Upstream Granite Block Dam	*840
			Downstream Mill River-Great Barrington Road	*850
			Upstream Mill River-Great Barrington Road	*867
			Upstream Hartsville-Mill River Road	*896
			Upstream Adsit Crosby Road	*908
			Confluence of Lake Buel Tributary	*913
			Upstream State Route 57	*923
			Approximately 1,250' upstream State Route 57	*950
			Upstream Corporate Limits	*1,002

Maps available at the New Marlborough Town Hall, Mill River, Massachusetts.

Send comments to the Honorable Gerald Stevens, Chairman of the Board of Selectmen of New Marlborough, Town Hall, Mill River, Massachusetts 01244.

Massachusetts	North Adams, City, Berkshire County.	Bowerman Creek	Approximately 1,000' downstream of Church Street	*715
			Approximately 200' downstream of Church Street	*725
			Approximately 40' upstream of Church Street	*735
			Approximately 150' upstream of Church Street	*745
		Hoosic River	Downstream Corporate Limits	*611
			Approximately 300' upstream of Ashton Avenue	*619
			Downstream of Barber Dam	*624
			Upstream of Barber Dam	*629
			Upstream of State Route 2 (lower crossing)	*635
			Biltmore Avenue (extended)	*639
			Confluence of Notch Brook	*644
			Upstream of State Route 2 (upstream crossing)	*652
			Upstream of B&M Railroad	*660
			Fairgrounds Avenue (extended)	*670
			Upstream of Brown Street	*680
		North Branch Hoosic River	Magnolia Terrace (extended)	*685
			Upstream of Marshal Street	*695
			Upstream of Holden Street	*701
			Downstream of Eagle Street	*715
			Upstream of Lower Union Street	*726
			Approximately 800' upstream of Lower Union Street	*738
			Upstream of Upper Union Street	*750
			Approximately 500' upstream of Upper Union Street	*760
			Downstream of Hoosic Cotton Mill Dam	*770
			Upstream of Hoosic Cotton Mill Dam	*787
			Upstream of Eclipse Dam	*826
			Upstream of Weir (approximately 950' downstream from Beaver Street.	*837
			Upstream of Beaver Street (lower crossing)	*840
			Downstream of Beaver Street (upper crossing)	*857
			Bluff Street (extended)	*865
			End of Crest Street	*880
			Upstream Corporate Limits	*891
		Notch Brook	70' upstream face of Barbour Street extension culvert	*658
			Upstream of spillway	*671
			Pershing Street (extended)	*680
			Downstream of Notch Road	*692
		South Branch Hoosic River	Upstream of Sprague Bridge No. 1	*686
			Upstream of East Main Street	*691
			Upstream of Boston and Maine Yard Road	*701
			Upstream of Hunter Foundry Road	*711
			Confluence of Bowerman Creek	*715
			Upstream Corporate Limits	*721

Maps available at Town Court, 10 Main Street, City of North Adams, Massachusetts 01247.

Massachusetts	Whitman, Town, Plymouth County	Shumatuscacant River	Approximately 3,130' downstream of South Avenue	*65
			Approximately 60' downstream of Essex Street	*74
		Shumatuscacant Tributary	Approximately 240' upstream of Conrail Bridge	*65
			Approximately 680' upstream of South Avenue	*74
		Meadow Brook Tributary	Confluence with Meadow Brook	*78
			Approximately 525' upstream of Auburn Street	*88
			Approximately 3,625' upstream of Auburn Street	*94
		Meadow Brook	Approximately 1,880' downstream of Auburn Street	*79
			Approximately 2,230' upstream of Auburn Street	*90

Maps available at the Town Manager's Office, Whitman Town Hall, P.O. Box 426, Whitman, Massachusetts.

Send comments to Honorable Emmett Hayes, Chairman of the Board of Selectmen of Whitman, Town Hall, P.O. Box 426, Whitman, Massachusetts 02382.

Michigan	(Twp.), Caledonia, Kent County	Thornapple River	At downstream corporate limit	*669
			About 0.75 mile upstream 68th Street	*682
			About 0.3 mile downstream of Alaska Avenue	*703
			About 0.74 mile upstream 100th Street	*706

Maps available for inspection at the Township Hall, Caledonia, Michigan.

Send comments to Honorable Phillip Datema, Supervisor, Township of Caledonia, 9696 Whitneyville Road, Alto, Michigan 49302.

Michigan	(C), Detroit, Wayne County	Detroit River	Confluence of River Rouge	*578
			Upstream corporate limits	*578

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Shallow Flooding (Overflow from Detroit River).	Intersection of Essex Avenue and Piper Avenue	#2
			Intersection of Essex Avenue and Manistique Avenue	#2
			About 900 feet north of Freud Avenue along St. Clair Avenue	#2
	Maps available for inspection at the Department of Planning, City Hall, 3400 Cadillac Tower, Detroit, Michigan.			
	Send comments to Honorable Coleman Young, Mayor, City of Detroit, City Hall, 3400 Cadillac Tower, Detroit, Michigan 48226.			
Michigan	(C), Pinconning, Bay County	Pinconning River	About 0.5 mile downstream of Water Street	*591
			At upstream corporate limit	*595
	Maps available for inspection at the City Hall, 208 Manitou Street, Pinconning, Michigan.			
	Send Comments to Honorable W. W. Evans, Mayor, City of Pinconning, City Hall, 208 Manitou Street, Pinconning, Michigan 48650.			
Minnesota	(C), Arden Hills, Ramsey County	Valentine Lake	Shoreline	*881
		Lake Josephine	Shoreline	*886
		Lake Johanna	Shoreline	*879
		Little Lake Johanna	Shoreline	*879
		Valentine Lake Discharge Channel.	About 1,490 feet downstream of County Road E 2	*878
			Just upstream of County Road E 2	*880
			At Valentine Lake	*881
		Lake Josephine Discharge Channel.	At Lake Johanna	*879
			Just downstream of State Highway 51	*880
			Approximately 90 feet upstream from Hamline Avenue	*881
			AT Lake Josephine	*886
		Lake Johanna—Little Lake Johanna Discharge Channel.	At Lake Johanna	*879
			At Little Lake Johanna	*879
	Maps available for inspection at the City Hall, 1450 West Highway 96, Arden Hills, Minnesota.			
	Send comments to Honorable Henry J. Crepeau, Jr., Mayor, City of Arden Hills, City Hall, 1450 West Highway 96, Arden Hills, Minnesota 55112.			
New Jersey	Fair Lawn (Borough), Bergen County.	Passaic River	Intersecton of Chittendon Road and River Road	*37
			Intersection of Passaic River and center of Maple Avenue	*42
		Diamond Brook	Intersection of Diamond Brook and center of Harristown Road	*49
		Henderson Brook	70 feet downstream from center of State Highway 208	*54
			Intersection of McBride Avenue and Pollitt Drive	#1
		Saddle River	Intersection of Saddle River and center of Red Mill Road	*46
			Intersection of Saddle River and the Dam	*55
		Jordan Brook	70 feet upstream from center of Well Drive	*57
		Beaver Dam Brook	Intersection of Beaver Dam and center of Paterson Street	*51
	Maps available for inspection at Municipal Building, 8-01 Fair Lawn Avenue, Fair Lawn, New Jersey.			
	Send comments to Honorable Louis Raffiani, 8-01 Fair Lawn Avenue, Fair Lawn, New Jersey 07410.			
New Jersey	Franklin, Township, Hunterdon County.	Capoolang Creek	3,970' downstream of Quakertown Road	*345
			2,570' downstream of Quakertown Road	*357
			1,850' downstream of Quakertown Road	*363
			Downstream of Quakertown Road	*386
			450' upstream of Quakertown Road	*395
			1,130' upstream of Quakertown Road	*405
			1,910' upstream of Quakertown Road	*415
			2,645' upstream of Quakertown Road	*425
		Tributary A	Downstream of Conrail	*172
			1,500' upstream of Conrail	*183
			Sidney Road	*192
			1,895' upstream of Sidney Road	*205
			Pittstown Road	*215
	Maps available at the Municipal Building, Sidney Road, Franklin, New Jersey.			
	Send comments to Honorable Phyllis Elston, R. D. 1, Annandale, New Jersey 08801.			
New Jersey	Glen Rock (Borough), Bergen County.	Diamond Brook	50 feet upstream of center of Conrail crossing	*56
			At center of Rutland Road crossing	*80
		Hohokus Brook	30 feet upstream of center of the pedestrian bridge	*61
			At center of Grove Street crossing	*65
		Saddle River	600 feet east of the intersection of Leigh Terrace and Franklin Place	*55
	Maps available for inspection at Municpal Building, Glen Rock, New Jersey.			
	Send comments to Honorable Charles Lagos, Municipal Building, Glen Rock, New Jersey 07422.			
New Jersey	North Haledon (Borough), Passaic County.	Molly Ann Brook	20 Feet upstream from center of Oldham Dam	*204
			Intersection of Molly Ann Brook and center of High Mountain Road	*277
			70 feet upstream from center of Sicomac Road	*364
			20 feet upstream from center of Haledon Reservoir Dam	*415
		Molly Ann Brook Tributary 3	Intersection of Molly Ann Brook Tributary 3 and center of High Mountain Road.	*218
			170 feet south of the intersection of Walray Avenue and Manor Road	*273
		Molly Ann Brook Tributary 4	Intersection of Molly Ann Brook Tributary 4 and center of De Roon Avenue.	*219
			30 feet upstream from center of Manchester Avenue	*303
			20 feet upstream from center of Motta Avenue	*382
		Squaw Brook	Intersection of Squaw Brook and center of High Mountain Road	*255
			15 feet upstream from center of Saw Mill Road	*349
			20 feet upstream from center of Squaw Brook Road	*404

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Glen Place Brook	15 feet upstream from center of High Mountain Road	*303
			10 feet upstream from center of Dam	*475
			Intersection of Glen Place Brook and the upstream corporate limit	*612
		Molly Ann Brook Tributary 6	15 feet upstream from center of Graham Avenue	*358
			150 feet southeast of the intersection of Romaine Drive and Pleasant View Drive.	*408
	Maps available for inspection at 103 Overlook Avenue, North Haledon, New Jersey.			
	Send comments to Honorable John Carbone, 103 Overlook Avenue, North Haledon, N.J. 07508.			
New York	Cheektowaga, Town, Erie County.	Ellicott Creek	Downstream Corporate Limits	*682
			Upstream Youngs Road	*691
			Upstream Corporate Limits	*700
	Maps available at the Town Engineer's Office, Cheektowaga Town Hall, Broadway and Union Road, Cheektowaga, New York.			
	Send comments to Honorable Kenneth Meyers, Cheektowaga Town Supervisor, Broadway and Union Road, Cheektowaga, New York 14227.			
New York	Chenango, Town, Broome County	Castle Creek	Upstream of U.S. Route 11 (Lower Crossing)	*856
			200' upstream of Interstate 81	*862
			1,080' upstream of Interstate 81	*870
			140' downstream of U.S. Route 11 (Upper Crossing)	*880
			600' upstream of U.S. Route 11 (Lower Crossing)	*885
		Chenango River	Downstream Corporate Limits	*852
			Confluence of Castle Creek	*855
			Upstream of State Route 12A	*860
			Peninsula Drive (Extended)	*864
			Airport Road (Extended)	*876
			Shore Acres Drive (Extended)	*880
			Willette Park Road (Extended)	*890
			Upstream Corporate Limits	*898
	Maps available at the Town Hall, 1137 Front Street, Binghamton, New York.			
	Send comments to Honorable Oscar Wormuth, Supervisor, Town Hall, 1137 Front Street, Binghamton, New York 13905.			
New York	East Syracuse, Village, Onandaga County.	South Branch Ley Creek	State Route 290	*404
			Downstream crossing of Conrail	*406
			Burnet Avenue	*409
			Upstream crossing of Conrail	*410
			Interstate Route 690	*411
			Above 2nd crossing of Access Road at upstream Corporate Limits	*413
		Butternut Creek	Area north of Dewitt Yards in northeastern corner of East Syracuse	*410
			Area between Interstate 690 and State Route 290 in southeast corner of East Syracuse.	*414
			Area between access roads to Interstate 690 in southeast corner of East Syracuse.	*417
	Maps available at the Municipal Building, 204 North Center Street, East Syracuse, New York.			
	Send comments to Honorable Richard Benack, Mayor, Municipal Building, 204 North Center Street, East Syracuse, New York 13057.			
New York	Fenton, Town, Broome County	Chenango River	Downstream Corporate Limits	*852
			Van Lane (Extended)	
			Upstream of State Route 12A	*860
			300' southeast of junction of State Route 7 and Interstate 88 (Extended).	*865
			Confluence of Osborne Creek	*869
			Port Street (Extended)	*872
			Stony Brook Road (Extended)	*876
			Bend of Rodgers Road (Extended)	*879
			Upstream of Gaging Station	*888
			Marshman Road (Extended)	*895
			Upstream of State Route 79	*900
			Upstream Corporate Limits	*901
		Osborne Creek	Confluence with Chenango River	*869
			Upstream of State Route 369	*871
			Private Drive off State Route 369 (Extended)	*879
			Confluence of Ballyhack Creek	*885
			Upstream of Ballyhack Road	*889
			Approximately 1,450' upstream from Ballyhack Road	*900
			Approximately 2,170' upstream from Ballyhack Road	*910
			Approximately 2,900' upstream from Ballyhack Road	*920
			Approximately 4,370' upstream from Ballyhack Road	*930
			Approximately 6,750' upstream from Ballyhack Road	*950
			Approximately 8,930' upstream from Ballyhack Road	*970
			Approximately 10,910' upstream from Ballyhack Road	*990
			Approximately 11,990' upstream from Ballyhack Road	*1,000
			Upstream Corporate Limits	*1,011
		Page Brook	Confuence with Chenango River	*877
			400' downstream from Rodgers Road	*880
			100' upstream from Rodgers Road	*884
			1,070' upstream from Rodgers Road	*887
	Maps available at the Town Hall, Park Street, Port Crane, New York.			
	Send comments to Honorable Donald J. Grunder, Supervisor, Town Hall, Park Street, Port Crane, New York 13833.			

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
New York	Greene, Village, Chenango County.	Chenango River	Downstream Corporate Limits	*911
			250' downstream from State Route 206	*912
			Upstream Corporate Limits	*913
Maps available at the Village Hall, 51 Genesee Street, Greene, New York.				
Send comments to Honorable Thomas J. Wynn, Mayor, Village Hall, 51 Genesee Street, Greene, New York 13778.				
New York	Hilton Village, Monroe County	Salmon Creek	Downstream Corporate Limits	*259
			Upstream side of Conrail	*261
			Upstream side of Hovey Avenue	*266
			Upstream Corporate Limits	*268
Maps available at the Village Hall, 24 Main Street, Hilton, New York 14468.				
Send comments to Honorable Thomas Younker, Village Hall, 24 Main Street, Hilton, New York 14468.				
New York	North Tarrytown, Village, Westchester County.	Hudson River	Entire shoreline	*8
Maps available at the Municipal Building, 28 Beekman Avenue, North Tarrytown, New York.				
Send comments to Honorable Philip E. Zegarell, Mayor, 28 Beekman Avenue, North Tarrytown, New York 10591.				
New York	Piermont, Village, Rockland County.	Sparkill Creek	Downstream Corporate Limits	*8
			Paradise Avenue	*8
			State Route 9W	*22
			Upstream Corporate Limits	*23
Maps available at Village Hall, 478 Piermont Avenue, Piermont, New York.				
Send comments to Honorable Mary C. Bryan, Mayor 478 Piermont Avenue, Piermont, New York 10968.				
New York	Seneca Falls, Village, Seneca County.	Seneca River	Downstream of Van Cleef Lake Dam	*386
			Upstream side of Van Cleef Lake Dam	*431
			Upstream Corporate Limits	*432
		Sampson Creek	Upstream side of Bayard Street culvert	*435
			Upstream side of Bridge Street	*437
			Downstream side of Swaby Street	*442
			Downstream side of Toledo	*445
			Upstream side of Toledo Street	*448
			60' upstream of Private Road	*453
			Shamrock Avenue (extended)	*457
			Upstream Corporate Limits near Conrail crossing	*459
		Black Brook	Downstream Corporate Limits	*475
			Upstream Corporate Limits at Black Brook Road	*477
		Bentons Creek	Confluence with Sampson Creek	*435
			Upstream side of Ovid Street	*437
			Upstream side of Garden Street	*438
			Upstream of Chaplin Street	*442
			Seneca Manor Drive (extended)	*452
			Downstream of Conrail	*454
Maps available at the Village Hall, 136 Falls Street, Seneca Falls, New York.				
Send comments to the Honorable Robert S. Freeland, 136 Falls Street, Seneca Falls, New York 13148.				
New York	South Corning, Village, Steuben County.	Chemung River	Downstream Corporate Limits	*918
			Upstream Corporate Limits	*920
Maps available at Village Office, 1 Clark Street, Corning, New York.				
Send comments to the Honorable Robert S. Smoogen, Mayor, 1 Clark Street, Corning, New York 14830.				
New York	Sterling, Town, Cayuga County	Lake Ontario	Entire shoreline	*249
Maps available at the Town Clerk's Office, Sterling Center Road, Sterling, New York.				
Send comments to Honorable Marion Teachoud, R.D. 1, Box 19, Martsville, New York 13111.				
New York	West Monroe, Town, Cayuga County.	Lake Oneida	Entire shoreline	*375
		Slocum Creek	Old railroad grade	*392
			Downstream side of State Route 49	*395
			120' upstream of State Route 49	*398
			Foster Road	*406
			1,990' upstream of Foster Road	*414
			700' downstream of County Route 11	*422
			Downstream of County Route 11	*436
			90' upstream of County Route 11	*444
Maps available at the Town Hall, West Monroe, New York.				
Send comments to Arlene Caiella, Town Supervisor, P.O. Box 4, West Monroe, New York 13167.				
New York	Wyoming, Village, Wyoming County.	Oatka Creek	Downstream Corporate Limits	*948
			Downstream side of Main Street	*953
			Upstream side of Main Street	*955
			Upstream Corporate Limits	*955

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Wyoming Gulf Brook	Confluence with Oatka Creek	*954
			750' upstream of confluence with Oatka Creek	*960
			Downstream side of Academy Street	*988
			Upstream side of Academy Street	*993
			Upstream Corporate Limits	*1,001
	Maps available at the Village Clerk's Office, 50 Main Street, Wyoming, New York.			
	Send comments to Honorable Howard Ridal, Village Hall, 50 Main Street, Wyoming, New York 14591.			
North Dakota	Cavalier (City), Pembina County	Tongue River	Intersection of Bjornson Drive and River Street	*890
			Intersection of Busse Lane and Bjornson Drive	*894
		Breakout Flow Into Southwest Coulee.	At south end of the Cavalier Airport runway	*889
	Maps available for inspection at City Hall, Cavalier, North Dakota.			
	Send comments to Honorable Jack McPherson, P.O. Box 446, Cavalier, North Dakota 58220.			
North Dakota	Cavalier (Township), Pembina County.	Tongue River	Confluence with Breakout Flow Into Southwest Coulee	*906
		Breakout Flow Into Southwest Coulee.	Intersection of Coulee and Burlington Northern Railroad	*885
	Maps available for inspection at Route 1, Box 109A, Cavalier, North Dakota.			
	Send comments to Honorable John Schroeder, Route 1, Box 180, Cavalier, North Dakota 58220.			
North Dakota	Horace (City), Cass County	Sheyenne River	Intersection of Park Drive and Sheyenne Drive	*918
			Intersection of Center Avenue and Nelson Street	#2
	Maps available for inspection at City Hall, Horace, North Dakota.			
	Send comments to Honorable Donald Goerger, P.O. Box 707, Horace, North Dakota 58047.			
North Dakota	Mapleton (City), Cass County	Maple River	1,500 feet upstream from center of Main Street	*907
	Maps available for inspection at City Hall, Mapleton, North Dakota.			
	Send comments to Honorable Arnold Grindberg, Box 532, Mapleton, North Dakota 58059.			

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: September 24, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-32542 Filed 10-20-80; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-5883]

National Food Insurance Program; Proposed Flood Elevation Determinations; Correction

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the Town of Hamburg, Erie County, New York, previously published at 45 FR 55487 on August 20, 1980.

EFFECTIVE DATE: October 21, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, Federal Emergency Management Agency, Federal Insurance Administration, National Flood Insurance Program, (202) 426–1460 or Toll Free Line (800) 424–8872 (In Alaska and Hawaii call Toll Free Line (800) 424–9080), Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the correction to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the Town of Hamburg, Erie County, New York, previously published at 45 FR 55487 on August 20, 1980, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a).

The Flood Insurance Study and Rate Maps for the Town of Hamburg, New York, correctly showed Lake Erie as a Source of Flooding. However, that source was inadvertently omitted from the notice of proposed flood elevation determination. In order for the flooding sources and locations to be correctly identified with the Flood Insurance Study and Rate Map for the Town of Hamburg, Erie County, New York, the proposed notice should be amended to read as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
New York	Hamburg, Town, Erie County	Eighteen Mile Creek	Approximately 400' downstream of Lake Shore Road	*580
			State route 5 (upstream)	*588
			Norfolk and Western Railway upstream	*610
			Route 20 downstream at Corporate Limits	*623
			Coincident with Corporate Limits (approximately 400' downstream of South Creek Road.	*714
			Conrail (upstream)	*745
			Pierce Avenue (upstream)	*756
			Corporate Limits (Village of Hamburg)	*768
			Carpenter Road (extended)	*791
			Upstream Corporate Limits	*802
		Hampton Brook	Confluence with Eighteen Mile Creek	*764
			Upstream Corporate Limits	*782
		Eighteen Mile Creek North Branch.	Confluence with Eighteen Mile Creek	*798
			Upstream Corporate Limits	*802
		Eighteen Mile Creek South Branch.	Confluence with Eighteen Mile Creek	*799*805
			Approximately 620' upstream of Farm Road	
		Buttermilk Falls Creek	Approximately 60' downstream of North Creek Road	*696
			North Creek Road upstream	*707
			Approximately 90' upstream of Lakeview Road	*731
		Berricks Creek	Confluence with Lake Erie	*581
			Mt. Vernon Parkway (downstream)	*609
			Mt. Vernon Parkway (upstream)	*617
			Norfolk & Western Railway (upstream)	*639
			U.S. Route 20 upstream	*692
			Upstream Corporate Limits	*752
		Waterfalls Village Creek	Confluence with Lake Erie	*581
			Conrail (downstream)	*608
			Norfolk & Western Railway (upstream)	*627
			Approximately 250' upstream of Howard Road	*670
		Foster Brook	Confluence with Lake Erie	*581
			State Route 75 upstream	*590
			Conrail downstream	*597
			Conrail upstream	*610
			U.S. Route 20 upstream	*716
			Sowles Road upstream	*742
			Approximately 120' upstream of Maelov Drive	*793
		Rush Creek	Conrail upstream	*628
			South Park Avenue upstream	*655
			State Route 20 upstream	*668
			Bayview Road upstream	*726
			Clark Road downstream	*796
			Downstream South Abbott Road at Corporate Limits	*845
		South Branch	Downstream Corporate Limits	*602
		Smokes Creek	Lake Avenue (upstream)	*620
			Upstream Corporate Limits	*646
		Tributary to South Branch Smokes Creek.	Confluence with South Branch Smokes Creek	*626
			Milestrip Road	*669
			Nile Road (upstream)	*680
			Approximately 950' upstream of Nile Road	*683
		Lake Erie	Shoreline southwest of Cloverbank Road (extended)	*580
			Shoreline northeast of Cloverbank Road (extended)	*581

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: September 19, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-32541 Filed 10-21-80; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-5817]

National Flood Insurance Program; Proposed Flood Elevation Determinations; Correction

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the City of Carmel, Hamilton County, Indiana, previously published at 45 FR 31433 on May 13, 1980.

EFFECTIVE DATE: October 21, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program, (202) 426–1460 or Toll Free Line (800) 424–8872 (In Alaska and Hawaii call Toll Free Line (800) 424–9080), Federal Emergency Management Agency, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the correction to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the City of Carmel, Hamilton County, Indiana previously published at 45 FR 31433 on May 13, 1980, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a)). Under the Source of Flooding of Carmel Creek, the elevation 740 feet which corresponds to the location described as, "Approximately 600 feet upstream of East 96th Street," has been changed. The elevation should be 741 feet. The Flood Insurance Study (FIS) and Flood Insurance Rate Map were correct as printed. The listing appears correctly as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD).
Indiana	(C) Carmel, Hamilton County	Carmel Creek	Approximately 600 feet upstream of East 96th Street	*741

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: September 26, 1980.

Gloria M. Jiminez,

Federal Insurance Administrator.

[FR Doc. 80-32552 Filed 10-20-80; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-5845]

National Flood Insurance Program; Proposed Flood Elevation Determinations; Correction

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the Unincorporated Areas of Dakota County, Minnesota, previously published at 45 FR 46114 on July 9, 1980.

EFFECTIVE DATE: October 21, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program (202) 426–1460 or Toll Free Line (800) 424–8872. (In Alaska and Hawaii call Toll Free Line (800) 424–9080.) Federal Emergency Management Agency, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the correction to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the Unincorporated Areas of Dakota County, Minnesota previously published at 45 FR 46114 on July 9, 1980, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a)).

The Source of Flooding of Mississippi River should be added, with the following location descriptions and elevations: "About 2.8 miles downstream of Goodhue County boundary," 688 feet, and "At City of Rosemount eastern corporate limits," 697 feet.

Under the Source of Flooding of Vermillion River, the location described as, "At downstream county boundary" has been changed. The location should read, "About one mile downstream Chicago, Milwaukee, St. Paul and Pacific Railroad." The corresponding elevation of 689 feet remains unchanged. Also under Vermillion River, the location described as, "Just upstream from 170th Street East" has been changed. The location should read, "About 300 feet upstream from 170th Street." The corresponding elevation of 815 feet remains unchanged.

The accompanying Flood Insurance Study (profile) and Flood Insurance Rate Map have been revised to reflect these changes. The listing appears correctly as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Minnesota	(Uninc.) Dakota County	Mississippi River	About 2.8 miles downstream of Goodhue County boundary	*688
			At City of Rosemount eastern corporate limits	*697
		Vermillion River	About one mile downstream Chicago, Milwaukee, St. Paul and Pacific Railroad.	*689
			About 300 feet upstream from 170th Street	*815

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: September 18, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80–32539 Filed 10–20–80; 8:45 am]

BILLING CODE 6718–03–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Child Support Enforcement

45 CFR Part 305

Child Support Enforcement Program; Audit and Penalty

AGENCY: Office of Child Support Enforcement (OCSE), HHS.

ACTION: Noice of Proposed Rulemaking.

SUMMARY: States which are determined by means of an annual audit to have failed to have an effective child support program in the audit period are subject to a reduction in Federal funds for the Aid to Families with Dependent Children (AFDC) program. The Department of Health and Human Services is proposing a new "substantial compliance" test to determine whether a State has failed to have an effective Child Support Enforcement program meeting the statutory requirements. The Department is proposing that this "substantial compliance" standard be used to evaluate the results of all child support enforcement audits conducted to date in order to determine if a penalty should be imposed.

DATE: Consideration will be given to written comments received by December 22, 1980.

ADDRESS: Address comments to: Director, Office of Child Support Enforcement; Department of Health and Human Services; 6110 Executive Blvd., 9th Floor; Rockville, Maryland 20852; ATTN: Policy Branch. Agencies and organizations are requested to submit comments in duplicate. The comments will be available for public inspection Monday through Friday, 8:30 a.m. to 5:00 p.m., in Room 1010 of the Department's offices at the address above.

FOR FURTHER INFORMATION CONTACT: Steve Henigson, Chief, Policy Branch; OCSE; phone (301) 443–2910.

SUPPLEMENTARY INFORMATION:

Background

Section 452(a)(4) of the Social Security Act requires that, not less often than annually, the Office of Child Support Enforcement conduct a complete audit of the IV–D program in each State to determine whether the actual operation of the program conforms to the requirements of the statute. Section 403(h) of the Act requires that the amount payable to any State for its AFDC program for a fiscal year shall be reduced by 5 percent if the State is found, as a result of the annual audit, to have failed to have an effective IV–D program operated in conformity with an approved State plan.

HEW published final Audit and Penalty Regulations on December 20, 1976 (41 FR 55348), providing for an annual audit, establishing audit standards, establishing criteria for an effective program, and providing for imposition of the penalty. These regulations were effective for the first audit period required by statute, January 1, 1977 through September 30, 1977, and for subsequent audit periods which correspond to the Federal fiscal year.

Current Regulations

The 1976 regulations define an effective program as one that is in compliance with each of 17 title IV–D State plan requirements and two related title IV–A (AFDC) program requirements. These regulations require the States to have written procedures to carry out each of the State plan requirements and to be using the written procedures. In order to pass the audit, a State must be meeting every requirement. The regulations weigh each of the 19 criteria equally regardless of the importance of the requirement to the State's implementation of an effective program. Thus, if a State is determined to have failed any one criterion, no matter how technical, the regulations provide no discretion regarding the application of the penalty.

Application of the Current Regulations

OCSE has now completed work on the audit for the first audit period, January 1, 1977 through September 30, 1977. In its item by item review of each of the audit criteria under the current regulation, OCSE determined that all States were in substantial compliance with most of their State IV–D plan requirements. Nevertheless, since each State was required to meet all of the title IV–D State plan requirements, a significant number of States would have been penalized because they failed to meet a single State plan requirement even if the failure to comply had no significant impact on the overall effectiveness of the State's program. The Department believes that in light of the emphasis placed by Congress on program effectiveness, the newness of the program and the difficulties encountered by the States in implementing it, Congress would not have intended this result.

Proposed Regulations

Having reviewed the results of the first audit, the Department has concluded that the current audit regulations impose an unrealistic burden on the States. By placing a State in Jeopardy of being penalized for failure to meet just one audit criterion, the current regulations do not carry out what we believe to be the intent of Congress in establishing the audit and penalty provisions of title IV–D. The Department is therefore proposing to revise 45 CFR 305.20, Audit criteria, to require "substantial compliance" with the requirements of Section 402(a)(27) of the Social Security Act, rather than compliance with each title IV–D State plan provision as required by the existing regulations. We are also proposing a conforming change to 45 CFR 305.50, Penalty for failure to have an effective child support enforcement program, to specify "substantial compliance" for penalty purposes.

These proposed regulations provide a substantial compliance standard as the basis for determining whether States have effective IV–D programs. Under this standard, the Department would have greater discretion in the application of the penalty, so that States which operate effective programs but are nonetheless technically out of compliance with one or more requirements will not automatically be subject to a penalty. Thus the penalty will be reserved for those State IV–D programs which are not in substantial compliance with the Federal statute and regulations. The Department believes that this approach is both closer to the Congressional intent of the audit and penalty provision and more equitable in its treatment of State compliance problems.

Application of the Proposed Regulations

The Department is proposing to use the new substantial compliance standard in evaluating the results of all audits conducted to date in order to determine if a penalty should be imposed. Because no determinations have yet been made by the Secretary

under the requirements of Section 403(h) of the Act, this new standard will enable the Department to review pending and subsequent audit results under a substantial compliance standard.

In consideration of the foregoing, 45 CFR Part 305 is amended to read as follows:

A. Section 305.20 is revised to read as follows:

§ 305.20 Audit criteria.

For purposes of meeting the requirements of Section 403(h) of the Act and of this part, the State must operate its IV–D program in substantial compliance with the requirements of Section 402(a)(27) of the Act. Substantial compliance with Section 402(a)(27) will be determined by examining:

(a) The following title IV–D State plan requirements:

Statewide operation. (45 CFR 302.10)
State finanical participation. (45 CFR 302.11)
Single and separate organizational unit. (45 CFR 302.12)
Establishing paternity. (45 CFR 302.31(a))
Support obligations. (45 CFR 302.50)
Enforcement of support obligation. (45 CFR 302.31(b))
Child support payments to the IV–D agency. (45 CFR 302.32)
Distribution of child suport payments. (45 CFR 302.51)
Payments to the family. (45 CFR 302.38)
Incentive payments. (45 CFR 302.52)
Individuals not otherwise eligible. (45 CFR 302.33)
Cooperation with other State. (45 CFR 302.36)
State partent locator service. (45 CFR 302.35)
Cooperative arrangements. (45 CFR 302.34)
Reports and maintenance of records. (45 CFR 302.15)
Fiscal policies and accountability. (45 CFR 302.14)
Safeguarding information. (45 CFR 302.18); and

(b) The title IV–A State plan requirements regarding prompt notice from the IV–A agency to the IV–D agency for cases in which AFDC is furnished with respect to a child who has been abandoned or deserted by a parent (45 CFR 235.70), and assignment of rights to support (45 CFR 232.11).

B. Section 305.50(a) is amended to read as follows:

§ 305.50 Penalty for failure to have an effective child support enforcement program.

(a) Pursuant to sections 403(h) and 404(d) of the Act, if a State if found by the Secretary, on the basis of the audit described in this part, to have failed to have an effective child support enforcement program substantially meeting the requirements of section 402(a)(27) of the Act, as implemented by Part 302 of this chapter and this part, total payment to the State under title IV–A of the Act shall be reduced by 5 percent of such payments.

* * * * *

Note.—The Office of Child Support Enforcement has determined this document does not require preparation of a Regulatory Analysis as described by Executive Order 12044.

The proposed regulations are to be issued under the authority of Section 1102 of the Social Security Act, 49 Stat. 647 (42 U.S.C. 1302) and Section 452(a) of the Social Security Act, 83 Stat. 2351 (42 U.S.C. 652(a)).

(Catalog of Federal Domestic Assistance Program No. 13.679, Child Support Enforcement Program)

Dated: August 22, 1980.

William J. Driver,

Director, Office of Child Support Enforcement.

Approved: October 14, 1980.

Patricia Roberts Harris.

Secretry.

[FR Doc. 80–32806 Filed 10–20–80; 8:45 am]

BILLING CODE 4110–07–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[BC Docket No. 80–586; RM–3628]

FM Broadcast Stations in Farwell and Morton, Tex.; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rule making.

SUMMARY: This action proposes to assign Channel 222 to Farwell, Texas, and to reassign unused Channel 252A from Farwell to Morton, Texas, in response to a petition filed by Best Broadcasting Company, Inc.

DATES: Comments must be filed on or before November 28, 1980, and reply comments must be filed on or before December 18, 1980.

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

FOR FURTHER INFORMATION CONTACT: Joaquin Cantu, Broadcast Bureau, (202) 632–9660.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of § 73.202(b), *Table of Assignments,* FM Broadcast Stations (Farwell and Morton, Texas, BC Docket No. 80–586, RM–3628.

Adopted: September 29, 1980.
Released: October 9, 1980.

1. *Petitioner, Proposal, Comments.* A petition for rule making was filed by Best Broadcasting Company, Inc. on February 26, 1980, proposing the assignment of Channel 222 to Farwell, Texas, and the reassignment of unused Channel 252A from Farwell to Morton, Texas.[1] Best Broadcasting indicated its intent to apply for Channel 222, if assigned to Farwell, and to operate it as a Class C facility if granted the license. No responses to the petition have been filed.

2. *Community Data:* Farwell, Texas, is the seat of Parmer County and is located in the Texas Panhandle along the Texas-New Mexico border, 90 miles southwest of Amarillo, Texas. Morton, Texas, the seat of Cochran County, is located 50 miles southeast of Farwell.

3. According to figures from the U.S. Census, 1970, Farwell accounts for 1,185 of Parmer County's 10,509 residents, while Morton accounts for 2,738 of Cochran County's 5,326 residents.

4. Farwell, Texas, presently receives local aural service from only one daytime AM station, KZOL (1570 kHz). FM Channel 252A has been allocated to that community but remains unused. Morton, Texas, is served by one daytime-only AM station, KRAN (1280 kHz). No FM channels are presently assigned to Morton.

5. *The Need for the Proposed Assignments:* In order to demonstrate a need for the assignment of Channel 222 to Farwell, Best Broadcasting submitted economic and demographic data describing the principal commercial and social activity in that community and in the areas to be served under the proposal. The data indicate that Farwell is an agricultural, trade, and cultural center for a large, and otherwise sparsely populated, region.

6. *Preclusion Considerations:* The assignment of Channel 222 to Farwell, will cause preclusion to communities, on commercial channels, as follows: Channel 221A (within 105 miles); Channel 222 (within 180 miles—generally to the northeast); Channel 223 (insignificant preclusion); Channel 224A (within 65 miles—generally to the southwest); Channel 225 (no preclusion). According to petitioner, the following communities having a population exceeding 2,000 persons, fall within the area which would be precluded by a grant of the proposed assignment of Channel 222 to Farwell: *Texas:* Amarillo, Canyon, Dalhart, Dimmit, Floydada, Hereford, Morton, Muleshoe, Panhandle, Quannah, Tulia; *New Mexico:* Clayton, Clovis, Portales. Petitioner should indicate alternative available channels for those

[1] The Commission published a Public Notice of the Best Broadcasting petition on April 11, 1980 (Report No. 1223).

communities without an FM assignment (Dimmit and Panhandle).

7. *Other Considerations:* Although Best Broadcasting proposes to locate its transmitter facility at Farwell, the Commission's own analysis indicates that, due to site restrictions, the Channel 222 transmitter must be located 30.3 kilometers (18.9 miles) northeast of Farwell. Petitioner's *Roanoke Rapids* [2] *Anamosa* [3] showing indicates that the proposed assignment to Farwell would provide a first FM and nighttime aural service to 5,000 square kilometers (1,900 square miles) with a population of 15,934 persons and a second FM and nighttime aural service to 1,700 square kilometers (654 square miles) with a population of 3,548 persons. These figures would be reduced, however, by assuming reasonable facilities [4] for KKQQ and KTQM–FM (75 kW, 500 feet AAT) in Clovis, New Mexico, and reasonable facilities for KMUL–FM (3 kW, 300 feet AAT) in Muleshoe, Texas. Petitioner should modify its showing accordingly.

8. As stated earlier, petitioner has proposed the reassignment of Channel 252A from Farwell to Morton, Texas. However, we would not assign Channel 252A in the absence of an expression of interest for it in Morton. While we find no obstacle to proposing the reassignment for the purpose of soliciting interest, such expression of interest would be necessary before the assignment could be made.

9. *Conclusion:* In view of the foregoing, the Commission proposes to amend its FM Table of Assignments (§ 73.202(b) of the Commission's rules) for the communities listed below as follows:

City	Channel No.	
	Present	Proposed
Farwell, Tex	252A	222
Morton, Tex		252A

10. 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.

11. Interested parties may file comments on or before November 28, 1980, and reply comments on or before December 18, 1980.

12. For further information concerning this proceeding, contact Joaquin R. Cantu, Broadcast Bureau, (202) 632–9660. However, members of the public should note that form 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 presentations required by the Commission.

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules Division, Broadcast Bureau.

[2] 9 F.C.C. 2d 672 (1967).

[3] 46 F.C.C. 2d 520 (1974).

[4] The *Roanoke Rapids* criteria call for an assumption of reasonable facilities where these are greater than the existing facilities.

Appendix

[BC Docket No. 80–586; RM–3628]

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 poposed 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) Counter proposals advanced in this proceeding itself will be considered, if advanced in intial 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 submisisons 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 Commisison.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties duing regular business hours in the Commisison's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 80-32807 Filed 10-20-80; 8:45 am]

BILLING CODE 6712-01-M

47 CFR—Part 73

[BC Docket No. 80–608; RM–3638]

TV Broadcast Station in Rio Grande City, Tex.; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Action taken herein proposes the assignment of UHF television Channel 40 to Rio Grande City, Texas, in response to a petition filed by Antonio L. Garza. The proposed station could provide a first local television service to Rio Grande City.

DATES: Comments must be filed on or before December 2, 1980, and reply comments on or before December 22, 1980.

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

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Broadcast Bureau, (202) 632–9660.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of § 73.606(b) Table of Assignments, Television Broadcast Stations (Rio Grande City, Texas), BC Docket No. 80–608, RM–3638.

Adopted: October 3, 1980.

Released: October 16, 1980.

1. The Commission has before it a petition for rule making [1] filed by Antonio L. Garza ("petitioner"), which seeks the amendment of Section 73.606(b) of the Commission's Rules, the Television Table of Assignments, by the reassignment of UHF Channel *44 from Harlingen, Texas, to Rio Grande City, Texas, deleting the reservation for noncommercial educational use *or* the assignment of a different channel to Rio Grande City. Petitioner states that he will apply for the channel assigned. Oppositions to the proposal were filed by the Association for Public broadcasting ("APB") and the City of Harlingen, Texas ("Harlingen").

2. Rio Grande City (pop. 5,676),[2] seat of Starr County (pop. 17,707), is located in south Texas, near the Mexican border, approximately 210 kilometers (130 miles) southwest of Corpus Christi. It has no local television service.

3. Petitioner claims that Rio Grande City has experienced an enormous growth in the past five years. The proposed assignment would allow for a broadcast facility that would operate as a bilingual commercial station.

4. Both APB and Harlingen, in opposition, argue that the petitioner offers no support for his request to delete the noncommercial educational reservation on Channel *44. they suggest that an alternate channel assignment should be found for commercial use, thereby, retaining Channel *44 for future noncommercial educational use at Harlingen. They take no position on the need to assign a UHF channel to Rio Grande City.

5. We have found no justification for deleting Channel *44 at Harlingen, in view of the fact that another channel (Channel 40) is available for assingment to Rio Grande City. The assignment of Channel *44 to Rio Grande City would require a transmitter site to bve located at least 38 kilometers (24 miles) northeast of the city to meet international distance separation requirements. Channel 40 may be assigned to Rio Grande City without a site restriction and provide an oportunity for a first local television station. Petitioner has not provided information about the need for a television station at Rio Grande City. He should do so in comments to this proposal.

6. Since Rio Grande City is located within 320 kilometers (199 miles) of the U.S. Mexican border, the proposed assignment of Channel 40 requires coordination with the Mexican Government.

7. Comments are invited on the following proposal to amend the Television Table of Assignments with regard to the city of Rio Grande City, Texas, as follows:

City	Channel No.	
	Present	Proposed
Rio Grande City, Tex.		40

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 December 2, 1980, and reply comments on or before December 22, 1980.

10. For further information concerning this proceeding, contact Montrose H. Tyree, 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.

Federal Communications Commission.

Henry L. Baumann.

Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

[BC Docket No. 80–608; RM–3638]

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, § 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 § 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.)

[1] Public Notice of the petition was given on April 25, 1980, Report No. 1226.

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

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. 80-32799 Filed 10-20-80; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 80-606; NM-3623]

FM Broadcast Station in Alliance, Nebr.; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking and order to show cause.

SUMMARY: Action taken herein proposes the assignment of Class C Channels 271 and 290 to Alliance, Nebraska, and modification of the license for Station KFAH, currently operating on Channel 221A, to specify Class C Channel 290, in response to a petition filed by Nebraska Rural Radio Association. The proposed Class C channels could provide first and second service to a large area and population.

DATES: Comments must be filed on or before December 2, 1980, and reply comments must be filed on or before December 22, 1980.

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

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Broadcast Bureau, (202) 632-9660.

SUPPLEMENTARY INFORMATION:

Adopted: October 1, 1980.

Released: October 20, 1980.

In the matter of amendment of § 73.202(b), *Table of Assignments,* FM Broadcast Stations (Alliance, Nebraska), BC Docket No. 80-606; RM-3623.

1. *Petitioner, Proposal, Comments.* (a) A petition for rule making [1] was filed by Nebraska Rural Radio Association ("petitioner"), licensee of Stations KRVN and KRVN-FM, Lexington, Nebraska, proposing the assignment of Class C Channel 271 to Alliance, Nebraska, and modification of the license on Channel 221A in Alliance to specify Class C Channel 290. An opposition to the proposal was filed by Tracy Corporation (licensee of KMOR-FM, Scottsbluff, Nebraska), to which petitioner responded.

(b) The channel can be assigned in conformity with the minimum mileage separation requirements.

(c) Petitioner states it will apply for the channel, if assigned.

2. *Community Data*—(a) *Location.* Alliance, seat of Box Butte County, is located approximately 584 kilometers (365 miles) west of Omaha, Nebraska.

(b) *Population.* Alliance—6,862,[2] Box Butte County—10,094.

(c) *Present Aural Broadcast Service.* Alliance is served locally by fulltime AM Station KCOW and FM Station KFAH (Channel 221A).

3. *Economic Considerations.* Petitioner states that the economy is based on agriculture. It further states that Alliance, as the largest community in Box Butte County, comprises 68% of its population and 100% of the urban population. Petitioner claims that it has experienced a sustained population growth, which has been accompanied by an upswing in its economy. Demographic and economic information has been submitted to demonstrate the need for a second FM assignment.

4. In opposition, Tracy Corporation contends that the rural areas around Alliance are decreasing in population, that this area is adequately served by Class A Station KFAH and other Class C stations licensed to nearby cities, and there is insufficient economic population support for a Class C Assignment. It states that the proposed assignments would preclude 38 communities of 1,000 or more population on Channels 268 through 274. Tracy claims that the petitioner has presented no evidence or legal precedent to demonstrate that the Commission should make an exception to its policy of assigning Class A channels to small communities. It also cites several cases in which an exception was permitted but were allegedly distinguishable by the greater populations and areas proposed to be served.

5. Petitioner, in response, argues that it submitted extensive data regarding Alliance's population and economy, which demonstrated its growth and a need for a Class C assignment. It states that its engineering report included the information on channels available for communities precluded by the assignment. Furthermore, the cited cases are not contrary to the request here, according to the petitioner. Rather, they involved the same concept of growth and wide area coverage needs as appears here. Petitioner asserts that Tracy's allegations are motivated by its desire to protect its own economic interests.

6. *Preclusion Studies*-(a) *Channel 271.* The preclusion study for Channel 271 was conducted assuming the transmitter was located in the center of the city. Assignment of Channel 271 would cause preclusion on Channel 268 within a 65 mile radius, Channel 269A within a 65 mile radius, Channel 270 within a 150 mile radius, Channel 271 within a 180 mile radius, Channel 272A within a 105 mile radius, Channel 273 within a 65 mile radius, and Channel 274 within a 65 mile radius. The petitioner lists available assignments for precluded communities of over 1,000 population.

(b) *Channel 290.* The preclusion study for Channel 290 was conducted assuming the transmitter was located in the center of the city. The assignment of Channel 290 to Alliance will cause preclusion on Channel 287 within 65 miles, Channel 288A within 65 miles, Channel 289 within 150 miles, Channel 290 within 180 miles, Channel 291 within 150 miles, Channel 292A within 65 miles, and Channel 293 within 65 miles. Petitioner claims that alternate channels are available in the precluded areas.

7. Petitioner's engineering statement indicates that Channel 271 at Alliance would provide a first FM and first nighttime aural service to 1,313 persons in a 5,081 square kilometers (1,962 sq. mile) area. It will also provide a second FM and nighttime aural service to 1,603 persons in a 2,670 square kilometers (1,031 sq. mile) area. Petitioner, however, did not take into account the unused Channel 234 assignment in Chadron, Nebraska. Taking this into account substantially reduces the second service figures.

8. Although it has been general Commission policy to assign Class C channels only to larger communities, exceptions have been made when the assignment would result in an FM station which would provide first or second FM service to a significant area and population. Petitioner has stated that the proposed assignments would provide a first and second service. Although Tracy cites cases involving larger first FM and aural service, we do not have an established level of such services and, in fact, we have made exceptions for Class C assignments in cases where there was less or no first FM service.

9. In proposing a second Class C assignment as a substitute for the existing Class A channel, intermixture

[1] Public Notice of the petition was given on March 31, 1980, Report No. 1221.

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

of classes of channels would be avoided, thus maintaining a competitive balance which the Commission seeks to achieve in its policy against intermixture. Therefore, it has been our policy to propose to modify the existing Class A station to a Class C channel, see *Mitchell, South Dakota*, 62 F.C.C. 2d 70 (1976).

10. Since Station KFAH(FM) would be affected if we were to follow the *Mitchell* precedent, it must be given an opportunity to indicate whether it consents to or is opposed to the proposed change of its channel assignment, and this *Order to Show Cause* is adopted for that purpose. Its general comments on the appropriateness of the proposal are also invited.

11. Station KFAH will be entitled to be reimbursed for the reasonable expenses of the change in frequency only, not for the necessary upgrading in facilities. See *Mitchell, South Dakota, supra, Gillette, Wyoming*, Docket 21119, 42 FR 47557 (1977), and *Iron Mountain, Michigan, supra*. The reimbursement would come from the ultimate permittee of Channel 271 if assigned.

12. Finally, if another interest were expressed in a Class C channel, Channel 271 would be available for application. Accordingly, the Commission proposes to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules, with regard to the community below, as follows:

City	Channel No.	
	Present	Proposed
Alliance, Nebr.	221A	271,290

13. It is ordered, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, Fortner-Hill Broadcasting, Inc., licensee of Station KFAH, Alliance, Nebraska, shall show cause why its license should not be modified to specify operation on Channel 290, if the Commission determines that the public interest would best be served by adopting the proposed assignment.

14. Pursuant to § 1.87 of the Commission's rules and regulations, Station KFAH may, not later than December 2, 1980, request that a hearing be held on the proposed modification. Pursuant to § 1.87(f), if the right to request a hearing is waived, Station KFAH may, not later than December 2, 1980, file a written statement showing with particularity why its license should not be modified as proposed in this *Order to Show Cause*. In this case, the Commission may call on Station KFAH to furnish additional information, designate the matter for hearing, or issue, without further proceedings, an *Order* modifying the license as provided in the *Order to Show Cause*. If the right to request a hearing is waived and no written statement is filed by the date referred to above, Station KFAH will be deemed to consent to modification as proposed in the *Order to Show Cause* and a final *Order* will be issued by the Commission, if the channel changes mentioned above are found to be in the public interest.

15. 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.

16. Interested parties may file comments on or before December 2, 1980, and reply comments on or before December 22, 1980.

17. For further information concerning this proceeding, contact Montrose H. Tyree, 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 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.

18. It is further ordered, That the Secretary of the Commission SHALL SEND a copy of this *Order* by CERTIFIED MAIL, RETURN RECEIPT REQUESTED, to Fortner-Hill Broadcasters, Inc., 221 East 3rd Street, Alliance, Nebraska 69301, the party to whom the *Order to Show Cause* is directed.

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

[BC Docket No. 80–606; RM–3623]

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. 80-32801 Filed 10-20-80; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 73

[BC Docket No. 80-607; RM-3641]

TV Broadcast Stations in Madisonville, Owensboro and Princeton, Ky., Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of Proposed Rule Making.

SUMMARY: In response to petitions filed by Life Anew Ministries and Apple Media Associates, this action proposes two UHF television assignment plans for Owensboro, Kentucky, Madisonville, Kentucky, and Princeton, Kentucky.

DATES: Comments must be filed on or before December 2, 1980, and reply comments must be filed on or before December 22, 1980.

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

FOR FURTHER INFORMATION CONTACT: Joaquin R. Cantu, Broadcast Bureau, (202) 632-9660.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of § 73.606(b) Table of Assignments, Television Broadcast Stations, (Madisonville, Owensboro, and Princeton, Kentucky), BC Docket No. 80-607, RM-3641.

Adopted: October 1, 1980.

Released: October 20, 1980.

1. The Commission has before it a petition for rule making [1] submitted on March 26, 1980, by Life Anew Ministries ("LAM"), proposing that the Commission reassign UHF television Channel 19 from Owensboro, Kentucky to Madisonville, Kentucky, and substitute UHF television Channel 48 at Owensboro. Madisonville would receive a first commercial television channel assignment. In response to the LAM petition, Apple Media Associates ("AMA") petitioned for the reassignment of Channel 19 from Owensboro to Princeton, Kentucky, instead, as a first commercial TV assignment.[2]

2. The communities of Madisonville, Owensboro and Princeton are all located in western Kentucky. Madisonville (population 15,332),[3] seat of Hopkins County (population 38,167), is located approximately 180 kilometers (115 miles) southwest of Louisville, Kentucky. Owensboro (population 50,329), seat of Davies County (population 79,486), is located approximately 60 kilometers (37 miles) northeast of Madisonville. Princeton (population 6,292), seat of Caldwell County (population 13,179), is located approximately 45 kilometers (28 miles) southwest of Madisonville.

3. Madisonville presently receives local television broadcast service from Station WKMA (UHF TV Channel 35), a reserved noncommercial educational television channel. The community has no other channel assigned to it. Princeton has no television channel assignment.

4. In support of the proposed reassignment of Channel 19 from Owensboro to Madisonville, LAM indicates that it has equipment available to it which can be utilized in operating Channel 19, but which is not capable of operating on a higher UHF channel. In addition, petitioner LAM also asserts that the proposed reassignment to Madisonville would serve the public interest for a number of reasons. For example, petitioner presented economic and demographic data pertinent to demonstrating the need for, and viability of, a commercial UHF television station in Madisonville. It stated that Channel 19 can be used at Madisonville, meeting the minimum distance separation requirements as set forth in the Commission's Rules, once Channel 19 is deleted from Owensboro. Moreover, according to petitioner's engineering analysis, several channels meeting the minimum distance separation requirements, including Channel 48, as proposed, can be substituted for Channel 19 at Owensboro. Petitioner further states that Commission records indicate that no person has shown any interest in applying for the use of Channel 19 at Owensboro since the early 1950's. These facts, argues petitioner, tied to an expressed interest in the channel assignment at Madisonville, warrant a grant of the proposed amendment to the Commission's Television Table of Assignments.

5. By comparison, AMA's petition can properly be described as a bare statement of opposition to the LAM proposal and a request that Channel 19 be assigned to Princeton rather than to Madisonville. The AMA petition makes no attempt to demonstrate a public need for the assignment; nor does it suggest any reason which would reasonably permit the Commission to conclude that Princeton is a particularly well-suited location for Channel 19. Moreover, the AMA petition contains no expression of intent on the part of any person to apply for Channel 19 at Princeton, should the assignment be approved.

6. However, consistent with the statutory mandate set forth in the Communications Act of 1934—to apportion the airwaves in a "fair, efficient, and equitable" [4] manner—the Commission has no intention of foreclosing to any of the Communities involved here the possibility of receiving a local television assignment. Thus the Commission has elected to proceed with both requests. Information submitted by petitioner LAM and the Commission's own investigation, indicates that there are a number of channels potentially available to each community involved in this proceeding.[5] By virtue of this *Notice of Proposed Rule Making,* we shall seek comments on the proposal to assign Channel 19 and on why another channel would not serve either community's needs equally well. Of course, in adopting either of the proposed plans, the Commission will apply its longstanding policy of refusing to consider the relative desirability of the channels available. Accordingly, pursuant to this *Notice of Proposed Rule Making,* petitioners are requested to come forward with information to support their respective mutually exclusive proposals in order that the Commission will be in a better position to meaningfully assess the comparative strengths and weaknesses of each proposal.

7. In view of the foregoing, the Commission is of the opinion that alternative proposals are in order. Accordingly, it is proposed to amend § 73.606(b) of the Commission's rules, the Television Table of Assignments, as follows:

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[1] The Commission published a Public Notice of the petition on April 25, 1980, Report No. 1226.

[2] This petition has been incorporated into the RM-3641 proceeding.

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

[4] 47 U.S.C. Section 307(b).

[5] For example, should Channel 19 be retained by Owensboro or assigned to Madisonville, the community of Princeton would have available to it Channels 54, 55, 56 or 57 and possibly others. Similarly, should Channel 19 be assigned to Princeton, Madisonville would have Channels 47, 48, 57, 61, or 69 available to it.

Plan I

City	Channel No.	
	Present	Proposed
Madisonville, Kentucky	*35–	19–, *35–
Owensboro, Kentucky	19–, 31–	31–, 48
Princeton, Kentucky		54–

Plan II

City	Channel No.	
	Present	Proposed
Madisonville, Kentucky	*35–	*35–, 57+
Owensboro, Kentucky	19–, 31–	31–, 48
Princeton, Kentucky		19–

8. The Commission's authority to institute rule making proceedings, showing 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 December 2, 1980, and reply comments on or before December 22, 1980.

10. For further information concerning this proceeding, contact Joaquin R. Cantu, 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. 80–607 RM–3641]

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 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, NW., Washington, D.C.

[FR Doc. 80-32802 Filed 10-20-80; 8:45 am]

BILLING CODE 6712-01-M

47 CFR—Part 73

[BC Docket No. 80–609; RM–3636]

FM Broadcast Station in Hilton Head Island, S.C.; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rule making.

SUMMARY: This action proposes to assign Channel 288A to Hilton Head Island, S.C. as that community's second FM assignment in response to petitions filed by Santee-Cooper Broadcasting Company and by Leonard Stevens.

DATE: Comments must be filed on or before December 2, 1980 and reply comment must be filed on or before December 22, 1980.

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

FOR FURTHER INFORMATION: Joaquin Cantu, Broadcast Bureau (202) 632–9660.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Hilton Head Island, South Carolina), BC Docket No. 80–609, RM–3636.

Adopted: October 2, 1980.

Released: October 17, 1980.

1. *Petitions, Proposals, Comments:* Petitions for rulemaking were filed by Santee-Cooper Broadcasting Company on March 14, 1980, and by Leonard Stevens on June 30, 1980, proposing the assignment of Class A Channel 288 to Hilton Head Island, Beaufort County, South Carolina, as that Community's second commercial FM channel.[1] An opposition to the proposal was filed with the Commission by the Hilton Head Radio Corporation, licensee of Station WHHR (FM), Hilton Head Island, on May 12, 1980.

2. *Community Data:* Hilton Head Island is an unincorporated community located in the southeastern corner of South Carolina. It is situated within Beaufort County, which, according to a 1978 population count reported by petitioner Leonard Stevens, had 61,882 residents. Under a "special census" conducted in 1980, the Island itself had a population of 10,470 permanent

[1] The Commission published a Public Notice of the Santee-Cooper petition on April 11, 1980 (Report No. 1223). The Leonard Stevens' petition is being treated as comments in this proceeding.

residents. In addition, the Island draws in excess of one-half million visitors annually .

3. The Hilton Head Island community presently receives local aural service from one FM station, WHHR (Channel 292A), although competing applications are currently pending for a new AM broadcast station to operate on 1130 kHz at Hilton Head.[2]

4. *The Need for an Additional Assignment:* In order to establish the need for an additional FM assignment at Hilton Head as required by the Commission's *Policy to Govern Requests for Additional FM Assignments,*[3] petitioners submitted economic and demographic data describing the principal social and commercial activities on the Island. The data indicate that the Island's commerce is strongly influenced by the health of the tourist trade. However, trades such as banking and construction are also very important. Moreover, petitioners chronicled in detail the rapid recent development of the area and projected a continuation of present growth trends.

5. Hilton Head Radio Corporation, on the other hand, opposes the proposed assignment, arguing that petitioner's data is incapable of supporting any finding of need for the additional channel. Moreover, it points to the aural service which it provides to Hilton Head (as licensee of WHHR), to the service provided by existing facilities located at Beaufort, South Carolina, and Savannah, Georgia, and to the potential new AM service, as the basis for its conclusion that "the Island is adequately served by a plethora of radio broadcast signals which obviate the need for an additional FM service in a small island community."

6. In the *Policy Statement,* the Commission declared that all future assignments must be made "consistent with a clear showing that the proposal will result in a fair and equitable distribution of available facilities, with due regard to the future needs of all communities." A policy of continuing reexamination to assess the extent to which the Commission's practices are achieving its objectives has long characterized its involvement in the FM assignment area. *Notice of Inquiry, Notice of Proposed Rule Making and Memorandum Opinion and Order,* FCC 61–833, 26 FR 6130 (adopted June 21, 1961 and issued July 5, 1961). For example, present Commission policy favors a presumption of need for the proposed assignent whenever a petitioner makes a reasonable showing, reflecting a preference for initiating service on an otherwise dormant channel at the earliest practicable time and a reliance on means such as public notice to communities precluded by a proposed assignment to generate counterproposals for the assignment. But the standard promulgated in the *Policy Statement* remains. A petitioner who seeks to assign an FM channel to a particular community must convince the Commission that an additional channel in that community would be "fair, efficient and equitable."

7. However, regardless of the standard ultimately to be satisfied in proving the existence of community need, and regardless of the actual merits of the instant petitions in meeting the standard, the rule making proposals before us should not be denied at this stage of the proceeding. The Commission's rules and longstanding practices regarding FM Table of Assignment rule making cases give to petitioners such as Santee-Cooper and Leonard Stevens an opportunity to answer all questions raised in a *Notice of Proposed Rule Making.*

8. Similarly, Hilton Head Radio Corporation's assertion that the Island presently receives adequate aural service from existing facilities does not, in itself, constitute sufficient reason to deny the petitions for rule making at this point in the proceedings. Indeed, inasmuch as the assignment of a second FM channel to Hilton Head Island falls within the Commission's population guidelines,[4] it would appear that opponents face the more stringent burden than merely overcoming a presumption of need.

9. *Preclusion Studies, Engineering Statements:* Neither petitioner has submitted the information required by the Commission to assist it in notifying communities which would be precluded by a grant of the proposed assignment. The Leonard Stevens' petition does state, however, that it has requested its consulting communications engineer to prepare for submission a statement indicating the area of preclusion which would result from a grant of the proposed assignment. We expect a preclusion study be filed in comments by either or both petitioners.

10. Petitioner Leonard Stevens' engineering statement indicates that the assignment of Channel 288A to Hilton Head Island, as proposed, will provide a new FM service of 60 dBu or greater strength to 24,000 persons in an area of 427 square miles—assuming a maximum Class A facility of 300 feet AAT at 3 kW. Petitioner Santee-Cooper adds that the proposed assignment will necessitate no modification of any channel number nor any deletion of channel presently assigned in the Commission's FM Table of Assignments. Moreover, it appears that the channel can be assigned to Hilton Head Island in conformity with the minimum distance separation requirements between stations.

11. In view of the foregoing, the Commission proposes to amend its FM Table of Assignments, § 73.202(b) of the Commission's Rules as follows:

City	Channel No.	
	Present	Proposed
Hilton Head Island, South Carolina....	292A	288A, 292A

12. 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.

13. Interested parties may file comments on or before December 2, 1980, and reply comments on or before December 22, 1980.

14. For further information concerning this proceeding, contact Joaquin Cantu, 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 presentations 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

[2] Coastal Empire Broadcasting Company, Inc., File No. BP–20620; Thomas H. Harvey III and James N. Richardson, Jr., d/b/a Calibogue Broadcasting Company, Inc., File No. BP–20830; and E. Justin Love and Larry D. Benes, d/b/a Hilton Head Media, File No. 780728AC.

[3] 8 FCC 2d 79 (1967) (Hereinafter "Policy Statement.").

[4] *Notice of Inquiry and Notice of Proposed Rule Making,* FCC 80–168 (April 16, 1980), *citing Second Further Notice of Proposed Rule Making,* 40 FCC 728 (1962).

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, NW., Washington, D.C.

[FR Doc. 80-32803 Filed 10-21-80; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 90

[PR Docket No. 80-605; FCC 80-566]

Amendment of Rules and Regulations To Permit the Use of 12.5 kHz Offset Assignments in the 450-470 MHz Band in the Private Land Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This Notice of Proposed Rule Making proposes making the 12.5 kHz offset frequencies lying between regularly assigned channels in the 450-470 MHz band available to all private land mobile services as is already being done in the Business Radio Service. It comes as a response to a petition filed by the Central Committee on Communications of the American Petroleum Institute and requests for expansion of the Commission's action by several other radio service associations. Adoption of this proposal could make over 300 additional interstitial channels available for systems requiring limited coverage.

DATES: Comments by: November 5, 1980; reply comments by: November 15, 1980.

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

FOR FURTHER INFORMATION CONTACT: Emmett H. Pritchard or Arthur C. King, Private Radio Bureau, (202) 632-6497.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of Subpart D of Part 90 of the Commission's rules and regulations to permit the use of 12.5 kHz offset assignments in the 450-470 MHz band in the Private Land Mobile Radio Services, PR Docket No. 80-605, RM-3569.

Adopted: October 3, 1980.

Released: October 20, 1980.

1. The Commission has before it a petition (RM-3569) filed on January 22, 1980, by the Central Committee on Telecommunications of the American Petroleum Institute (API). The petition asks for amendment of the Petroleum Radio Service rules to permit the use of frequency assignments which are spaced 12.5 kHz from regularly assignable channels in the 450-470 MHz band.[1]

2. In support of its request, API notes that the use of 12.5 kHz offset assignments in this band is not a new concept, and has long been allowed in the Business Radio Service.[2] It also points out that the "primary" channels in this band are extensively used and that additional communications needs for low power operations could be accommodated on offset assignments. This would have the added benefit, API notes, of allowing the offsets to serve low power needs, and freeing the primary assignments to accommodate "wide-area" communications systems.

Additionally, API argues that a particular requirement of the petroleum and natural gas industries is related to the technological advances which allow increased remote control and monitoring of operations and functions in petroleum refinery and natural gas processing plants. API points out there is a continuing need for radio channels to accommodate these remote monitoring and control capabilities, and permitting low-power fixed point-to-point communications on the offset frequencies would contribute to satisfying this. Finally, API notes, that there are numerous areas of activity (e.g., offshore production platform complexes, marine terminals, pipeline terminals, gas treatment plants and refineries) where these offsets could be satisfactorily used on a non-interference basis and that, if the Commission were to authorize the use of offsets in this band, otherwise fallow spectrum could be effectively used in the public interest.

3. In response to API's petition the following parties submitted comments: the Association of American Railroads (AAR); Forest Industries Telecommunications (FIT); the Manufacturers Radio Frequency Advisory Committee (MRFAC); the Utilities Telecommunications Council (UTC); the Special Industrial Radio Service Association (SIRSA) and API. All of the parties supported API's petition, and all noted eligibles in their own radio services had similar requirements which could be met

[1] The normal channel spacing in this band is 25 kHz.

[2] Operations on "offsets" in the Business Radio Service are low power in nature and are accorded secondary, non-interference status vis-a-vis the operations on adjacent "primary" channels. See 47 CFR 90.75(d)(4).

through the use of offsets in the 450–470 MHz band. All requested that the proceeding be enlarged to include their own radio services.[3]

Background

4. In 1968 in Docket No. 13847, the Commission amended the Business Radio Service rules to incorporate a new concept for frequency assignments in this service in the 450–470 MHz range. There, in response to demonstrated requirements for low-power multiple frequency operations within the boundaries of manufacturing plants, or other confined areas, the Commission authorized the use of "offset assignments" or channels separated by 12.5 kHz from the regularly assignable 25 kHz channels available in this band. All use of these offsets was on a secondary non-interference basis.[4] The concept was expanded in 1975 in Docket No. 19478 to permit the use of offset assignments in other areas (e.g., race tracks and construction sites) and to eliminate the so-called "industrial complex" restriction.[5]

5. As API notes in its petition, this approach has worked well in the Business Radio Service and it has become apparent to licensees in the Petroleum and other radio services who are also eligible in the Business Radio Service that the use of low power offset channels can provide highly effective communications in numerous instances where conventional higher power assignments are not essential. Consequently, the use of offset frequencies in the Business Radio Service is substantial.[6] However, because of the heavy usage of "primary" frequencies in the Business Radio Service, in many areas of the country a general "saturation" point of offset use has been reached.[7]

Proposal

6. We have considered the petition and the comments and we believe the petition should be granted. This method of operation has been efffective in the Business Radio Service, and we believe it has application in the other radio services as well, as evidenced by the comments supporting this proposal. We are therefore proposing to expand the proposal to include all of the private land mobile services with allocations in the 450–470 MHz band.

7. The rules being proposed in the attached Appendix would delete § 90.75(d)(4) and substitute a new Section 90.267 of the rules. The proposed rules would allow the use of 12.5 KHz offsets at 450–470 MHz in all of the private land mobile radio services in which frequencies in this band are assigned. The use of these frequencies would be on a secondary, non-interference basis to regularly assigned adjacent frequency operations and interservice frequency coordination is required where appropriate. The maximum power output for unmodulated carrier would be 2 watts or less. We also continue not to authorize wide area operation. Additionally, we would require of all private land mobile systems operating in the 450–470 MHz band on offsets that fixed or mobile relay stations be limited to 10 watts ERP. Finally, we point out that we have an on-going proceeding looking at narrow band technologies and should these technologies eventuate nothing in this proposal should be construed as precluding their adoption.[8] Indeed, if such narrow band technologies are introduced in the 450–470 MHz band, operations on the offset frequencies might very well become secondary to any narrow band systems that might be authorized.

8. Accordingly, we propose to delete § 90.75(d)(4) of the rules and to add a new § 90.267 to extend the use of 12.5 kHz offset frequency assignments in the UHF range in the Private Land Mobile Radio Services. The specific rules are set out in the attached Appendix.

9. The authority for issuing this Notice of Proposed Rulemaking is contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r).

10. Pursuant to procedures set out in § 1.415 of the Commission's rules, 47 CFR 1.415, interested persons may file comments on or before November 5, 1980, and reply comments on or before November 15, 1980. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that 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.

11. In accordance with the provisions of § 1.419 of the Commission's rules, 47 CFR 1.419, formal participants shall file an original and 5 copies of their comments and other materials. Participants wishing each Commissioner to have a personal copy of their comments should file an original and 11 copies. Members of the general public who wish to express their interest by participating informally may do so by submitting one copy. All comments are given the same consideration, regardless of the number of copies submitted. All documents will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C.

12. For further information contact Emmett Haines Pritchard, Federal Communications Commission, Private Radio Bureau, Rules Division, Washington, D.C. 20554 (202) 632–6497.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

It is proposed that 47 CFR Part 90 be amended as follows:

§ 90.75 [Amended]

1. The present § 90.75(d)(4) is removed and § 90.75(d)(5) is renumbered to become the new § 90.75(d)(4).

2. A new § 90.267 is added to read as follows:

§ 90.267 Assignment and use of 12.5 kHz frequency offsets.

(a) Frequencies separated by 12.5 kHz from regularly assignable frequencies in the 450–470 MHz band, which are listed in the table at paragraph (b) of this section may be assigned in the land mobile services in accordance with the following conditions.

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[3] FIT, for example, pointed out that these offsets could be used in the logging industry for signaling to control equipment operations and movement of felled trees in dangerous and remote areas. MRFAC stressed that licensees in the Manufacturers Radio Service could employ these offsets for low power systems at locations within the confines of plant facilities. SIRSA noted their potential application in the construction of dams and bridges and the operation of open-pit mines. UTC saw applications in powerplants, coal gasification sites and synthetic natural gas plants. AAR felt the offsets could be successfully used in railroad yards and terminals for the remote control of locomotives.

[4] *See Frequency Allocations 450–470 Mc/s Band, Second Report and Order, Docket No. 13847,* 11 FCC 2d 648 (1968).

[5] *See Second Report and Order, 450–470 MHz, Business Radio Service, Docket No. 19478,* 56 FCC 2d 1004 (1975).

[6] See footnote 2, API Petition for Rule Making. Source: 1978 Year-end compilation of the National Association of Business and Educational Radio, Inc.'s geographic divisions reflecting offset assignments in the Business Radio Service.

[7] Heavy use of the primary assignments severely restricts potential use of the adjacent 12.5 kHz offset assignments, which are afforded no protection from primary operations, because higher powered adjacent primary operations in close proximity to the potential offset area of operation produce sufficient interference to preclude use of low power offset assignments.

[8] Notice of Inquiry, Docket No. 80–440, FCC No. 80–484, 45 FR 63305, adopted August 1, 1980, released September 9, 1980.

(1) All stations shall be licensed as mobiles but they may serve the functions of base, fixed, or mobile stations. Such stations are limited to 2 watts output power.

(2) All operations shall be on a secondary, noninterference basis to regularly assigned adjacent frequency operations and shall be entitled to no protection from such stations.

(3) Wide area operations will not be authorized. The area of normal day-to-day operations shall be described in the application in terms of a maximum distance from a geographic center (latitude and longitude).

(4) Mobile stations, when used as fixed stations, shall be exempt from any limitations on the number of frequencies assignable contained elsewhere in Part 90.

(5) Antennas of mobile stations used as fixed stations communicating with one or more associated stations located within 45 degrees of azimuth shall be directional and have a front to back ratio of at least 15 dB. Except as provided below, the height of the antenna used at any mobile station serving as a base, fixed mobile relay station may not exceed 7 m. (20 ft). above the ground.

(i) No limit shall be placed on the length or height above ground or any commercially manufactured radiating transmission line when the transmission line is terminated in a nonradiating load and is routed at least 7 m. (20 ft.) interior to the edge of any structure or is routed below ground level.

(ii) Sea-based stations may utilize antennas mounted not more than 7 m. (20 ft.) above the man-made supporting structure, excluding antenna structures.

(iii) Fixed and mobile stations are limited to 10 watts ERP.

(6) To assure compatibility with regularly assigned adjacent frequency operations, coordination requirements set forth in Section 90.175 apply to the use 12.5 kHz frequency offsets. Where availability is indicated in more than one service in the table, frequency coordination is required in all such services. See Section 90.555(a) for identification of service abbreviations.

(b) Frequencies available for assignment under this section are as follows:

Offset Channels Available in Services Indicated

[Frequency]

451.0375	IW
451.0625	IW
451.0875	IW
451.1125	IW
451.1375	IW
451.1625	IF, IP, IT, IW, IX
451.1875	IF, IP, IT, IX

Offset Channels Available in Services Indicated—Continued

[Frequency]

451.2125	IF, IP, IT, IW, IX
451.2375	IF, IP, IT, IW, IX
451.2625	IF, IP, IT, IW, IX
451.2875	IF, IP, IT, IW, IX
451.3125	IT
451.3375	IT
451.3625	IF, IP, IT, IW, IX
451.3875	IF, IP, IT, IW, IX
451.4125	IF, IP, IT, IW, IX
451.4375	IF, IP, IT, IW, IX
451.4625	IF, IP, IT, IW, IX
451.4875	IF, IP, IT, IW, IX
451.5125	IF, IP, IT, IW, IX
451.5375	IF, IP, IT, IW, IX
451.5625	IF, IP, IT, IW, IX
451.5875	IF, IP, IT, IW, IX
451.6125	IF, IP, IT, IW, IX
451.6375	IF, IP, IT, IW, IX
451.6625	IF, IP, IT, IW, IX
451.6875	IF, IP, IT, IW, IX
451.7125	IF, IP, IS
451.7375	IF, IP, IS
451.7625	IF, IP, IS
451.7875	IS
451.8125	IS
451.8375	IS
451.8625	IS
451.8875	IS
451.9125	IS
451.9375	IS
451.9625	IS
451.9875	IS
452.0125	IS
452.0375	IS, LX
452.0625	IS, LX
452.0875	IS, LX
452.1125	IS, LX
452.1375	IS, LX
452.1625	IS, LX
452.1875	IS, LX
452.2125	IS, LX
452.2375	LX
452.2625	LX
452.2825	LX
452.3125	LX
452.3375	LM, LR, LX
452.3625	LM, LR, LX
452.3875	LM, LR, LX
452.4125	LM, LR, LX
452.4375	LM, LR, LX
452.4625	LM, LR, LX
452.4875	LM, LR, LX
452.5125	LA, LX
452.5375	LA
452.5625	LA
452.5875	LA
452.6125	LA, LM
452.6375	LM
452.6625	LM
452.6875	LM
452.7125	LM
452.7375	LM
452.7625	LM, LR
452.7875	LM, LR
452.8125	LM, LR
452.8375	LM, LR
452.8625	LM, LR
452.8875	LM, LR
452.9125	LR
452.9375	LR
452.9625	IY, LR
452.9875	IY
453.0125	PL, PS, IY
453.0375	PF, PH, PL, PO, PP
453.0625	PF, PH, PL, PO, PP
453.0875	PF, PH, PL, PO, PP
453.1125	PF, PH, PL, PO, PP
453.1375	PF, PH, PL, PO, PP
453.1625	PF, PH, PL, PO, PP
453.1875	PF, PH, PL, PO, PP
453.2125	PF, PH, PL, PO, PP
453.2375	PF, PH, PL, PO, PP
453.2625	PF, PH, PL, PO, PP
453.2875	PF, PH, PL, PO, PP
453.3125	PF, PH, PL, PO, PP
453.3375	PF, PH, PL, PO, PP
453.3625	PF, PH, PL, PO, PP
453.3875	PF, PH, PL, PO, PP
453.4125	PF, PH, PL, PO, PP
453.4375	PF, PH, PL, PO, PP
453.4625	PF, PH, PL, PO, PP
453.4875	PF, PH, PL, PO, PP
453.5125	PF, PH, PL, PO, PP

Offset Channels Available in Services Indicated—Continued

[Frequency]

453.5375	PF, PH, PL, PO, PP
453.5625	PF, PH, PL, PO, PP
453.5875	PF, PH, PL, PO, PP
453.6125	PF, PH, PL, PO, PP
453.6375	PF, PH, PL, PO, PP
453.6625	PF, PH, PL, PO, PP
453.6875	PF, PH, PL, PO, PP
453.7125	PF, PH, PL, PO, PP
453.7375	PF, PH, PL, PO, PP
453.7625	PF, PH, PL, PO, PP
453.7875	PF, PH, PL, PO, PP
453.9125	PF, PH, PL, PO, PP
453.9375	PF, PH, PL, PO, PP
453.9625	PF, PH, PL, PO, PP
453.9875	PL, IP
454.0125	Not available (adjacent to Domestic Public)
454.025–454.975	Domestic Public
455.050–455.950	Broadcast Aux.
456.0125	Not available (adjacent to Broadcast Aux.)
456.0375	IW
456.0625	IW
456.0875	IW
456.1125	IW
456.1375	IW
456.1625	IF, IP, IT, IW, IX
456.1875	IF, IP, IT, IW, IX
456.2125	IF, IP, IT, IW, IX
456.2375	IF, IP, IT, IW, IX
456.2625	IF, IP, IT, IW, IX
456.2875	IF, IP, IT, IW, IX
456.3125	IT
456.3375	IT
456.3625	IF, IP, IT, IW, IX
456.3875	IF, IP, IT, IW, IX
456.4125	IF, IP, IT, IW, IX
456.4375	IF, IP, IT, IW, IX
456.4625	IF, IP, IT, IW, IX
456.4875	IF, IP, IT, IW, IX
456.5125	IF, IP, IT, IW, IX
456.5375	IF, IP, IT, IW, IX
456.5625	IF, IP, IT, IW, IX
456.5875	IF, IP, IT, IW, IX
456.6125	IF, IP, IT, IW, IX
456.6375	IF, IP, IT, IW, IX
456.6625	IF, IP, IT, IW, IX
456.6875	IF, IP, IT, IW, IX
456.7125	IF, IP, IS
456.7375	IF, IP, IS
456.7625	IF, IP, IS
456.7875	IS
456.8125	IS
456.8375	IS
456.8625	IS
456.8875	IS
456.9125	IS
456.9375	IS
456.9625	IS
456.9875	IS
457.0125	IS
457.0375	IS, LX
457.0625	IS, LX
457.0875	IS, LX
457.1125	IS, LX
457.1375	IS, LX
457.1625	IS, LX
457.1875	IS, LX
457.2125	LX
457.2375	LX
457.2625	LX
457.2875	LX
457.3125	LM, LR, LX
457.3375	LM, LR, LX
457.3625	LM, LR, LX
457.3875	LM, LR, LX
457.4125	LM, LR, LX
457.4375	LM, LR, LX
457.4625	LM, LR, LX
457.4875	LM, LR, LX
457.5125	IB, LX
457.5375	IB
457.5625	IB
457.5875	IB
457.6125	IB, LM
457.6375	LM
457.6625	LM
457.6875	LM
457.7125	LM
457.7375	LM
457.7625	LM, LR
457.7875	LM, LR
457.8125	LM, LR

Offset Channels Available in Services Indicated—Continued

[Frequency]

457.8375	LM, LR
457.8625	LM, LR
457.8875	LM, LR
457.9125	LR
457.9375	LR
457.9625	IY, LR
457.9875	IY
458.0125	PS, IY
458.0375	PF, PH, PL, PO, PP, PS
458.0625	PF, PH, PL, PO, PP, PS
458.0875	PF, PH, PL, PO, PP, PS
458.1125	PF, PH, PL, PO, PP, PS
458.1375	PF, PH, PL, PO, PP, PS
458.1625	PF, PH, PL, PO, PP, PS
458.1875	PF, PH, PL, PO, PP, PS
458.2125	PF, PH, PL, PO, PP
458.2375	PF, PH, PL, PO, PP
458.2625	PF, PH, PL, PO, PP
458.2875	PF, PH, PL, PO, PP
458.3125	PF, PH, PL, PO, PP
458.3375	PF, PH, PL, PO, PP
458.3625	PF, PH, PL, PO, PP
458.3875	PF, PH, PL, PO, PP
458.4125	PF, PH, PL, PO, PP
458.4375	PF, PH, PL, PO, PP
458.4625	PF, PH, PL, PO, PP
458.4875	PF, PH, PL, PO, PP
458.5125	PF, PH, PL, PO, PP
458.5375	PF, PH, PL, PO, PP
458.5625	PF, PH, PL, PO, PP
458.5875	PF, PH, PL, PO, PP
458.6125	PF, PH, PL, PO, PP
458.6375	PF, PH, PL, PO, PP
458.6625	PF, PH, PL, PO, PP
458.6875	PF, PH, PL, PO, PP
458.7125	PF, PH, PL, PO, PP
458.7375	PF, PH, PL, PO, PP
458.7625	PF, PH, PL, PO, PP
458.7875	PF, PH, PL, PO, PP
458.8125	PF, PH, PL, PO, PP
458.8375	PF, PH, PL, PO, PP
458.8625	PF, PH, PL, PO, PP
458.8875	PF, PH, PL, PO, PP
458.9125	PF, PH, PL, PO, PP
458.9375	PF, PH, PL, PO, PP
458.9625	PF, PH, PL, PO, PP
458.9875	PL, IP
459.0125	(Not available, adjacent to Domestic Public)
459.025–459.975	Domestic Public
459.9875	(Not available, adjacent to Domestic Public)
460.0125	PP
460.0375	PP
460.0625	PP
460.0875	PP
460.1125	PP
460.1375	PP
460.1625	PP
460.1875	PP
460.2125	PP
460.2375	PP
460.2625	PP
460.2875	PP
460.3125	PP
460.3375	PP
460.3625	PP
460.3875	PP
460.4125	PP
460.4375	PP
460.4625	PP
460.4875	PF
460.5125	
460.5375	
460.5625	
460.5875	
460.6125	PF
460.6375	PF, IB
460.6625	IB
460.6875	IB
460.9125	IB
460.9375	IB
460.9625	IB
460.9875	IB
461.0125	IB
461.0375	IB
461.0625	IB
461.0875	IB
461.1125	IB
461.1375	IB
461.1625	IB
461.1875	IB
461.2125	IB

Offset Channels Available in Services Indicated—Continued

[Frequency]

461.2375	IB
461.2625	IB
461.3875	IB
461.4125	IB
461.4375	IB
461.4625	IB
461.4875	IB
461.5125	IB
461.5375	IB
461.5625	IB
461.5875	IB
461.6125	IB
461.6375	IB
461.6625	IB
461.6875	IB
461.7125	IB
461.7375	IB
461.7625	IB
461.7875	IB
461.8125	IB
461.8375	IB
466.0125	IB
466.0375	IB
466.0625	IB
466.0875	IB
466.1125	IB
466.1375	IB
466.1625	IB
466.1875	IB
466.2125	IB
466.2375	IB
466.2625	IB
466.2875	IB
466.3125	IB
466.3375	IB
466.3625	IB
466.3875	IB
466.4125	IB
466.4375	IB
466.4625	IB
466.4875	IB
466.5125	IB
466.5375	IB
466.5625	IB
466.5875	IB
466.6125	IB
466.6375	IB
466.6625	IB
466.6875	IB
466.7125	IB
466.7375	IB
466.7625	IB
466.7875	IB
466.8125	IB
466.8375	IB
466.8625	IB
466.8875	IB
466.9125	IB
466.9375	IB
466.9625	IB
466.9875	IB
467.9875	IB
467.0125	IB
467.0375	IB
467.0625	IB
467.0875	IB
467.1125	IB
467.1375	IB
467.1625	IB
467.1875	IB, IX
467.2125	IX
467.2375	IX
467.2625	IX
467.2875	IX
467.3125	IX
467.3375	IX
467.3625	IX
467.3875	IX
467.4125	IX
467.4375	IX
467.4625	IF, IP, IT, IW, IX
467.4875	IF, IP, IT, IW, IX
467.5125	IF, IP, IT, IW, IX
467.5375	Not available, adjacent to General Mobile
467.550–467.475	(Not available—General Mobile)
467.7625	Not available, adjacent to General Mobile
467.7875	IB
467.8125	IB
467.8375	IB
467.8625	IB
467.8875	IB

Offset Channels Available in Services Indicated—Continued

[Frequency]

467.9125	IB
467.9375	PS, IF
467.9625	PS
467.9875	PS
467.0125	PS
467.0375	PS
467.0625	PS
467.0875	PS
467.1125	PS
461.8625	IB
461.8875	IB
461.9125	IB
461.9375	IB
461.9625	IB
461.9875	IB
462.0125	IB
462.0375	IB
462.0625	IB
462.0875	IB
462.1125	IB
462.1375	IB
462.1625	IB
462.1875	IB, IX
462.2125	IX
462.2375	IX
462.2625	IX
462.2875	IX
462.3125	IX
462.3375	IX
462.3625	IX
462.3875	IX
462.4125	IX
462.4375	IX
462.4625	IF, IP, IT, IW, IX
462.4875	IF, IP, IT, IW, IX
462.5125	IF, IP, IT, IW, IX
462.5375	Not available, adjacent to General Mobile
462.550–462.725	(Not available—General Mobile)
462.7375	Not available, adjacent to General Mobile
462.7625	IB
462.7875	IB
462.8125	IB
462.8375	IB
462.8625	IB
462.8875	IB
462.9125	IB
462.9375	IB
462.9625	IB
462.9875	IB
463.0125	IB
463.0375	IB
463.0625	IB
463.0875	IB
463.1125	IB
463.1375	IB
463.1625	IB
463.1875	IB
463.2125	IB
463.2375	IB
463.2625	IB
463.2875	IB
463.3125	IB
463.3375	IB
463.3625	IB
463.3875	IB
463.4125	IB
463.4375	IB
463.4625	IB
463.4875	IB
463.5125	IB
463.5375	IB
463.5625	IB
463.5875	IB
463.6125	IB
463.6375	IB
463.6625	IB
463.6875	IB
463.7125	IB
463.7375	IB
463.7625	IB
463.7875	IB
463.8125	IB
463.8375	IB
463.8625	IB
463.8875	IB
463.9125	IB
463.9375	IB
463.9625	IB
463.9875	IB
464.0125	IB
464.0375	IB

Offset Channels Available in Services Indicated—Continued

[Frequency]

464.0625	IB
464.0875	IB
464.1125	IB
464.1375	IB
464.1625	IB
464.1875	IB
464.2125	IB
464.2375	IB
464.2625	IB
464.2875	IB
464.3125	IB
464.3375	IB
464.3625	IB
464.3875	IB
464.4125	IB
464.4375	IB
464.4625	IB
464.4875	IB
464.5125	IB
464.5375	IB
464.5625	IB
464.5875	IB
464.6125	IB
464.6375	IB
464.6625	IB
464.6875	IB
464.7125	IB
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464.7625	IB
464.7875	IB
464.8125	IB
464.8375	IB
464.8625	IB
464.8875	IB
464.9125	IB
464.9375	IB
464.9625	IB
464.9875	IB
465.0125	PP
465.0375	PP
465.0625	PP
465.0825	PP
465.1125	PP
465.1375	PP
465.1625	PP
465.1875	PP
465.2125	PP
465.2375	PP
465.2625	PP
465.2875	PP
465.3125	PP
465.3375	PP
465.3625	PP
465.3875	PP
465.4125	PP
465.4375	PP
465.4625	PP
465.4875	PP
465.5125	PF, PP,PS
465.5375	PF, PP,PS
465.5625	PF, PP,PS
465.5875	PF
465.6125	PF
465.6375	PF, IB
465.6625	IB
465.6875	IB
465.7125	IB
465.7375	IB
465.7625	IB
465.7875	IB
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465.8625	IB
465.8875	IB
465.9125	IB
465.9375	IB
465.9625	IB
465.9875	IB
468.1375	PS
468.1625	PS
468.1875	PS
468.2125	IB
468.2375	IB
468.2625	IB
468.2875	IB
468.3125	IB
468.3375	IB
468.3625	IB
468.3875	IB
468.4125	IB
468.4375	IB
468.4625	IB
468.4875	IB

Offset Channels Available in Services Indicated—Continued

[Frequency]

468.5125	IB
468.5375	IB
468.5625	IB
468.5875	IB
468.6125	IB
468.6375	IB
468.6625	IB
468.6875	IB
468.7125	IB
468.7375	IB
468.7625	IB
468.7875	IB
468.8125	IB
468.8375	IB
468.8625	IB
468.8875	IB
468.9125	IB
468.9375	IB
468.9625	IB
468.9875	IB
469.0125	IB
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469.0625	IB
469.0875	IB
469.1125	IB
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469.3125	IB
469.3375	IB
469.3625	IB
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469.4625	IB
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469.5375	IB
469.5625	IB
469.5875	IB
469.6125	IB
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469.6875	IB
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469.7625	IB
469.7875	IB
469.8125	IB
469.8375	IB
469.8625	IB
469.8875	IB
469.9125	IB
469.9375	IB
469.9625	IB

[FR Doc. 80-32800 Filed 10-20-80; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 45, No. 205
Tuesday, October 21, 1980

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

Cooperative Imported Fire Ant Program; Draft Environmental Impact Statement

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of intent to prepare a Draft Cooperative Imported Fire Ant Program Environmental Impact Statement; and notice of public meeting.

SUMMARY: This give notice that this Department intends to prepare a Draft Cooperative Imported Fire Ant Program Environmental Impact Statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, by Plant Protection and Quarantine, Animal and Plant Health Inspect Service. The draft is scheduled for completion by December 30, 1980.

To provide opportunity for participation in the development of the draft environmental impact statement (DEIS), comments are invited from all interested members of the public and from State and local agencies which administer plant pest control regulatory programs or are authorized to develop and enforce environmental standards, and from Federal agencies having jurisdiction by law or special expertise with respect to any national program issue, or environmental impact involved. Additionally, a public metting will be held to provide for public participation to discuss the proposed DEIS as well as the future direction of the imported fire ant control program.

DATES: Comments must be received on or before December 5, 1980. The public meeting will be held on November 18, 1980, starting at 9:00 a.m.

ADDRESSES: The pulic meeting will be held in the Ramada Inn, 845 North Central Avenue, Hapeville, Georgia. Written comments concerning matters pertaining to the proposed DEIS should be addressed to the Pest Program Development Staff, Plant Protect and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Federal Building, Hyattsville, MD 20782, by December 5, 1980.

FOR FURTHER INFORMATION CONTACT: B. Glen Lee, 301–436–8745. Interested persons ar invited to submit written comments concerning the proposed DEIS. Comments should bear a reference to the date and page numbers of this issue of the **Federal Register.** All written comments made pursuant to this notice will be made available for public inspection at the Federal Building, 6505 Belcrest Road, Room 630, Hyattsville, MD 20782, during regular hours of business, 8 a.m. to 4.30 p.m., Monday through Friday, except holidays.

Background

The imported fire ant is an insect pest not native to the United States. An aggressive mound builder with a vicious sting, it is a pest of agriculture, a health hazard, and a nuisance to anyone living in heavily infested areas. When disturbed, imported fire ants will attack both humans and animals. The ant has spread throughout the Southeastern United States and currently infests 230,000,000 acres in nine States. Without an environmentally safe and biologically effective insecticide for areawide control since 1977, populations have increased to high levels in parts of the nine States. Infestations are often of such an extent as to be beyond the capability of individuals to handle. Therefore, the Department plans in conjunction with cooperating State Departments of Agriculture to conduct control/suppression treatments by aerial, ground, and individual mound application of Amdro.

Amdro has been tested extensively by the American Cyanamid Company and the U.S. Department of Agriculture for several years. During two years of intensive field testing by the U.S. Department of Agriculture, Amdro was found to be effective against the ant, to degrade rapidly in sunlight, not to leach in the soil, and to be degraded by soil microorganisms. Environmental components collected in treated areas were analyzed and found to contain no residues of the insecticide. Amdro is considered to be an environmentally safe and biologically effective material.

Applications of Amdro will be made only in areas where surveys have been conducted and are known to contain populations of imported fire ants. All applications are to be made in accordance with the approved label.

Done at Washington, D.C., this 16th day of October 1980.

William F. Helms, Acting

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

[FR Doc. 80-32759 Filed 10-20-80; 8:45 am]

BILLING CODE 3410-34-M

Office of the Secretary

National Advisory Council on Small Community and Rural Development; Proposed Establishment

Notice is hereby given that the Secretary of Agriculture proposes to establish the National Advisory Council on Small Community and Rural Development.

The purpose of the Council will be to recommend solutions to problems affecting rural America in the areas of housing, health, water and sewer, education, human services, job creation, economic development, energy, transportation and communications, capacity building, natural resources, and recreation and cultural resources. Meetings of the Council will be open to the public.

The establishment of the Council is in the public interest in connection with the duties of the Department.

Persons wishing to comment on the proposed establishment of the Council or desiring additional information concerning it may contact Tom Burgum, Deputy Assistant Secretary for Rural Development, U.S. Department of Agriculture, Washington, D.C. 20250, telephone 202–447–5277. The Committee Management Secretariat has authorized less than 15 days notice.

Joan S. Wallace,

Assistant Secretary for Administration.

October 16, 1980.

[FR Doc. 80-32750 Filed 10-20-80; 8:45 am]

BILLING CODE 3410-07-M

Rural Electrification Administration

San Miguel Electric Co-op., Inc., Jourdanton, Tex.; Proposed Loan Guarantee

Under the authority of Pub. L. 93–32 (87 Stat. 65), and in conformance with applicable policies and procedures as set forth in REA Bulletin 20–22 (Guarantee of Loans for Bulk Power Supply Facilities), notice is hereby given that the Administrator of REA will consider providing a guarantee supported by the full faith and credit of the United States of America for a loan in the approximate amount of $51,640,000 to San Miguel Electric Cooperative, Inc. (San Miguel), of Jourdanton, Texas. This loan guarantee will provide supplemental funds needed to complete San Miguel's 400 MW lignite-fired generating plant and associated lignite strip mine.

Legally organized lending agencies capable of making, holding and servicing the loan proposed to be guaranteed may obtain information on the proposed program, including the engineering and economic feasibility studies and the proposed schedule for the advances to the borrower of the guaranteed loan funds from Mr. Mac A. Coalson, President, San Miguel Electric Cooperatives, Inc., P.O. Box 280, Jourdanton, Texas 78206.

In order to be considered, proposals must be submitted by November 20, 1980 to Mr. Coalson. The right is reserved to give such consideration and make such evaluation or other disposition of all proposals received as San Miguel and REA deem appropriate.

Prospective lenders are advised that the guaranteed financing for this project is available from the Federal Financing Bank under a standing agreement with the Rural Electrification Administration.

Copies of REA Bulletin 20–22 are available from the Director, Office of Information and Public Affairs, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250.

This program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.

Dated at Washington, D.C., this 10th day of October, 1980.

Robert W. Feragen,

Administrator, Rural Electrification Administration.

[FR Doc. 80-32567 Filed 10-20-80; 8:45 am]

BILLING CODE 3410-15-M

ARMS CONTROL AND DISARMAMENT AGENCY

National Environmental Policy Act and Executive Order 12114; Proposed Implementing Procedures

AGENCY: U.S. Arms Control and Disarmament Agency.

ACTION: Notice of Proposed Implementing procedures for the National Environmental Policy Act and Executive Order 12114.

SUMMARY: The U.S. Arms Control and Disarmament Agency (the Agency) proposes to adopt internal procedures to implement the National Environmental Policy Act in accordance with the regulations of the Council on Environmental Quality, published in the **Federal Register** on November 29, 1978 (43 FR 55978) and to implement Executive Order 12114, entitled Environmental Effects Abroad of Major Federal Actions, published in the **Federal Register** on January 9, 1979 (44 FR 1957).

DATE: Comments or suggestions should be submitted in writing on or before November 28, 1980.

ADDRESS: Send comments to: Office of the General Counsel, U.S. Arms Control and Disarmament Agency, Washington, D.C. 20451.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond O. Waters, Office of the General Counsel, U.S. Arms Control and Disarmament Agency, Washington, D.C. 20451 (202–632–0760).

SUPPLEMENTARY INFORMATION: On June 19, 1980 the Agency published in the **Federal Register** (45 FR 39320) proposed implementing procedures for the National Environmental Policy Act and Executive Order 12114. Comments were received from the State Department which pointed out that the proposed procedures did not make it clear that the National Environmental Policy Act and Executive Order 12114 rest on differing legal bases and that the procedures relating to preparation of environmental documents for each should be separate. No other comments were received. In response to the comments the proposed procedures have been revised. Because of the nature of the revision, the Agency believes that it is best to put the revised proposed procedures out for comment rather than adopt the procedures as final.

Dated: October 15, 1980.

James T. Hackett,

Administrative Director.

U.S. Arms Control and Disarmament Agency

National Environmental Policy Act and Executive Order 12114; Proposed Implementing Procedures

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II. Timing of environmental analyses and responsibility of agency officials.
III. Categories of actions.
IV. General procedures for environmental review.
V. Determining the need for environmental impact statements.
VI. Exceptions.
VII. Cooperation with other agencies.

I. General

These procedures implement within the United States Arms Control and Disarmament Agency (the Agency) Section 102(2) of the National Environmental Policy Act (NEPA) (42 U.S.C. 4332(2)), Section 309 of the Clean Air Act as amended (42 U.S.C. 7609), Executive Order 12114 (E.O. 12114) dated January 4, 1979, and the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (the Regulations) published by the Council on Environmental Quality (CEQ) on November 29, 1978 (43 FR 55978, 40 CFR Parts 1500–1508), incorporated herein by reference. The procedures relating to preparation of documents under NEPA and under E.O. 12114 are presented separately in these procedures as the actions to be taken rest on differing legal bases. The CEQ Regulations will be followed by the responsible Agency officials in complying with policies and provisions of the NEPA and Section 309 of the Clean Air Act. E.O. 12114 will be followed as appropriate. The requirements of these procedures are in addition to, and not a substitute for, any environmental analyses or consultations required by any international obligations of the United States.

II. Timing of Environmental Analyses and Responsibility of Agency Officials

The environmental analysis and review for a proposed Agency action shall be conducted as early as practicable so as to be timely, but late enough in the decision-making process so as to be relevant to the decision-making.

The Office of the General Counsel (GC) has primary responsibility for the Agency's compliance with the requirements of NEPA. GC will provide policy direction, guidance and

leadership within the Agency for implementing these procedures. GC will also be responsible for coordination of preparation of environmental assessments, environmental impact statements, and concise environmental reviews, by the Agency, bureau or office having operational responsibility, for all proposed Agency actions for which they are required in accordance with the NEPA, Executive Order 12114 and these implementing procedures.

Other Agency, bureaus and offices having operational responsibility over a proposed major action subject to the NEPA which is not categorically excluded from the requirements for environmental impact statements, or which become aware of planning for such an action by private applicants or other non-Federal entities before Agency involvement, shall inform GC of the proposed action. In order to determine whether the proposed action will require an environmental impact statement, GC will coordinate the preparation of an environmental assessment by the bureau or office having operational responsibility. Where appropriate to supplement the work of assessing the environmental effect of the proposed action, information will be solicited from other parts of the Agency, from other Federal, State, or local Government agencies with jurisdiction by law or special expertise with respect to any environmental effect involved, or from private individuals or organizations.

III. Categories of Actions

1. *Actions Normally Requiring Environmental Impact Statements.* It is not expected that any actions of this Agency will normally require preparation of an environmental impact statement.

NEPA

Any Agency action deemed to have a "significant effect upon the quality of the human environment" in the United States shall require an environmental impact statement. Considerations to be used in determining significance are given in § 1508.27 of the CEQ Regulations.

E.O. 12114

Any Agency action significantly affecting the environment of the global commons outside the jurisdiction of any nation shall require appropriate action under E.O. 12114.

2. *Actions Categorically Excluded from Preparation of Environmental Documents.*

NEPA

Categorical exclusion is defined in Section 1508.4 of the CEQ Regulations and provides for excluding from environmental review under these implementing procedures actions which have no significant impact on the quality of the domestic human environment. Neither an environmental assessment nor an environmental impact statement is required for such actions.

Even though an action may be categorically excluded from the need for a formal environmental assessment or environmental impact statement, if the environmental analysis conducted during the earliest planning for the action shows the possibility for significant environmental effects, an environmental assessment will be prepared. Based upon the assessment, a determination will be made whether to prepare an environmental impact statement.

The Agency conducts and contracts for research that is largely directed towards acquiring a fund of theoretical and practical knowledge for arms control and disarmament policy formulation, and the conduct of such research does not individually or cumulatively have a significant effect on the environment. Therefore research that has been reviewed for environmental effects and is determined to be research solely directed at acquiring a fund of theoretical and practical knowledge for arms control and disarmament policy formulation will be categorically excluded from the requirements for environmental assessments and environmental impact statements.

E.O. 12114

Actions may also be categorically excluded under Section 2–5c of E.O. 12114.

3. *Actions Normally Requiring Environmental Assessments.* Any Agency action which may significantly affect the human environment of the United States, and which is not one normally requiring an environmental impact statement or is not categorically excluded, shall require the preparation of an environmental assessment.

4. *Actions Normally Requiring Concise Environmental Reviews.* Any Agency action falling within the categories described in Sections 2–3(b) (c) and (d) of E.O. 12114, shall require the preparation of a concise environmental review, provided however that if a relevant and adequate document described in Section 2–4(a) of E.O. 12114 already exists no concise environmental review need be prepared.

5. *Exempted Actions Under E.O. 12114.* Any Agency action falling within actions found in Section 2–5 (a) or (c) of E.O. 12114, will be exempt from the requirements for preparation of environmental documents, except to the extent limited by Section 2–5(d).

6. *Amendments and Mofifications.* As experience is gained in implementing these procedures the Agency may amend the above categories of action. Such amendments will be prepared by GC, published in the **Federal Register**, and made available for review and comment in the same manner as these procedures.

IV. General Procedures for Environmental Review

In reviewing their actions for environmental effects, Agency officials will use the NEPA and Executive Order 12114 processes. Early in the process of considering an action, the bureau or office having operational responsibility will review it for potential environmental effects. This review shall be early enough to be useful in formulating, reviewing, and deciding upon proposed actions. If it is determined that the action could have potential environmental effects then the action should be further reviewed by the bureau or office having operational responsibility in consultation with GC to determine if it falls under NEPA or E.O. 12114. After that determination, then the procedures set forth below will be followed:

NEPA

Any action which is under NEPA should be reviewed to determine which of the following basic categories of action it falls under:

(1) Actions normally requiring environmental impact statements;

(2) Actions categorically excluded from environmental statements; and

(3) Actions normally requiring environmental assessments.

If the action normally requires an impact statement, the statement process will be initiated without preparing an environmental assessment. If the action is categorically excluded, no further immediate environmental review is needed. If an environmental assessment is required, GC will coordinate the preparation of an environmental assessment by the bureau or office having operational responsibility for the proposed action.

If the environmental assessment shows that the environmental effects of the action may be "significant", the Agency is required to prepare an environmental impact statement. If the effects are found to be insignificant,

then the Agency should make a "finding of no significant impact" which completes the environmental review. The "finding of no significant impact" shall be made available to the affected public as required by Section 1501.4(a)(1) of the CEQ Regulations.

If an impact statement is required, the Agency will issue a "notice of intent" to prepare a statement. GC, and the bureau or office having operational responsibility, will then commence the "scoping process" to determine the proper content ("scope") of the statement.

The bureau or office having operational responsibility for the proposed action then prepares a "draft" environmental impact statement in consultation with GC which is filed for comment with the Environmental Protection Agency (EPA) and circulated for at least 45 days to Government agencies with jurisdiction by law or with special expertise with respect to any environmental impact involved, and among the public. Upon circulation of a draft environmental impact statement to the EPA, comments shall be requested under both the NEPA and Section 309 of the Clean Air Act. Notice of the draft statement's availability will be published in the **Federal Register** as a public notice. GC shall arrange for the publication.

After considering comments and revising the draft environmental impact statement, the Agency will file and circulate a "final" environmental impact statement at least 30 days before making a final decision on the action. In any case where comments are not received in sufficient time to allow consideration in final policy decisions, they should be considered in future decision-making in similar areas of policy.

Relevant environmental documents including environmental impact statements and environmental assessments, as well as comments and responses shall be part of the record in formal rulemaking or adjudicatory proceedings. In all cases such documents shall accompany the proposal through existing agency review processes so that Agency officials use the information contained therein in making decisions.

The decisionmaker shall consider all alternatives discussed in the relevant environmental documents. This is as required by § 1505.1 of the CEQ Regulations. After a decision is made on the action, GC will prepare and the Agency will make available a formal "record of decision" as required by § 1505.2 of the CEQ Regulations.

Modifications for the comment time period and for emergency situations may be made in accordance with § 1506.4 of the CEQ Regulations.

A final environmental impact statement shall be supplemented when a substantial change is made in the proposed action or when significant new information on the environmental impacts comes to the Agency's attention. A Supplemental Statement should be prepared, circulated and approved in accordance with the provisions of § 1502.9 of the CEQ Regulations. If there are reasons not to prepare a Supplemental Statement when one ordinarily would be called for, the bureau or office having operational responsibility should consult with GC and subsequently with the CEQ on the matter.

E.O. 12114

Any action which is determined by the initial review to be under E.O. 12114 should be further reviewed to determine if the action would fall within one of the categories set forth in Section 2–3 of E.O. 12114, or would fall within one of the categories of exempt actions set forth in Section 2–5 of E.O. 12114.

If it has been determined that the action would fall under Subsection 2–3(a) then an environmental impact statement (2–4(a)(i)) will be prepared.

If it has been determined that the action would fall either under Subsection 2–3(b) or (c) then it will be further determined whether an environmental study (2–4(a)(ii)) or a concise envornmental review (2–4(a)(iii)) will be prepared.

If it has been determined that the action would fall under Subsection 2–3(d) then it will be further determined whether an environmental impact statement (2–4(a)(i)), an environmental study (2–4(a)(ii)), or a concise envorinmental review (2–4(a)(iii)) will be prepared.

Determinations as to what category of Section 2–3 an action falls under, determinations as to what documents under Section 2–4(a) will be prepared, and determinations as to whether an action is exempt under Section 2–5, will be made by the bureau or office having operational responsibility for the proposed action in consultation with GC. GC will coordinate the preparation of any document under Section 2–4(a) by the bureau or office responsible, and in case an action is determined to fall under Subsection 2–3(d) will coordinate the necessary consultations with the CEQ and the Secretary of State.

In cases where an action is exempt under Section 2–5 the bureau or office having operational responsibility, in consultation with GC, will prepare a memorandum stating the exemption and the reasons for it. If the exemption is necessary to meet emergency circumstances, or involves exceptional foreign policy or national security sensitivities or other such special circumstances, then GC will coordinate consultations with the Department of State and with CEQ.

If a document described in Section 2–4(a) already exists, then the Agency need not prepare a new one. GC will coordinate with other Federal agencies with relevant environmental jurisdiction or expertise to provide for appropriate utilization of their resources in order to avoid duplication of effort.

GC shall, as soon as feasible, inform other Federal agencies with relevant expertise of the availability of environmental documents prepared under E.O. 12114. GC shall also coordinate, through appropriate procedures, with the Department of State in order to determine when an affected foreign nation shall be informed in accordance with Section 3–2 of E.O. 12114.

If an environmental impact statement (2–4(a)(i)) is to be prepared, the bureau or office having operational responsibility, in consultation with GC, shall prepare it and to the extent possible and consistent with these implementing procedures, should follow the procedures set forth in these implementing procedures for the preparation of environmental impact statements under NEPA.

If an environmental study (2–4(a)(ii)) is to be prepared, the bureau or office having operational responsibility, in consultation with GC, shall prepare it. The environmental study should normally include a brief discussion of the action proposed and of the anticipated environmental impacts as well as possible measures that could be taken to mitigate harmful environmental effects.

If a concise environmental review (2–4(a)(iii)) is to be prepared, the bureau or office having operational responsibility, in consultation with GC, shall prepare it. The concise environmental review should consider the key environmental issues and effects involved in the proposed action. It should also include the same basic elements as an environmental study as discussed above.

The bureau or office having operational responsibility shall revise or supplement any environmental document prepared under E.O. 12114 if before the final decision is taken on the proposed action significant new circumstances or information which has

a bearing on the proposed action is made known to that bureau or office.

V. Determining the Need for Environmental Impact Statements

For each action meeting the criteria of Section III.3 of these implementing procedures, and for other actions as required, GC shall coordinate the preparation, by the bureau or office having operational responsibility, of an environmental assessment as required by § 1510.3 of the CEQ Regulations, and on the basis of that assessment, determine if an environmental impact statement is required. If it is determined by GC that the proposed action would have a significant effect on the human environment of the United States, an environmental impact statement should be prepared. If the determination is that the proposed action would have no significant effect on the human environment, a "finding of no significant impact", as required by § 1508.14 of the CEQ Regulations, shall be made and this finding made available to the affected public.

In assessing the need for impact statements regarding any particular action, the following guidelines will be considered:

(1) The Agency is responsible for determining whether environmental impact statements are required and for preparing such statements with respect to Federal actions for which the Agency is solely responsible or for which it has been designated as the "lead agency", as defined in Section 1508.16 of the CEQ Regulations. However this does not encompass combat or combat-related activities in a combat zone, or activities covered by Section 36 of the Arms Control and Disarmament Act (Sec. 146 of Pub. L. 94–141, 22 U.S.C. 2576). Although the Agency conducts activities related to the preparation for and managmeent of U.S. participation in international negotiations in the arms control and disarmament field, these functions are subject to the direction of the Secretary of State (see 22 U.S.C. 2551(b), 22 U.S.C. 2574(a), and the Department of State Circular 175 Procedure (11 FAM 720)). Thus, in the case of international agreements and the actions leading to them, the Agency is not responsible for determining whether the NEPA is applicable or whether environmental impact statements are required. (For Department of State environmental impact statement procedures, see Department of State Regulations for Implementing the Procedural Provisions of the NEPA (44 FR 66838)). However, when an environmental impact statement is determined under the appropriate procedures to be required for an arms control and disarmament agreement, the Agency will ordinarily be the "lead agency" for the preparation of the statement.

(2) The Agency is responsible for determining whether environmental impact statements are required for its research projects and for preparing such statements for those projects which constitute major Federal actions significantly affecting the quality of the human environment.

(3) Mandatory actions (i.e. those for which no alternatives are available) required under any treaty or international agreement to which the United States is a party, or required by the decisions of international organizations, authorities, conferences, or consultations in which the United States is a member or participant will not be considered major Federal actions for purposes of the NEPA.

(4) Indirect effects of Agency activities can lead to a need to file an environmental impact statement. In some such instances, the Agency might be the lead agency responsible for the preparation of such a statement. However, in most cases, another agency will be responsible since the action of this Agency will merely permit rather than require action by the other agency or will leave open the manner in which the actions of the other agency will be performed. For example, projects such as the destruction of weapons in accordance with the provisions of an international arms control agreement would be the subject of environmental impact statements, if otherwise required, prepared by the Department of Defense, the Department of State, or another lead agency. In some cases, joint preparation of the statement by two or more agencies may be appropriate.

VI. Exceptions

NEPA

The nature of negotiations and relations at the international level may make it necessary to depart in some instances from the procedures in the CEQ Regulations. CEQ foresaw the need for such departures in §§ 1507.3(c) and 1506.11 of the CEQ Regulations. Exceptions applicable to the Agency are set forth below:

(a) The statements and other materials written to comply with the NEPA should not normally include any classified or administratively controlled material. However, there may be situations where such statements and memorandum cannot adequately discuss environmental effects without including material classified or administratively controlled under the provisions of Executive Order 12065, 22 CFR Part 605, and the ACDA Security and Classification Handbook. In any event, however, those portions of any statement which are not classified or administratively controlled shall be made available to the public unless the material thus disclosed would be distorted or incomprehensible.

(b) Every attempt will be made to comply with the 30-day and 90-day periods which § 1506.10(b) of the CEQ Regulations requires between submission of statements and final action. Where schedules of international conferences or other factors make this impossible, the Agency will consult with the CEQ concerning appropriate modifications by the Agency of these minimum arrangements for the availability of environmental impact statements.

(c) Normally, agencies consulted in accordance with Section IV of these implementing procedures shall be allowed 45 days for reply. However, if it becomes necessary to reduce these periods the Agency will consult with the CEQ concerning appropriate modifications of these minimum arrangements for the availability of environmental impact statements. When this is the case, all agencies to which the draft statement has been sent will be informed by GC of the reduced time period. The reduced time period must also be included in the public notice published in the **Federal Register.**

(d) Section 1506 of the CEQ Regulations establishes requirements for providing public information on Federal actions and impact statements and envisions use of public hearings when substantial controversy surrounds a proposed action or a request for such a hearing has come from another agency with jurisdiction over the action supported by reasons why the hearing would be helpful. Public hearings will be employed by the Agency following the circulation of each draft environmental impact statement under the circumstances outlined above, unless it is determined that the requirements of

carrying on international relations, including the constraints of time and the posture of the United States in negotiations, do not allow such hearings to be carried out without prejudice to the national interest. The provisions of the Administrative Procedure Act do not apply to hearings involving "foreign affairs functions"; however, in each case where hearings are employed in accordance with this paragraph, a public notice of the hearings shall be published in the **Federal Register** indicating the time and place of the hearing and the matters to be considered, and the draft environmental impact statement shall be made available to the public at least 15 days prior to the hearings. Where possible, notice of hearings in the **Federal Register** and circulation of draft impact statements should occur 30 days before the hearings. GC shall determine the nature and the procedures to be employed for such hearings, shall arrange for the hearing and the publication of the prescribed notice, and shall conduct the hearings. If such hearings cannot be carried out, arrangements should still be made, where practicable, for an expedited opportunity for members of the public to present their views orally. The public at all times can obtain information or get status reports on environmental impact statements and other elements of the NEPA process from the Office of the General Counsel, U.S. Arms Control and Disarmament Agency, 320 21st Street, NW., Washington, D.C. 20451.

E.O. 12114

Appropriate modifications in the contents, timing and availability of environmental documents prepared under E.O. 12114 may be made where necessary under the circumstances set forth on Section 2–5(b) of E.O. 12114.

Environmental documents written under E.O 12114 should also not normally include classified or administratively controlled material. However, there may be situations where such documents cannot adequately discuss environmental effects without such materials. If possible the classified or administratively controlled materials will be confined to a classified annex. In any event, however, those portions of any statement which are not classified nor administratively controlled shall be made available to the public unless the material thus disclosed would be distorted or incomprehensible.

VII. Cooperation With Other Agencies

GC shall ensure that Agency officials have an opportunity to cooperate with other agencies and individuals. It shall ensure that the Agency reviews the draft and final impact statements submitted for review by other agencies as required by § 1502.19 of the CEQ Regulations. Where appropriate and to eliminate duplication of work it shall seek to prepare joint analyses, assessments and statements with other Federal or State agencies. Where possible GC will arrange for the Agency to "adopt" statements prepared by other agencies as permitted by § 1506.3 of the CEQ Regulations. It shall seek to work out lead agency responsibilities for preparing environmental documents as required by § 1501.5 of the CEQ Regulations and Section 3–3 of E.O. 12114.

GC shall, to the maximum extent possible, insure that the conduct of environmental analyses, assessments, and any impact statement preparation is done concurrently with environmental reviews required by the following:

(1) The National Historic Preservation Act of 1966 (Section 106), 16 U.S.C. 470(f), which requires identification of National Register properties, eligible properties, or properties which may be eligible for the National Register within the area of the potential impact of a proposed Agency action. Evaluation of the impact of a proposed Agency action on such properties shall be discussed in draft environmental impact statements and transmitted to the Advisory Council on Historic Preservation for comment.

(2) The Endangered Species Act (Section 7), 16 U.S.C. 1531 *et seq.* which requires identification of and consultation on aspects of a proposed Agency action that may affect listed species or their habitat. A written request for consultation, along with the draft environmental impact statement, shall be conveyed to the Regional Director of the U.S. Fish and Wildlife Service or the National Marine Fisheries Service, as appropriate, for the region in the United States where the proposed action will be carried out.

(3) Executive Order 11988 (Floodplain Management) and Executive Order 11990 (Protection of Wetlands). These Executive Orders seek to protect floodplains and wetlands by requiring agencies proposing actions which might affect such areas to consider *inter alia* environmental effects, and to provide opportunity for public review of such proposals. An evaluation of any such Agency actions shall be discussed in draft environmental impact statements and transmitted to the U.S. Water Resources Council or the CEQ, as appropriate, for comment.

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DEPARTMENT OF COMMERCE

Bureau of the Census

Census Undercount Adjustment: Basis for Decision

Note.—This document was originally published in the issued of October 20, 1980. It is repulished at the request of the agency.

The following report sets forth the basic assumptions related to a decision on whether, when, and how to adjust 1980 census results for possible undercoverage of the population. This report was developed prior to Judge Gilmore's decision on the suit brought by the City of Detroit and does not analyze the issue of adjusting the population count for apportionment purposes.

This report provides information on the process that the Bureau is following in order to arrive at a decision which considers all relevant information. The report is structured in terms of critical assumptions, supporting information, and rebuttals to those assumptions. Its purposes are (1) to distill into meaningful information 2 years of deliberation on the issues, and (2) to provide a direct and practical response mechanism for a final round of comment and discussion before decisions are made later this year.

The Bureau is interested in any reactions or comments on particular parts of the report as well as general comments. Any information—either supporting or rebutting—is welcomed as input to the final decision. However, as the Bureau is under very tight deadlines for the decision, please submit any comments to the Director, Bureau of the Census, Washington, D.C. 20233, by October 31, 1980.

Dated: October 13, 1980.

Vincent P. Barabba,

Director, Bureau of the Census.

Section and Subject

A—Introduction
B—Procedures for Arriving at the Basis for Decision
C—The Basic Question and Critical Assumptions
D—Factors that Prevent Adjustment for Apportionment Purposes
Appendix A—Memorandum from the Secretary of Commerce to the Director of the Bureau of the Census
Appendix B—Assumptions Discussed at the Second Census Undercount Workshop
Appendix C—References and Background Material

Section A—Introduction

A substantial body of knowledge has been developed over several decades as to the accuracy and completeness of decennial censuses. There is also, now, wide recognition that the shortcomings of census enumerations and the resulting statistics may have adverse consequences for the end uses of census data, even though the census remains, in our judgment, the most comprehensive and uniform statistical profile that our free society can achieve.

Through its own evaluation work, the Bureau has produced estimates of census undercount for the past three censuses; the preferred estimates were 3.3 percent in 1950, 2.7 percent in 1960, and 2.5 percent in 1970. For the 1970 census, the principal evaluation studies show that the most plausible estimates of undercoverage were 1.9 percent for the White population and 7.7 percent for the Black population, with variations in coverage among geographic areas and for age/sex categories.

For the 1980 census, the Post Enumeration Program (PEP) is intended to expand our knowledge of the levels and types of census undercoverage. Certain studies, for example, are designed to develop reasonable estimates of undercount for the Hispanic population, and possibly other minority groups, and for subnational areas such as the States and selected substate areas.

Census undercoverage has always been a concern of elected officials—Federal, State, and local. During the 19th century, when there was no systematic knowledge of undercount, communities and their elected representatives nonetheless called attention to perceived deficiencies in the decennial censuses that they believed shortchanged them of monies, prominence, prosperity, or political representation. For the 1980 census, these concerns have focused largely on political representation and the distribution of Federal funds to State and local governments. Because of these real concerns and the increasing ability of statisticians to measure census coverage, proposals have emerged to adjust census figures so that the "whole number of persons" would include those omitted from the actual enumeration.

For the past two years, the Bureau has committed itself to deal with the undercount adjustment issue in a careful, systematic, and open way, so that decisions on the questions of whether, when, and how to adjust would be clearly understood, if not embraced, by all affected individuals and groups (see section B).

The debates about undercount adjustment have also found expression in legislative proposals and lawsuits. On September 25, 1980, a Federal District Court judge issued an opinion which, if

sustained, would require adjustments for apportionment purposes and reserve to the court a decision on whether the statutory deadline of December 31, 1980, for reporting census figures to the President should be extended until acceptable adjusted data are compiled. The Bureau has considered the extent to which adjustment for apportionment purposes is permissible and feasible, and it has been our view that Federal Statutes do not permit adjustment for that purpose, and that it is not operationally feasible to do so within the time constraints set by law. These aspects of the adjustment issue are discussed in section D of this report, which was prepared prior to the September 25th opinion.

Discussions about adjustment will continue, regardless of the outcome of litigation. In the following section (C) we concentrate on the most critical assumptions that we believe provide the basis for decisions about adjustment. These assumptions represent a wide range of contributions made by many individuals and organizations outside the Bureau as well as through the two workshops. The Bureau is responsible for selection of the assumptions that are discussed here as most important. We invite reaction and comment on these assumptions.

Review of this report will be concurrent with the processing and tabulating phases of the 1980 census which will result in the transmittal of the count of the total population of each State to the President in December 1980. The magnitude of census undercount in 1980, as well as its distribution among geographic areas or population characteristics, has not yet been determined. The earliest information we will have on 1980 undercount will be rough approximations subject to later revision. While those approximations can also impinge on the decisions, based on what we now know, they will not alter the critical assumptions on which the decision should be made.

Section B. Procedures for Arriving at a Decision on Undercount Adjustment

The Bureau has established a procedure for considering undercount adjustment where it might be permitted by law, time schedules and resource availability, and supported by professional judgment. The procedure that is being followed is outlined below:

Initially, the Secretary of Commerce requested that the National Academy of Sciences review and evaluate the 1980 census data collection plans, including the undercount adjustment issue. A special panel convened by the Academy conducted the desired research and issued a report stating the judgment, among other things, that on balance an improvement in equity would be achieved through an adjustment. The panel did not recommend either a particular technique for adjustment or that adjusted figures be used for legislative apportionment. At the same time, the panel pointed out that the application of an adjustment methodology has arbitrary features and that the figures for some areas would be further from the correct population than the actual census count.

Next, the Bureau conducted a 3-day intensive workshop in September 1979 at which Bureau staff members attempted to surface all assumptions that would underlie a decision on whether providing a set of adjusted data is desirable and feasible. Technical and policy issues were identified and recommendations were made for additional information needed to make the final decision.

Third, the Bureau hosted a Conference on Census Undercount in late February of this year. Attended by a diverse body of professionals from academic, business, Federal and local governmental, and legal communities, the Conference was successful in presenting research results and in eliciting opinions on a wide range of topics related to the undercount issue. A discussion of invited papers followed each presentation, thereby affording the Bureau staff insight into the concerns of individuals viewing undercount adjustment from differing perspectives. The Bureau issued a report on the undercount conference that presented all papers in full and summaries of the discussions.

Fourth, during the first week of September, the Bureau conducted a second workshop to facilitate the concluding process of decisionmaking. Analyses of our ability and the time required to produce adjusted data, guidelines for deciding the issue and the legal aspects and possible implications of providing adjusted data were prepared for this workshop. The purpose of the workshop was to integrate the issues which had surfaced and to reach a consensus as to a final set of critical assumptions which must underlie the ultimate decision. The findings of that workshop are being made available for public comment in this document.

Finally, by November/December of this year, consonant with the instruction from the Secretary of Commerce to the Director of the Bureau of the Census, (see Appendix A) and based on all the information obtained through the preceding steps and on any preliminary assessment of census coverage, the

Bureau will decide whether or not adjusted data can or should be made available for official uses *other than apportionment.* If the decision is to provide data adjusted for the estimated undercount, the questions of when and how an adjustment is to be made, how the data will be presented, and how the data will be used in postcensal estimates programs will also be assessed.

With respect to its two workshops, the Bureau adopted a proven process for dealing with ill-structured problems. In this process, participants are divided into groups according to contrasting views and positions. Each group surfaces assumptions, and challenges the assumptions of other groups. Through this exercise, a wide range of views and issues emerge, and these are coupled to facts that strengthen or weaken specific assumptions as well as affect the individuals or segments of the public that support those assumptions and have perceived stakes in the outcome of the decision process. The published report from the September workshop expressed this wide range of assumptions and stakeholders.

Section C—The Basic Question and Critical Assumptions

As noted in the introduction and discussed fully in section D, we have argued that Federal statues do not permit us to adjust census results for purposes of apportionment, and are convinced that it is not operationally feasible to do so in accordance with timing requirements as set forth in Federal law.

Issues concerning adjustment go well beyond these purposes, however, and the resolution of those issues will have consequences throughout the decade. Principal among them is the distribution of Federal and State revenues to subordinate units of government on the basis of decennial census data, and on population and income estimates compiled regularly between censuses from other sources and linked in various ways to census results.

Through the workshop process many issues and assumptions were thoroughly discussed and debated (see Appendix B). This section examines only those considered most critical in making the decisions on whether, when, and how to adjust, without extensive discussion of specific end uses of census information. The format for discussing the critical assumptions provides key premises, supporting information, and possible rebuttals to the assumption. This approach is intended to encourage the reader to act to specific as well as general points; to defend, reject, or modify assumptions; or to present counterarguments. Although predispositions are not entirely avoidable, we have attempted to develop an approach that provides a reasonably neutral framework for comment.

The assumptions are examined with reference to this basic question: *Should the Census Bureau adjust the 1980 census results for purposes other than apportionment?*

A "Yes" answer to this question requires that certain critical assumptions be accepted as plausible.

If, however, the assumptions are rejected because the rebuttals are considered stronger, then the answer to this question should be "No."

These assumptions are organized around three broad premises and supporting statements shown on the following page and discussed later in terms of specific assumptions and rebuttals beginning on the pages noted in the margin. Background materials are listed in Appendix C.

Critical Assumptions

I. The Census Bureau has the capability to develop statistically acceptable and programmatically useful procedures for adjustments.

a. We will have a data base from evaluation studies that is substantially improved from previous censuses.

b. The Bureau has in the past demonstrated the ability to develop acceptable procedures to meet similar challenges.

II. It is the responsibility of the Bureau to take an active role in developing methodology and providing adjusted data.

a. Other options (anyone who chooses can adjust), though plausible, do not meet societal needs for accuracy, credibility, and consistency.

b. The Bureau is best equipped to apprise society of the limitations of adjusted census data.

III. The Census Bureau will be able to produce a series of adjusted census figures that are statistically acceptable for various geographic levels and various characteristics as they become technically feasible; the Bureau will continue to produce additional estimates during the decade.

a. Adjustments to headcounts that produce more accurate figures are desirable; information obtained from evaluation studies will provide partial adjustments for large geographic areas rather than all geographic areas at one point in time.

b. Acceptable adjustments for measures of population characteristics are also desirable; results of evaluation

studies will provide for only limited adjustments for characteristics, but additional research throughout the decade may permit extending the range of characteristics for which satisfactory adjustments could be produced.

c. An acceptable adjustment that includes adjusting for uncounted undocumented aliens will not be possible at the time adjustment for other groups is; however, the inability to adjust for every group does not take away the responsibility to adjust for those for which data are available. During the decade, further information may become available to enable adjustment for undocumented aliens.

The following assumptions deal with the broad premise:

The Census Bureau has the capability to develop statistically acceptable and programmatically useful procedures for adjustments.

Critical Assumption

The Census Bureau will continually examine, evaluate, and share its understanding of undercoverage throughout the decade.

Basis of Assumption

The Bureau has the responsibility to continue to improve the state of the art by striving to achieve greater statistical accuracy in coverage estimates.

Supporting Information

1. The Bureau has historically advanced the level of knowledge regarding undercoverage estimates.

2. An ongoing program permits expansion of the number and kinds of areas covered and would contribute to accuracy as more data and refined methods are employed.

3. The continuing reevaluation of coverage provides the flexibility to respond to methodological advances, new data, and changes in policies, programs, and enabling legislation.

4. This policy is in line with the traditional approach of revising and improving current data series.

5. Work is continuing on the development of undercoverage estimates for Hispanics, since this group may be affected by specific programs.

6. The present schedule of research and evaluation work calls for different pieces of information to become available at different points in time.

Reubttal

1. Once a revision is made, reevaluation will result in increased demands for revised numbers, and this will lead to confusion among data users as to which data sets should be used for various purposes.

2. The Bureau often neglects to anticipate the broad consequences of an issue. Thus an announcement of new findings which the Bureau regards merely as technical improvements may have widespread impact that the Bureau fails to recognize in advance.

3. Lack of congressional or administration support could result in budgetary constraints limiting the Bureau's work in this area.

4. Changes in type of funding or a reduction in funding for the census count in 1990 may occur if, for example, Congress argues that based upon 1980 results, adjustments are cheaper *and* more accurate.

5. The census is recognized to be the best measure of the U.S. population. Doing anything to that count might not necessarily improve it.

Critical Assumption

The Census Bureau has the ability to develop a statistical and analytical methodology which will permit adjustment of *critical variables* (e.g., selected subnational geographic units and selected characteristics) in a timely fashion.

Basis of Assumption

In the past, when the Census Bureau has been confronted with a significant information need, it has been able, over time, to develop a statistically acceptable procedure for generating the required information.

Supporting Information

1. The need for credible employment statistics during the Depression era was the impetus for the development of sample survey methodology leading to the Current Population Survey.

General Revenue Sharing generated the need for current estimates of the population for 39,000 general-purpose governments.

3. The Bureau has experimented with and tested the following methodologies which have shown some promise:

a. Matching studies

b. Demographic analysis

c. Regression analysis or refined synthetic estimation

4. The Bureau is supporting research related to adjustment methodologies.

5. The Bureau has been able to rearrange priorities to expedite carrying out the Post Enumeration Program.

6. The Bureau will have available throughout the next 3 years the results of the Post Enumeration Program, which should provide the following:

a. Estimates of undercount for total population at the State level.

b. Estimates of undercount by region for age, sex, race, and Hispanic origin.

c. Information about undercount related to income, education, labor force, urban vs. rural, and metropolitan vs. nonmetropolitan areas that could be used in regression analysis or in refined synthetic estimation.

Rebuttal

1. Although the need to generate "adjusted" totals for geographic subdivisions has existed for the past couple of decades, the Bureau has not yet developed a procedure it is willing to implement today.

2. Results of the 1980 census test program, especially for Oakland and Richmond, indicate there are a number of difficulties in the match studies that still need to be resolved.

3. There is a stated concern within the professional statistical community that the techniques being developed are at the "frontier" and are not yet ready for implementation.

Critical Assumption

A Census Bureau adjustment procedure would be recognized as equitable, legally acceptable, meeting professional standards, and providing users with more accurate data.

Basis of Assumption

In the past, the need to provide adjustment procedures to take care of nonresponse and undercoverage biases has resulted in the development of statistically acceptable and useful procedures.

Supporting Information

1. Survey undercoverage in the Current Population Survey is adjusted for by using the ratio of survey estimates to independently derived population control totals. (The control totals are based on previous census data, which do not include adjustments for undercoverage in the census.

2. To improve coverage in the 1978 Census of Agriculture, a direct enumeration of an area sample was used to supplement mailing lists. Since the sample data provided reliable estimates for State totals only, data for lower levels were not adjusted. Both adjusted State totals and unadjusted data below the State level were published. The size of the adjustment from the area sample was also published with the adjusted State data.

3. There currently is being developed an adjustment procedure (based on direct estimates of the undercount) for the national and State levels, using data which will be available from demographic analysis and the Post Enumeration Program.

4. A study of the effect of population adjustment on General Revenue Sharing allocations in two States showed that most areas tended to move in the direction of their "proper" allotment (although this means a decrease in allotment for most areas), "proper" being determined by both population and income adjustments.

5. The National Academy of Sciences' panel on decennial census plans concluded that "inequities resulting from the geographic differentials in the decennial census undercount could be reduced by adjustment of the data for underenumeration."

6. The courts, in the past, have upheld Bureau procedures because they could be shown to be neither arbitrary nor capricious.

Rebuttal

1. Currently there is no adequate methodology for measuring the quality (limitations) of adjusted figures at geographic levels below the State.

2. Studies of synthetic estimates have shown that any areas with undercount rates much above or below the national average would be adjusted in such a way that error rates for those areas would be high.

3. Estimates from demographic analysis are subject to unknown errors, especially in the net immigration component.

4. Examination of the effects of an adjustment procedure on allocation of funds will result in the realization that there are more "losers" than "winners."

The following assumptions deal with the broad premise:

It is the responsibility of the Bureau to take an active role in developing methodology and providing adjusted data.

Critical Assumption

The Census Bureau is recognized as having the ability to objectively make and defend the appropriate decision on whether or not to adjust. If adjustments are to be made, the Census Bureau should formulate the procedures. This will promote a high standard of statistical rigor and encourage the appropriate use of census results.

Basis of Assumption

The Bureau has long been recognized as an agency of unquestioned integrity. It has a history of systematically studying the undercount problem and took the lead in bringing the issue into the open. The Bureau has the appropriate technical skills, resources, and specialized knowledge to develop and implement a procedure for adjusting census data.

Supporting Information

1. Bureau leadership in this area will enhance the credibility of the results, in view of the Bureau's accumulation of information on the undercount not shared by other organizations.

2. Official statistics issued by the Bureau are accepted by the public as impartial and free of vested interests.

3. Legislators, program administrators, and courts of law give sanction to census data as official Government statistics.

4. Affected parties have strongly expressed their opinions that the Bureau should make the adjustment. No one has questioned the Bureau's competence in this area, nor its objectivity or integrity.

5. Through conferences and workshops, the Bureau encouraged discussion and debate on the adjustment issue so that all relevant information could be considered in arriving at a sound decision.

6. A large-scale Post Enumeration Program is in place and funded; it will provide the necessary information for adjustments for States and other subnational areas.

Rebuttal

1. Census statistics are in the public domain; users are free to accept, modify, or reject them (and sometimes do).

2. The judiciary has not always prescribed the use of decennial census figures when superior data are available from a source other than the Census Bureau.

3. Census data are used for a multitude of purposes; adjusted data are not appropriate for all of them. The responsibility for proper use of data, including appropriate adjustments, rests with the user.

4. There are other reputable institutions that can produce adjusted census data which would be acceptable for many purposes.

5. Equity is essentially a political issue, and the decision whether or not to adjust census data should be made by Congress, not by the Census Bureau.

Critical Assumption

A simple synthetic adjustment procedure would not satisfy the Census Bureau's standards for accuracy.

Basis of Assumption

The Bureau implements new statistical methods only when certain general standards of data quality can be statisfied.

Supporting Information

1. A most important criterion is that there should be some knowledge of the limitations of the data to reduce misuse of statistics that are not fully reliable.

2. The Bureau's analyses of 1970 census undercount show that geographic variation is substantial. The simple synthetic method is not sensitive to this variation, and can, in fact, introduce serious defects not present in the unadjusted data.

3. If the undercount for specific age/race/sex groups were the same among subunits below the national level, the method would be acceptable.

4. The simple synthetic method is dependent on readily available independent estimates of undercount for population subgroups, and therefore provides no direct means for adjusting for the undercount of Hispanics.

5. Bureau research, and comparable studies by Canada for its census, demonstrate that adjustments by this method would produce more errors than superior methods that can be refined as more information is available from evaluation projects.

Rebuttal

1. The simple synthetic method is uncomplicated, easily understood, and timely. Its use would produce acceptable results on the average.

2. In view of the important and immediate uses of census results, adoption of the simple synthetic method will produce adjusted data quickly, and such data will correct for some of the most serious defects of unadjusted data.

3. The Bureau has an obligation to reduce statistical inequity even through the method used may not satisfy its highest standards of data quality.

4. The National Urban League recommends that synthetic adjustments be used for States and local areas and that the national undercount rate for Blacks be used for subnational adjustment for the Hispanic undercount.

5. Application of the simple synthetic method requires only that the null hypothesis be satisfied—that there is no *statistically significant* difference in undercoverage rates among geographic areas.

6. Alternatives to the synthetic method depend partly on demographic analysis, for which a number of questionable assumptions must be made to derive national undercount estimates.

7. According to the National Commission on Employment and Unemployment Statistics, adjustments for undercount in labor force statistics by use of the synthetic method would be smaller in magnitude that the adjustments the Census Bureau traditionally makes to account for underreporting of income and unemployment in its Current Population Survey.

The following assumptions deal with the broad premise:

The Census Bureau will be able to produce a series of adjusted census figures that are statistically acceptable for various geographic levels and various characteristics as they become technically feasible; the Bureau will continue to produce additional estimates during the decade.

Critical Assumption

Recognizing the present limits of technical feasibility, affected parties will accept and find useful initial adjustments for larger geographic areas only, despite program requirements for data for smaller areas.

Basis of Assumption

The demand for statistical adjustment of decennial census data stems in large part from the conviction that differential population undercoverage, especially of minorities such as the Black and

Spanish-origin populations, produces serious inequity in the administration of Federal and State programs, especially those which distribute funds according to statistical formulas. Adjustment for States and large metropolitan areas, which should be feasible by 1982, will be an important step toward improved program administration.

Supporting Information

Population data, both counts and characteristics, are key elements in many formulas used to distribute billions of dollars in Federal funds annually.

2. Partial adjustments, such as for selected geographic areas and key characteristics, would satisfy some program requirements.

3. About one-third of the population lives in the 30 largest SMSA's for which adjustment is expected to be feasible within 2 years.

Rebuttal

1. Limited adjustments are not adequate:

a. An adjustment would be of dubious utility unless it applied to all geographic levels for which stakeholders have a program interest.

b. Many Federal agencies indicate that adjustment should be applied to all levels for which they have program responsibility.

2. Census results without adjustment are adequate; unadjusted census data have been valuable in the past and will continue to be useful, partly because they provide internally consistent figures for use in program administration and formula grants.

3. The Census Bureau should be in the counting business. Its staff is the most competent and highly regarded in that field.

4. Going beyond an absolute count would be to go outside of the mission of the Census to try to solve the problems of society.

Critical Assumption

No currently available adjustment procedure will provide more accurate numbers than the actual counts for *all* units of government or down to the block level; therefore, adjustments to relevant geographic levels must be made over time as procedures are refined geographically.

Basis of Assumption

None of the currently known procedures have been tested for their capability to measure the undercount at all levels for all units of government.

Supporting Information

1. There is a stated concern within the professional statistical community that the techniques being developed are still in the experimental stage and are not yet ready for implementation.

2. Canadian experience with reverse record checks indicates that simple synthetic adjustment might not be appropriate for geographic subdivisions below the regional level.

3. Comparisons of demographic estimates for States with those computed by synthetic methods also raise doubts about the accuracy of synthetic adjustment for small areas.

4. Demographic estimates are available only for the Nation and are still developmental for the States.

5. Standards against which to measure and evaluate adjustment procedures are not yet available for the smallest geographic areas.

6. To make estimates for every unit of government involves an assumption that undercount rates from the sample area apply to areas not in the sample.

7. Even though more accurate numbers cannot be provided for all units, it is important to increase the accuracy of as many as possible; improving the level of accuracy of some numbers is better than leaving them alone. Demographic estimates of national undercount by age, sex, and race will be available in the spring of 1981. Estimates of the undercount, based on evaluation studies, for the States, the 30 largest SMSA's, and 10 cities, and for the Hispanic undercount at the national level, will be available in late 1981, and improvements in these estimates will be possible by 1983.

Rebuttal

1. Adjustments for smaller geographic areas could be made using various synthetic or regression techniques. Although the data might be of unknown accuracy, at least a complete set of "official" data would be available for program administration.

2. Multiple series of adjusted census data may be unacceptable to users of census data.

3. The Census Bureau may not be capable of handling the workload required to produce multiple sets of printed and taped census figures.

4. There would be "numerator-denominator" difficulties in Federal program implementation where unadjusted and adjusted figures had to be combined to produce rates and ratios for program analysis or fund allocation formulas.

5. Because of difficulties in producing small area detail counts and characteristics, publication of official data could be delayed with corresponding adverse effects on timely application of census results for policy planning and program implementation.

Critical Assumption

In order for adjustment to improve program effectiveness, program agencies will require adjustment for key demographic characteristics such as age and income; adjustment for a limited number of key characteristics will satisfy the most important program needs.

Basis of Assumption

Agencies are dependent on accurate distributions of the population by certain demographic characteristics in order to carry out major program goals.

Supporting Information

1. Adjustment for some areas and not others is acceptable for many programs.

2. Legislated programs are often targeted at specific segments of the population; for example, the Elementary and Secondary Education Act allocates funds on the basis of the number of children ages 5 through 17 in low-income families.

3. The distribution of General Revenue Sharing funds could be adjusted if and when adjustment factors are available for all geographic areas and for income.

4. Among the characteristics most commonly incorporated into funding formulas are race, age, per capita income, family income, and employment and unemployment.

Rebuttal

1. No timely adjustments are feasible:

a. Current methodology does not produce estimates of acceptable quality for the adjustment of characteristics.

b. The time it may take to implement an adjustment of this type will not satisfy agency needs for timely data.

2. A few adjustments are not enough:

a. Different adjustment techniques must be used for various characteristics. This will result in a combination of adjustment procedures ranging from very sophisticated to simple raking, and therefore there may be inconsistencies in the data.

b. Program agencies have indicated the need for adjustment of many characteristics and will press for adjustment of more than a limited number of key characteristics.

Critical Assumption

Given the estimated magnitude of the undocumented-alien population and the fact that the Bureau's policy is to count all residents, it is important to include the development of an estimate of their "true" number as part of the 1980 census evaluation and statistical adjustment program.

Basis for Assumption

The stated policy of the Census Bureau is to enumerate all U.S. residents, regardless of legal status.

Supporting Information

1. Current interpretation of the Constitution indicates that the census should enumerate all residents.

2. Determining the legal status of respondents would be a complex legal undertaking and is not feasible or appropriate in a statistical activity such as the census.

3. Ultimately, a valid estimate of the undercount by demographic methods cannot be made without an estimate of undocumented residents in the estimate of the "true" population. Since some undocumented residents were likely to have been counted in the 1980 population census, they must also be accounted for in the national population estimates for consistency in making an adjustment.

4. Users of census data require complete information about all residents of the United States and its subnational areas.

5. Undocumented residents have an impact on economic and political life in the United States.

6. The speculative estimates of undocumented residents indicate this group may be a significant portion of the population. The number could be as high as several million.

7. Because of their reported concentration in certain areas of the country, the underenumeration of undocumented aliens could reduce political representation and funds allocated to certain States and cities.

Rebuttal

1. The Bureau does not now have a methodology to estimate the number of undocumented residents nationally or for geographic subdivisions, and the available evidence indicates an uneven geographic distribution of such persons.

2. It may not be possible to derive an estimate of undocumented immigrants to include in the estimated "true" population.

3. Including undocumented residents in the census or the undercount estimates may not be acceptable to Congress.

4. Even if no method is available to adjust for an undercount of undocumented aliens, that does not relieve the Bureau of the responsibility to adjust for other groups for which estimates are available.

Section D. Factors That Prevent Adjustment for Apportionment

The purpose of this statement is to summarize in nonlegal and nontechnical language the Census Bureau's position on the subject of statistical adjustment of the 1980 Decennial Census counts to be used to reapportion the U.S. House of Representatives.

The need for this statement arises from public confusion—generated by various lawsuits and attendant publicity—as to whether the Bureau could legally or operationally make such adjustments. The statement was prepared for the Undercount Adjustment Workshop held September 2–5, and, therefore, was completed before a decision was rendered in the Detroit suit.

The Issue

For a variety of reasons, not all persons are counted in the census. The 1970 census figures, for example, are estimated by one technique to have fallen about 2½ percent below the "true" population. All earlier censuses, going back to the first enumeration in 1790, are believed to have had net underenumeration. The courts have indirectly addressed the issue of underenumeration and concluded that officially released (albeit incomplete or not final) census results are appropriate for apportionment and redistricting.[1]

Knowledge of the extent and character of census undercounts has expanded considerably in the past two decades and with that expansion of knowledge there has been a growing interest in the possibility of adjusting both national and local area census counts to include statistical estimates of omissions. The specific issue is whether it is possible and appropriate to adjust 1980 census counts that will be used to reapportion seats in the House of Representatives among the States and to redistrict within States. This issue has two key parts:

1. Would it be legal?

2. If legal, would it be operationally feasible?

The answer to both questions is no.

The Legal Foundation

Statistical programs of the Federal Government, such as the Decennial Censuses of Population and Housing (hereafter, census) are authorized, controlled, and ultimately accountable within a specific legal framework. In the case of the census, the foundation and specific constraints are established in Article 1, Section 2 of, and the 14th Amendment to, the Constitution. The Constitution also confers full authority for the determination of census procedures on the Congress.[2] Congress, in turn, has delegated the responsibility for the conduct and content of the census to the Secretary of Commerce and to the Director of the Bureau of the Census; this statutory delegation is found in Title 13 of the U.S. Code (hereafter, Title 13). The delegation of responsibility for procedural and other matters has been tested in court and upheld.[3] This broad delegation of authority is, of course, subject to both specific and general constraints arising from the Constitution, Title 13 and other statutes.

In discharging its mandated responsibilities the Bureau of the Census (hereafter, Bureau) also faces other constraints. Important among these are the current state of census-taking technology and the state of knowledge in the statistical and demographic professions, the availability of adequate budgetary and other resources (including, particularly, a sufficient number of effective enumerators), public attitudes toward the census and government information collection in general, and various time constraints.

Paramount among time constraints are the statutory requirements that the Congress be notified of the population court by State and the appropriate number of Representatives for each State within one week after the opening of the next session of Congress after Census Day (or roughly 9½ to 10 months from Census Day)[4] and that local area data for redistricting within States be provided no later than one year after Census Day (April 1, 1981).[5]

Constitutional Provisions

Article I, Section 2, of the Constitution states:

> Representatives * * * shall be apportioned among the several states which may be included with this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of Free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three-fifths of all other Persons. The actual Enumeration shall be made within three Years ater the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct.

The term, "actual Enumeration", means a census or a headcount. A "census" has been judicially defined as "an official enumeration of the inhabitants with details of sex, age, family, etc., and the public record thereof * * * A 'census' is not an estimate of the population."[6] The legal definition does not differ from the common or historical usage.[7]

This original population base for apportionment was revised with the abolition of slavery; the fourteenth amendment to the Constitution modified the first sentence to provide that:

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[1] *Asbury Park Press, Inc. v. Wooley*, 33 (1960) and *East Chicago v. Stans*, Civil No. 70–H–156 (1970).

[2] *Bethel Park v. Stans*, 449 F.2d 575 (1971).

[3] *Quon v. Stans, 309 F. Supp 604 (1970).*

[4] Title 2, U.S. Code

[5] Title 13, U.S. Code

[6] *Union Electric Co. v. Curie River Electric Coop., Inc.*, 571 S.W. 2nd 790, 794 (Mo. App. 1978). See also, *State v. Nabours*, 286 P. 2d 752, 755, 1955 (to "enumerate means 'to designate' or specifically mention, in detail, or reckon singly.")

[7] *Webster's Third New International Dictionary*, p. 361 (1976) ed.; *New English Dictionary On Historical Principles*, p. 219–20 (1893).

Representatives shall be apportioned among the several States according to their respective numbers, *counting* the whole number of persons in each State, excluding Indians not taxed.

Since the passage of the income tax law, there are no longer any Indians not taxed who are to be excluded from the apportionment population, so that it now includes the "whole number of persons" in each State to be arrived at by an "actual Enumeration" or count.

In the phrase, "in such manner as they shall by Law direct.", the Constitution grants to Congress the authority to determine the manner and, hence, methods by which the census shall be taken. The Congress, through enactment of Title 13, has legislatively delegated the determination of the manner and methods of conducting the census to the Secretary of Commerce and the Director of the Bureau of the Census.

Title 13, U.S. Code

In its delegation of authority in Title 13, the Congress explicitly authorized the use of sampling as a means of estimating characteristics of the population. Section 141(a) of Title 13, which requires that the decennial census be taken, provides:

The Secretary shall, in the year 1980 and every 10 years thereafter, take a decennial census of population as of the first day of April of such year, which date shall be known as the "decennial census date", in such form and content as he may determine, including the use of sampling procedures and special surveys.

At the same time, in Section 195 of Title 13, the Congress expressly prohibited the use of sampling in the apportionment process, saying:

Except for the determination of population for purposes of apportionment of Representatives in Congress among the several States, the Secretary shall, if he considers it feasible, authorize the use of the statistical method known as "sampling" in carrying out the provisions of this title.

Thus, Title 13 clearly continues the constitutional mandate and historical precedent of using the "actual Enumeration" for purposes of apportionment, while eschewing estimates based on sampling or other statistical procedures, no matter how sophisticated.

There are, of course, methods other than sampling for estimating population and some have argued that the exclusion of sampling does not cover such alternatives. There are two relevant responses:

First, alternative methods for undercount adjustment were discussed in a General Accounting Office (GAO) report [8] to the House Committee on Post Office and Civil Service in a manner that underscored their developmental and experimental status. Although the GAO report recommended greater efforts to adjust for undercounts, the Committee did not authorize use of such adjustment techniques under Title 13, thus continuing the requirement of use of the actual enumeration.

Second, and perhaps more importantly, the framers of the Constitution drew a clear distinction between an "actual Enumeration" and an estimate, regardless of its underlying methods. In the absence of an "actual Enumeration," seats were apportioned in the first House of Representatives based upon what was characterized as "a mere conjecture" of population, which was contrasted to the more "precise standard" anticipated from the later census. [9]

Congressional Intent

The legislative history of Title 13 makes it eminently clear that sampling was not to be used in apportionment. Relative to the initial enactment of section 195, the relevant House report states: [10]

Section 195 provides that the Secretary of Commerce may authorize the use of the statistical method known as sampling in carrying out the purpose of Title 13, if he deems it appropriate. However, section 195 does not authorize the use of sampling procedures in connection with apportionment of Representatives.

The purposes of section 195 in authorizing the use of sampling procedures is to permit the utilization of something less than a complete enumeration, as implied by the word "census," when efficient and accurate coverage may be effected through a sample survey. Accordingly, except with respect to apportionment, the Secretary of Commerce may use sampling procedures when he deems it advantageous to do so.

Furthermore, enactment of section 195 was at the specific request of the Department of Commerce to provide authority to use sampling in the context of the overall census enumeration to achieve economies of operation. Thus, in the context of an understanding that an actual enumeration was required for apportionment purposes, the Congress granted authority for the use of sampling for other purposes.

The Congress had an opportunity in the 1976 amendments to Title 13 to consider expansion or alteration of section 195 and, even in the presence of recommendations to do so, chose not to modify section 195 to permit any undercount adjustment or correction. The continuation of the longstanding actual enumeration requirement is fully binding on census activities.

Other Opportunities for Congressional Action

In meeting its oversight responsibilities, the Congress has had ample opportunity to instruct the Bureau to make adjustments for underenumeration. The clearest such opportunity occurred in 1977, when the House Committee on Post Office and Civil Service considered, but chose not to report, H.R. 10386. In its final form this bill would have provided for "corrections" of the actual enumeration and, thereby, relaxed the obligation for an actual census. [11] H.R. 9623 and H.R. 8871, the precursors of H.R. 10386, were the subject of subcommittee hearings in which the proposal to require undercount "corrections" and other proposed changes in Title 13 were discussed extensively. [12]

The frequent Congressional hearings concerned with the census in particular, and the Bureau's programs in general, have provided ample opportunity for the Congress to consider undercount adjustments. In no instance has a proposal to adjust census results gone beyond a full Committee. When consulted, the Bureau has steadfastly maintained that, even if it were legal, a statistically defensible underenumeration adjustment of the census counts to be used for apportionment was not possible given statutory time constraints and the experimental and developmental character of possible undercount adjustment techniques.

Operational Feasibility

The issue is not just—or even—whether an adjustment should be done. Rather, it is whether an appropriate adjustment could be done within the time deadlines posed by statute. Tabulation of the total population by States required for the apportionment of Representatives in Congress must be completed and reported to the President by December 31, 1980. Tabulations for political subdivisions in the various States must be reported to the States by April 1, 1981. For the following reasons, it is the judgment of the Bureau that

[8] Comptroller General of the United States, *Report to the House Committee on Post Office and Civil Service on Programs to Reduce the Decennial Census Undercount*, B-78395 (May 5, 1976), p. 21-22.

[9] See Ferrand, *Records of the Federal Convention of 1787*, Vol. 1, p. 578-9.

[10] H.R. Rep. No. 85-1043, 85th Cong., 1st. Sess. (1957), p. 10.

[11] See, Section 143., "Corrections in census counts, H.R. 10386, 95th Congress, 1st. Sess. (1977), p. 9-11.

[12] See hearings on H.R. 8871, Hearing before the Subcommittee on Census and Housing, 95th Congress, 1st Sess., No. 95-46, (1977).

such adjustment to the counts to be used for apportionment would not be operationally feasible within the statutory time constraints.

At the minimum, such adjustment would require:

1. A reliable estimate of the undercount with specific estimates for such demographic, socioeconomic, administrative, and geographic subgroups as were needed for a pre-agreed adjustment methodology. At best, preliminary estimates of the undercount based on demographic analysis (race, sex and age) should be available around April 1, 1981. Preliminary estimates of the undercount would, of course, be subject to revisions, and, based on past experience, such revisions might be large.

2. Completion of the special data development efforts necessary to estimate State level undercounts by match studies and selected other analyses. This is necessary to address the problem of differential geographic undercounts arising from operational or other nondemographic factors. Fully tabulated data from these efforts will not be available until the fall of 1981 at the earliest. These activities involve direct matches of census returns with other surveys, some of which are not scheduled for collection until January 1, 1981, and includes sifting through the entire census file; a file that is expected to include records for more than 85 million households and more than 222 million individuals. It is impossible to complete the requisite work in time for the use of any adjusted data for Congressional apportionment among and within the States.

3. To properly lay the foundation for public, congressional, legal, and administrative acceptance of adjusted census counts for any purpose, there must be a suitable interval for statisticians, demographers, and the widely interested user community both to study and analyze the methodology to be used, and to assess the evidence in support of that methodology vis-a-vis alternative techniques. It is essential that this step engage the best minds and most interested users outside the Bureau as well as incorporate the best work within the Bureau.

4. Finally, it is essential that the Bureau be prepared to fully defend the accuracy of the chosen adjustment. The courts have long recognized the census counts as having a "presumptive correctness" and that alternatives that might be considered for redistricting would have to exhibit "clear, cogent and convincing evidence" to support their validity.[13] The Bureau has always adopted similar criteria in reaching decisions on new methods. In the case of undercount adjustment for apportionment purposes, because the first three conditions could not be met within the statutory time deadlines, *no* clear, cogent or convincing evidence could possibly be provided.

Operational Facets of "Actual Enumeration"

The 1980 census data covering the vast majority of Americans will result from a pure count in the full tradition and practice of actual enumeration. That is, the individual form will be completed (generally by a family respondent), checked for omissions or errors, and sent through a device which derives the statistical information and puts it into the Bureau's computer. The computer, in turn, prints the necessary tabulations for reapportionment calculations, and, later, for other statistical purposes. In enumeration and processing, however, there are situations which require error corrections or special efforts to ensure that the most accurate and complete count is achieved. Error correction and coverage improvement in the 1980 census requires information gained in the enumeration process as to the existence of a person or household at a specific location.

Substitution for Enumeration and Processing Reasons

Substitution is the process by which all the characteristics for one enumerated person are used during data processing to describe another enumerated person whose characteristics are unknown. This process has been used in previous censuses. Substitution is being used in the 1980 census as follows:

Close-out. After repeated visists by an enumerator to a housing unit known to be occupied, the enumerator is instructed, as a last resort, to determine at least the number of persons living in the unit as well as housing characteristics. This is usually obtained from neighbors, building manager, or other knowledgeable persons. The census form is identified as a "close-out" in machine readable form and the number of occupants is entered. During processing, characteristics are "substituted" by the computer for each person in a "close-out" household. If the number of occupants is unknown, an entire set of characteristics for a neighboring household is substituted. (The specific field guidelines for such procedures are described in the 1980 Census operations manuals).

Unreadable questionnaires. Occasionally during shipment or the processing of data, census forms are lost, destroyed, or damaged so as to be unreadable by the machine. In such instances, replacement questionnaires are entered into the system that indicate the number of persons, if any, in the living quarters. When possible, this information is obtained from master control counts for each address that is entered by the field staff during the actual census. By "reading" the replacement questionnaires, the characteristics for these enumerated persons are "substituted" by the computer from information reported for other persons. When master control counts are not available or the number of damaged forms is small, both the numbers and characteristics are substituted. In 1970, characteristics for more than 3 million enumerated persons were "substituted" for the two reasons described above. In 1980, the Bureau expects to hold substitution for these reasons to about 2¼ million persons.

Coverage Improvement—1980 and 1970

The Bureau's extensive coverage improvement program for the 1980 census is discussed in detail in a recent article by Peter Bounpane and Clifton Jordan of the Bureau staff.[14] Of the substantial improvements over 1970 procedures, two aspects of the 1980 coverage improvement program deserve special mention in the instant situation: The vacancy recheck and the post-enumeration post office check in conventional areas.

Vacancy Recheck. As the proportion of single, 2-person and 2-worker households has increased along with greater mobility, there has been growing difficulty in obtaining a census report for each occupied dwelling unit. One aspect of this problem has been a tendency on the part of enumerators to judge that a dwelling unit is vacant when, in fact, the residents were simply not home at the times the enumerator called. A special survey taken in the closing phase of the 1970 census showed that about one of every ten dwelling units classified as vacant by enumerators was actually occupied. Because the potential for even greater underenumeration from this type of situation grew during the 1970's and was clearly shown in the Bureau's intercensal surveys, a special, intensive

[13] *Dixon v. Hassler*, 412 Supp. 1036, 1976.

[14] "Plans For Coverage Improvement in the 1980 Census", *Papers and Proceedings of the Social Statistics Section of the American Statistical Association*, 1978.

recanvass of every dwelling unit classified as vacant is being undertaken in the 1980 census. Persons identified as omitted in this followup effort will, of course be added to the count.

In 1970, the magnitude of the problem of misclassification of dwelling units as vacant did not become apparent until initial field work had been largely completed. At that time, the cost, complexity, and delays associated with a recanvass would have delayed census processing to a point where the counts for apportionment probably would not have been available within the required time period. To correct this problem, a carefully designed and monitored program of substitution for units with a high probability of being occupied was used.[15] This use of substitution was of considerable concern within the Bureau and, even though the courts had regularly decided that the procedures used in the 1970 census were within the meaning of the Constitution and neither arbitrary nor capricious, a decision was made to recanvass completely in 1980, eliminating the need for the 1970-type activity.

The Post-Enumeration Post Office Check. About 5 percent of the 1980 population count is expected to be found in rural or remote areas where enumerators visit the household and complete or check the census form on the spot. The Bureau has learned that dwelling units are more likely to be completely missed than in urban areas. The Bureau, therefore, again enlisted the aid of the U.S. Postal Service in an effort to identify missed households. In 1980, a census enumerator will make an on-the-spot check of missed units as indicated by the post-enumeration postal service check. As with the vacancy check, this procedure will take place before the local census office is closed and any persons that were missed will be added to the count.

In 1970, by contrast, the timing and budgetary situation did not permit a direct canvass of post-office identified misses. Consequently, limited substitution was used in the South where the miss problem was most pronounced.[16] Because field procedures permit a direct early visit, no such substitution will be used in the 1980 census.

[15] See, Joseph Waksberg and Margaret A. giglitto, *The Effect Of Special Procedures To Improve Coverage In The 1970 Census, April 1973; and Bureau of the Census, Effect Of Special Procedures To Improve Coverage In The 1970 Census,* PHC(E)–6.

[16] *Effect of Special Procedures To Improve Coverage In The 1970 Census,* PHC(E)–6.

Coverage Improvement Vis-a-Vis Undercount Adjustment

Coverage improvement in the 1980 Census will rely almost entirely on strict observation by Bureau employees in reference to master control counts, rechecks or special recanvass procedures. *By contrast,* undercount adjustment means direct additions of persons to the basic count by statistical means alone, without any direct evidence of the actual existence of the persons or of the dwelling units in which they may reside. A variety of techniques are available for such adjustments, but they have the common characteristic of assigning individuals to a specific geographic area. Such assignments would have an uncertain effect on accuracy; they may make the resulting estimates for the majority of areas less accurate even as they bring the national total closer to the "true" population. As indicated by the proceedings of the Conference on Census Undercount,[17] there is no consensus on an optimal procedure for such allocation.

May 13, 1980.

Appendix A

Memorandum For: Vincent Barabba, Director, Bureau of the Census.
Through: Courtenay M. Slater (C.M.S.), Chief Economist for the Department of Commerce.
Subject: 1980 Census: Statistical Adjustment for Undercoverage.

Apparent undercoverage in previous decennial censuses has led to widespread interest in the possibility of statistical adjustments to the 1980 census data. Extraordinary efforts have been undertaken by the Census Bureau to achieve the most complete coverage possible in 1980. The extent of any undercount will not be known for some months. You are now engaged in an active and systematic process of examining the validity of various methods of measuring and analyzing a possible undercount in the 1980 Census, as well as the desirability of making adjustments once the existence and extent of an undercount is determined. This process should continue with the following guidelines.

1. Planning for and execution of a program to evaluate census data should continue to be given high priority by the Bureau and should proceed as expeditiously as is consistent with good professional standards.

2. There should be full and frequent consultation with the Chief Economist and the General Counsel throughout this process.

3. Federal agencies and interested parties among the general public should be kept informed regarding the Bureau's examination of this issue and should be given adequate opportunity to comment on the approach being taken by the Bureau.

The culmination of this process should be a decision by the Director of the Census Bureau on whether and how any statistical adjustment should be made to 1980 census data. This decision should take full cognizance of the importance of:

(1) the need for confidence that any adjustment will produce more accurate information regarding the distribution of the population and the relevant characteristics of that population;

(2) the defensibility of any adjustment methodology that may be used;

(3) a continued public perception of the accuracy, reliability, and objectivity of census data; and

(4) the very great public need for accurate and timely data about the U.S. population and its characteristics.

Even if there were some basis for an adjustment of the population count to be used for apportionment of the House of Representatives, I do not believe that any adjustment can be made prior to the statutory deadline for the delivery of this information to the President. I do expect, however, that by the end of this calendar year, or shortly thereafter, you will be prepared to announce a decision on adjusting the census data for other uses.

I should appreciate receiving from you a detailed description of the process to be followed in arriving at the above decision, and shall expect you to take direct personal charge of this process.

Philip M. Klutznick,

Secretary of Commerce.

Appendix B—Assumptions Discussed at the Second Census Undercount Workshop

1. A simple synthetic adjustment procedure would be timely.

2. The courts will accept adjusted Census Bureau numbers.

3. Any adjustment of the census counts will increase the demand for further adjustments for racial, ethnic, and socioeconomic groups.

4. The Census Bureau will continually examine, evaluate, and share its understanding of undercoverage throughtout the decade.

5. The nature of the Congressional legislative stucture and process, and knowledge of the complexity in determining gains and losses, will lead to maintaining the status quo, i.e., the use of *straight counts.*

6. Any adjustment procedure implies two sets of population counts—one adjusted and the other unadjusted.

7. There would be "numerator-denominator" difficulties in the use and interpretation of census data if not all census figures are adjusted.

8. The Census Bureau has to take into account the major uses of its data in making its decision whether or not to adjust.

9. Minorities will insist on complete adjustments at the lowest geographic levels, because they believe that this will bring them closer to the truth and equity in funds allocation.

10. The Census Bureau has the ability to develop a statistical and analytical methodology which will permit adjustment of *critical variables* (e.g., selected subnational geographic units and selected characteristics) in a timely fashion.

11. The Census Bureau can change operational procedures to improve timeliness.

[17] *Conference On Census Undercount,* July 1980.

detail, etc., of a complex procedure for adjustment of census counts.

12. A simple synthetic adjustment procedure will not meet Census Bureau standards for accuracy.

13. Major users of census data are capable of using multiple sets of data.

14. Given the estimated magnitude of the undocumented resident population and the fact that our policy was to count all residents, it is important to attempt to incorporate an allowance for this group in the expected (i.e., corrected) population and hence in the estimates of the undercount.

15. Given the potential for reducing the great uncertainty in our estimates of the undocumented resident population over time, the estimates of undercoverage will need to be modified with the passage of time for this reason.

16. The confidence of the Census Bureau to make a decision, to defend its position vis-a-vis stakeholders, and in its technical abilities has improved.

17. The Census Bureau is less hypersensitive to pressure applied by stakeholders.

18. All stakeholders must act through the Courts, Congress or the Administration.

19. It is assumed that the selected adjustment procedure will be accepted by stakeholders.

20. The anticipated reactions of segments of the public should not be the driving force behind the Bureau's decision to adjust or not to adjust.

21. If adjustments are to be made, the Census Bureau should formulate the procedures. This will promote a high standard of statistical rigor and encourage the appropriate use of census results.

22. Local area data required by Federal programs must be of sufficient quality to be credible in the courts.

23. Adjustment of census data would respond to widely expressed public policy needs.

24. In order for adjustment to improve program effectiveness, program agencies will require adjustment for key demographic characteristics, such as age and income, as well as for total population counts; however, adjustment for a limited number of key characteristics will satisfy the most important program needs.

25. The Administration will view support of the use of straight census counts to be consistent with expenditures for coverage improvement.

26. The Census Bureau has the ability to develop a statistical and analytical methodology which will permit adjustment of critical variables within 3 years of the census.

27. Regardless of the adjustment procedure used, there is currently no adequate methodology for measuring the quality of the adjusted figures.

28. Bureau professional staff would support the use of actual census counts rather than adjusted figures until the methodology area determines that there is a statistically acceptable adjustment technique.

29. Most stakeholders will expect that an adjustment procedure will be applied to all levels for which they have program interest.

30. No currently available adjustment procedure will provide more accurate numbers than the actual census counts for all units of government.

31. If an adjustment to census data is made, minorities other than Blacks will expect the Bureau to develop separate adjustment ratios to cover their populations.

32. An adjustment procedure would receive initial support from a wide range of stakeholders; however, there will be active opposition to the adjustment as the effects become known.

33. Pressure for a timely adjustment may force the Bureau to make an adjustment that does not make use of the information that will become available from the full set of evaluation studies. As more information becomes available, additional adjustments will be called for. Multiple adjustments could lead to more litigation.

34. A Bureau decision to adopt an adjustment procedure that is not statistically defensible is a step toward politicizing the Bureau.

35. Adjustment of census counts will result in the perception that the Bureau has changed the numbers for political purposes.

36. Adjustment of 1980 census data will raise serious doubts about whether the current investment in data collection should be repeated for the next census, whether the costs of data collection for surveys and other censuses are cost effective, and whether rigorous statistical standards for data quality are necessary. Concerns about response burden could intensify and the high levels of respondent cooperation could diminish.

Appendix C—References and Background Material

Discussion Toward the 1980 Undercount Adjustment Decision

1. Bounpane, Peter, and Mayer Zitter. "Technical Issues in Adjusting for the Census Undercount," presented at the 1980 Annual Meeting of the American Statistical Association, Houston, Texas: August 11–14, 1980.

2. Letter to the Honorable William Lehman, Chairman, Subcommittee on Census and Population, House Committee on Post Office and Civil Service, from the Comptroller General of the United States, November 9, 1978, GGD–79–7.

3. National Academy of Sciences, National Research Council, Assembly of Behavioral and Social Sciences, Committee on National Statistics, Panel on Decennial Census Plans. *Counting the People in 1980: An Appraisal of Census Plans.* Washington, DC: 1978.

4. Passel, Jeffrey S. and Jacob S. Siegel. "Measuring the Coverage of the Hispanic Population of the United States in the 1970 Census by Demographic Analysis," revised version of a paper presented at the 1979 Annual Meeting of the Southwestern Social Science Association, Fort Worth, Texas: March 28–31, 1979.

5. Siegel, Jacob S., Jeffrey S. Passel and J. Gregory Robinson. "Preliminary Review of Existing Studies of the Number of Illegal Residents in the United States," Working paper for the research staff of the Select Commission on Immigration and Refugee Policy, January 1980.

6. U.S. Bureau of the Census. *Conference on Census Undercount, Proceedings of the 1980 Conference,* Washington, DC: July 1980. See especially:

"The Census Bureau Experience and Plans," Jacob S. Siegel and Charles D. Jones

"Adjusting for Decennial Census Undercount: An Environmental Impact Statement," Peter K. Francese

"The Impact of Census Undercoverage on Federal Programs," Courtenay M. Slater

"The Impact of the Undercount on State and Local Government Transfers," Herrington J. Bryce

"Should the Census Count Be Adjusted for Allocation Purposes: Equity Considerations," Ian P. Fellegi

7. U.S. Bureau of the Census. "Coverage of Population in the 1970 Census and Some Implications for Public Programs," *Current Population Reports,* Series P–23, No. 56, Washington, DC: U.S. Government Printing Office, 1975.

8. U.S. Bureau of the Census. 1970 Census of Population and Housing, *Evaluation* and Research Program, "Estimates of Coverage of Population by Sex, Race, and Age: Demographic Analysis" Issued February 1974, Reprinted June 1976.

9. U.S. Bureau of the Census. *Proceedings of the Census Undercount Workshop, September 5–8, 1979,* Washington, DC: October 2, 1979.

Framework for the Decisionmaking Process

10. Mason, Richard O. and Ian I. Mitroff, *A Primer for SAST: Strategic Assumption Testing and Surfacing for Strategic Management.*

11. Toulmin, Stephen, Richard Rieke and Allan Janik. *An Introduction to Reasoning.* New York: Macmillan Publishing Co., Inc., 1979.

[FR Doc. 80–32557 Filed 10–17–80; 8:45 am]

BILLING CODE 3510–07–M

Foreign-Trade Zones Board

[Docket No. 16–80]

Foreign-Trade Zone No. 33, Allegheny County, Pa.; Expansion Within RIDC Park West

Notice is hereby given that an application has been submitted to the Foreign-Trade Zones Board (the Board) by the Regional Industrial Development Corporation of Southwestern Pennsylvania (RIDC), a Pennsylvania non-profit corporation and grantee of Foreign-Trade Zone No. 33, requesting authority to include three additional sites in its industrial park zone near the Greater Pittsburgh International Airport, Allegheny County, within the Pittsburgh Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act of 1934, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on October 14, 1980. RIDC was

established in 1955 as a non-profit development corporation to create employment opportunities through industrial development in the greater Pittsburgh area. The corporation is authorized to sponsor and operate foreign-trade zones under Pennsylvania Act No. 126 (approved June 10, 1935, Pub. L. 291).

Zone No. 33 was authorized by the Board on November 9, 1977 (Board Order 124) as a warehouse/distribution facility on a 6-acre site within the RIDC Park West, a 340-acre industrial park in the Townships of Findlay and North Fayette, Allegheny County. The original plan called for expansion of the zone within Park West based upon the needs of tenants.

The present application requests zone status for Parcels 6, 7, and 9 within the industrial park. Each parcel will be owned and operated by an American subsidiary of a foreign company planning to shift assembly operations to the U.S. from abroad. Each company's operation is designed to serve markets throughout the western hemisphere, thus creating a potential for exports.

Parcel 6, a 13.6-acre site, will be occupied by Eickhoff America Corporation, a subsidiary of Gebr Eickhoff of Bochum, West Germany. Eickhoff plans to construct a 39,000 square foot building to assemble shearing machines for the mining industry. Although the company will import certain components, it expects to use an increasingly larger share of American-produced components.

Parcel 7, on 7.3 acres, will contain the operations of North America Cerutti Technical and Commerical Organization, Inc., a subsidiary of Officine Mecconiche Giovanni Cerutti, S. p. A. of Casale Monferrato, Italy. North America Cerutti plans to assemble rotogravure printing presses in a 26,000 square foot building. Initially, the company will import component parts, gradually shifting to American-made parts.

Parcel 9, on a 9.3-acre site, will be occupied by National Draeger, Inc., a subsidiary of Draegerwerk AG of Luebeck, West Germany. Draeger is building an 11,000 square foot building for the assembly of diving, breathing protection, and gas detection equipment. Importing core parts, the company plans to manufacture certain components and purchase standard, American-made parts to complete the products.

In accordance with the Board's regulations, an Examiners Committee has been appointed to investigate the application and report thereon to the Board. The committee consists of Hugh J. Dolan (Chairman), Administrative Law Judge, Office of the Secretary, U.S. Department of Commerce, Washington, D.C. 20230; John Noon, Director, Inspection and Control, U.S. Customs Service, Region III, 40 S. Gay Street, Baltimore, Maryland 21202; and Colonel Joseph A. Yore, District Engineer, U.S. Army Engineer District Pittsburgh, Federal Building, 1000 Liberty Ave., Pittsburgh, Pennsylvania 15222.

Comments concerning the proposed zone expansion are invited in writing from interested persons and organizations. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before November 14, 1980.

A copy of the application is available for public inspection at each of the following locations:

Office of the Director, U.S. Department of Commerce District Office, 2002 Federal Building, 1000 Liberty Avenue, Pittsburgh, Pennsylvania 15222;

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th and E Streets, NW., Room 2006, Washington, D.C. 20230.

Dated: October 15, 1980.

John J. Da Ponte, Jr.,

Executive Secretary, Foreign-Trade Zones Board.

[FR Doc. 80-32630 Filed 10-20-80; 8:45 am]

BILLING CODE 3510-25-M

International Trade Administration

Semiconductor Technical Advisory Committee, Microcircuit Subcommittee; Change in Meeting Agenda

AGENCY HOLDING THE MEETING: International Trade Administration.

Federal Register CITATION OF PREVIOUS ANNOUNCEMENT: 45 FR 66786.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 11:00 a.m., October 22, 1980.

CHANGES IN THE MEETING: 9:00 a.m., October 22, 1980.

Dated: October 16, 1980.

Saul Padwo,

Acting Director, Office of Export Administration, International Trade Administration.

[FR Doc. 80-32629 Filed 10-20-80; 8:45 am]

BILLING CODE 3510-25-M

Semiconductor Technical Advisory Committee, Semiconductor Manufacturing Materials and Equipment Subcommittee; Change in Meeting Agenda

Agency holding the meeting: International Trade Administration.

Federal Register citation of previous announcement: 45 FR 66787.

Previously announced time and date of the meeting: 11:00 a.m., October 22, 1980.

Changes in the meeting: 9:30 a.m., October 22, 1980.

Dated: October 16, 1980.

Saul Padwo,

Acting Director, Office of Export Administration, International Trade Administration.

[FR Doc. 80-32628 Filed 10-20-80; 8:45 am]

BILLING CODE 3510-25-M

President's Export Council; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. (1976), notice is hereby given that a meeting of the President's Export Council will be held on Wednesday, November 12, 10:30 a.m., in Room B 338–339, Rayburn House Office Building, Washington, D.C. The President's Export Council was initially established by Executive Order 11753 of December 20, 1973, subsequently extended by Executive Order 11827 of January 4, 1975, Executive Order 11948 of December 20, 1976, and Executive Order 12110 of December 28, 1978. The President's Export Council was reconstituted by Executive Order 12131 of May 4, 1979, to advise the President on matters relating to United States export trade, including advice on the implementation of the President's National Export Policy.

The agenda for the meeting will be as follows:

Welcoming remarks and brief introduction.

Remarks by Cabinet level attendees, Senators and Congressmen.

Discussion of the Council's Report to the President.

Other organizational business, announcements and plans for next meeting.

A limited number of seats at the meeting will be available to the public on a first-come basis. The public may file written statements with the subcommittee before or after each meeting. Oral statements may be presented at the end of the meeting to the extent that time is available.

Copies of the minutes of the meeting and further information concerning the President's Export Council may be obtained from Ms. Wendy Haimes or Ms. Elizabeth Ruskin, room 4015B, U.S. Department of Commerce, Washington, D.C. 20230, telephone (202) 377–5719.

Dated: October 8, 1980.

Peter G. Gould,

Deputy Assistant Secretary for Export Development.

[FR Doc. 80-32685 Filed 10-20-80; 8:45 am]

BILLING CODE 3510-25-M

Zamilco International, Inc.

The Office of Antiboycott Compliance, International Trade Administration, U.S. Department of Commerce, having determined to initiate administrative proceedings pursuant to Section 11(c) of the Export Administration Act of 1979 (Pub. L. 96-72, to be codified at 50 U.S.C. app § 2401, *et seq.*) (the Act) Zamilco International, Inc. (Zamilco) based on allegations that Zamilco violated the Export Administration Regulations (15 CFR Part 368, *et seq.* (1979)) promulgated pursuant to the Export Administration Act of 1969, as amended, [50 U.S.C. app § 2401, *et seq.* (1976 & Supp I 1977)]; and

The Department and Zamilco having entered into a Consent Agreement whereby Zamilco agreed to settle this matter by the payment of a civil penalty in the amount of $32,000; and

The Deputy Assistant Secretary for Export Administration having approved the terms of the Consent Agreement;

It is therefore ordered,

First, that Zamilco within 20 days of the service of this Order, pay to the Department, pursuant to Section 11(c)(1) of the Act, the civil penalty in the amount of $11,000;

Second, that Zamilco six months after the date of entry of this Order pay to the Department, pursuant to Section 11(c)(1) of the Act, the civil penalty in the amount of $11,000;

Third, that payment of the remaining $10,000 by Zamilco shall be suspended for a period of one year from the date of entry of this Order, with payment of the suspended fine to be waived at the end of the probation period provided that there are no further violations by Zamilco of the antiboycott provisions of the Act or Part 369 of the Regulations (including timely reporting under Section 369.6 of the Regulations), or of this Order (including the missing of a payment or late payment).

Fourth, that Zamilco shall, to the extent that it has not already done so, undertake the following corrective measures to ensure its future compliance with the antiboycott provisions of the Export Administration Regulations:

a. Zamilco agrees that it will promptly issue to all of its employees involved in international sales information to acquaint them with Part 369 of the Regulations and written instructions directing strict compliance with such regulations.

b. Zamilco shall establish a final review procedure for all documents to or communications with customers in boycotting countries. Such review shall be conducted by one person who has been instructed about the requirements of the Act and Regulations and who will receive internal communications regarding compliance procedures.

c. Zamilco will promptly institute an internal reporting system and educate its employees as to the importance of following designated procedures with respect to reporting of all reportable request to the Department and with respect to taking appropriate exception to requests, compliance with which is prohibited, and which may occur on orders, letters of credit, requests for quotations, instructions from customers, correspondence, etc.

d. Zamilco shall submit a report to the Office of Antiboycott Compliance within one month after the date of entry of this Order, which shall include documentation evidencing in detail the steps it has taken to implement the corrective steps specified in this Order.

Fifth, that the Consent Agreement, the proposed Charging Letter and this Order to be made public;

Sixth, that one year from the date of entry of this Order Zamilco shall make available for inspection by the Office of Antiboycott Compliance at the firm's premises all documentation pertaining to Zamilco's business transactions and business contacts with boycotting countries.

Entered this date: October 9, 1980.

Eric L. Hirschhorn,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 80-32735 Filed 10-20-80; 8:45 am]

BILLING CODE 3510-25-M

Imported Steel Mill Products Trigger Price Mechanism: Fourth-Quarter 1980 Trigger Prices and Reviews of Requests for Changes in Product Coverage

AGENCY: Department of Commerce.

ACTION: Announcement of fourth-quarter 1980 trigger price levels and of a review of pending requests for adding or deleting products from trigger price coverage.

SUMMARY: The Department of Commerce hereby announces that fourth-quarter 1980 trigger price bases and extras for steel mill products covered by the steel trigger price mechanism (TPM) will, on average, be about 12 percent higher, and TPM freight rates generally $3 to $8 higher (depending on the port of entry), than second-quarter 1980 trigger price levels.

The Department uses trigger prices to monitor the prices of steel mill product imports for possible initiation of dumping investigations. The Department also announces its review of various requests for the addition/deletion of certain products from trigger price coverage.

SUPPLEMENTARY INFORMATION: On October 8, 1980 (45 FR 66833), the Department of Commerce published its intension to reinstate the TPM on or before October 21, 1980. The fourth-quarter trigger prices announced in this notice will apply to steel products entering the United States on or after October 21. Imports that were sold pursuant to a binding purchase contract, with a fixed price to an unrelated purchaser, entered into prior to September 5, and exported to the United States on or before November 5, 1980 will not be subject to the TPM.

Fourth-quarter trigger price bases and extras for those steel mill products manufactured principally by integrated steel producers will be 12.1 percent higher than their second-quarter 1980 trigger price levels. Trigger base prices and extras of those steel mill products manufactured principally by electric furnace producers will be 9.8 percent to 14.9 percent higher, depending on the product, than their second-quarter levels: Trigger price bases and extras for Group A (Equal Angle) electric furnace products will be 13.3 percent higher than the second-quarter levels; Group B (Flat Bars) 9.8 percent higher; and Group C (Rebars), 14.9 percent higher. The trigger price bases for stainless steel wire products will be about 11 percent higher and the extras about 4 percent higher than the second-quarter 1980 levels. (See Table 3 for a list of fourth-quarter trigger prices).

In order to minimize the impact of exchange rate fluctuations on TPM levels, the dollar/yen exchange rate used to convert Japanese steel producers' yen production costs to dollars was the average of the last 36 months (September 1977 through August 1980). On this basis, the exchange rate used in the Department's fourth-quarter 1980 production cost estimate is 223 yen to the dollar.

I. Production Costs

A. Integrated Producers

The last time integrated steel production costs were estimated for the TPM was November 1979. Second-quarter 1980 trigger prices, announced

March 19, 1980, were maintained by the Department of Commerce at their first-quarter 1980 levels without a re-calculation of the production cost estimate.

The first-quarter 1980 trigger price levels were 4 percent higher than estimated Japanese steel production costs (due to use of the flexibility band to offset exchange rate fluctuations); therefore, the 12.1 percent increase in the trigger price levels of the integrated steel mill products reflects a 16.6 percent or $63 per metric ton increase in the TPM estimate of Japanese integrated steel mill manufacturers' production costs (see Table 1, below). About $8 of the increase in the production cost estimate results from a change in the dollar/yen ratio used for the fourth-quarter estimate. Another $24 results from increases in energy costs (particularly electricity), and increases in the costs of iron ore and labor. New iron ore, coking coal and labor contracts were signed last Spring. Increases in other raw materials, other expenses, depreciation, and interest costs together accounted for the remaining increase.

Table 1.—*Japanese Productions Cost Estimate: Integrated Steel Producers 1st and 4th Quarter, 1980*

[U.S. dollars per metric ton of finished product]

	First quarter	Fourth quarter
Basic raw materials	$139.23	$161.36
Other raw materials	62.66	77.23
Labor	87.19	92.57
Other expenses	26.75	32.68
Depreciation	26.58	36.19
Interest	23.10	26.62
Profit [1]	25.27	29.11
Yield credit	(11.15)	(12.93)
Total cost $/MT	379.63	442.83
Total cost $/NT	344.40	401.73

[1] Profit = .08 (Raw materials + labor + other expenses).

B. Electric Furnace Producers

As with the production cost increase for integrated producers, about 10 percent of the increase in electric furnace production costs was caused by the appreciation of the yen relative to the dollar. Two-thirds of the increase resulted from increases in the price of scrap and energy (fuel oil and electricity). The remaining cost factors together accounted for 20 to 30 percent of the increase. (See Table 2 below for a comparison of first-quarter 1980 and fourth-quarter 1980 production costs by component for each of the three electric furnace product groups.)

C. Stainless Steel Wire Production Costs

Commerce's dollar-valued estimate of the current production costs of Japan's stainless steel wire producers increased by an average of about 11 percent over second-quarter 1980 trigger prices. The second-quarter production cost estimate incorporates, among other things, increases in the price of Japanese stainless steel wire drawers of stainless steel rod, and increases in labor and energy costs.

II. Product Adjustment

Based on data submitted by the Japanese Ministry of International Trade and Industry and additional data collected by the TPM task force, Commerce is revising the width-thickness-coating extras for galvanized steel sheet. The revised width-thickness-coating extras may be found on the page 27–5 of the *Trigger Price Manual: Fourth-Quarter 1980.* This page of the *Manual* is also issued as a part of this notice. (See Table 4.)

III. Freight Charges

TPM trigger prices are an estimate of the production costs of Japanese steel manufacturers plus the cost of transporting and landing the steel in the United States; hence, to the production costs described above and reflected in trigger price bases and extras must be added charges for freight, interest, handling and insurance. The only element of these charges that has changed from their second-quarter 1980 level is the freight charge.

The cost of shipping steel from Japan to the United States has increased primarily because of increases in the price of fuel oil. As a result, TPM freight rates will generally increase for steel mill product imports entering the Pacific Coast by $3 per metric ton, freight rates for imports entering Gulf Coast and Atlantic Coast ports by $5 per metric ton, and freight rates for imports entering Great Lakes ports by $8 per metric ton. (See Table 3 for a listing of fourth-quarter 1980 TPM freight charges.)

IV. Changes in Trigger Prices for Specific Product Categories

Under the fourth-quarter 1980 trigger prices, Commerce will retain the product coverage and cost coefficients for specific products used for the second-quarter 1980 trigger prices. Commerce has, however, received requests to expand TPM coverage of grain oriented electrical steels, specialty wire, and specialty steel products. Additionally, Commerce has received requests to delete wire nails, oil country tubular goods, and wire rod from coverage under the TPM.

Any party interested in commenting on these requests should submit written comments as soon as possible, and no later than November 10, 1980, to F. Lynn Holec, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. Comments should focus on the economic factors involved.

Public notice of and opportunity for comment on any additional requests for review of product coverage under TPM and for changes in the cost coefficients will be provided.

Commerce will maintain these requests in a public file. Anyone submitting business confidential information should clearly so label the confidential portion of their submissions.

Japanese Steel Production Cost Estimates: Electric Furnace Products 1st and 4th Quarters 1980

	Group A [1]		Group B [2]		Group C [3]	
	1st quarter	4th quarter	1st quarter	4th quarter	1st quarter	4th quarter
Basic raw materials	$166.11	$201.67	$181.34	$209.65	$166.49	$199.75
Other raw materials	32.60	36.83	35.12	39.44	32.02	35.62
Labor	26.71	29.71	28.71	33.37	20.81	27.03
Other expenses	10.46	11.13	16.09	15.64	12.66	13.88
Depreciation	6.53	6.24	9.01	8.65	5.93	6.52
Interest	5.91	6.61	6.77	9.89	5.94	8.53
Profit [4]	18.84	22.35	20.90	23.85	18.56	22.10
Scrap credit	(2.82)	(3.44)	(2.42)	(3.14)	(2.58)	(2.97)
Total $/MT	263.94	311.10	295.52	337.35	259.83	310.46
Total $/NT	239.44	282.23	268.09	306.04	235.72	281.65

[1] Group A products are equal angles, unequal angles, channels, and I-beams.
[2] Group B products are hot rolled strip from bar mills; merchant quality flat bars, hot rolled round bars, squares, and round cornered squares; and bar size channels.
[3] Group C products are concrete reinforcing bars, plain and deformed.
[4] Profit = .08 (Raw materials + labor + other expenses).

Table 3.—*Product Base Prices for Shipment Exported During Fourth Quarter 1980*

[All figures in dollars per metric ton]

Page [1]	Product	Fourth quarter 1980 base prices	Fourth quarter ocean freight			
			P.	G.	A.	L.
2-1	Wire rods commercial quality AISI 1008	360	34	41	49	62
2-2	Wire rods welding quality AISI 1008	361	34	41	49	62
2-3	Wire rods high carbon AISI 1065	417	34	41	49	62
2-5	Wire rods cold heading quality AISI 1038	432	34	41	49	62
2-7	Wire rods cold finished bar quality	432	34	41	49	62
2-9	Spheroidized annealed Mo alloy steel wire rod AISI 4037	629	67	84	87	98
2-13	Spheroidized annealed Si-Mn-Cr high carbon steel wire rod AISI 9254	603	67	84	87	98
2-15	Spheroidized annealed high carbon Cr steel wire rod AISI 52100	693	67	84	87	98
3-1	Wide flange beams and bearing piling ASTM A-36 12" x 12"	349	36	45	52	66
3-4	Standard carbon steel channels ASTM A-36 [2]	318	32	41	44	54
3-6	Unequal leg carbon steel angles ASTM A-36 [2]	334	32	41	44	54
3-8	Equal leg carbon steel angles ASTM A-36 [2]	300	32	41	44	54
3-10	Standard carbon steel "I" beams ASTM A-36 [2]	366	32	41	44	54
4-1	Sheet piling ASTM A-328 arch web PDA-27	395	36	45	49	66
5-1	Steel plates ASTM A-36 ⅛" x 80" x 240"	361	34	40	46	50
6-1	Heavy carbon steel rails AREA 115, 132 or 136 (40')	401	35	42	50	66
6-3	Light rails 60 lbs./yd	395	42	50	53	63
6-5	Tie plates	402	48	54	64	73
8-1	Plain and deformed carbon steel concrete reinforcing bars ASTM A-615 [4]	298	32	41	44	54
9-1	Hot rolled carbon steel bar size channel ASTM A-36 [2]	427	32	41	44	54
10-11	Rolled carbon bars special quality AISI 1045	457	33	41	44	54
10-3	Merchant quality hot rolled carbon steel squares and round cornered squares ASTM-36 or AISI 1020 * * *	357	32	41	44	54
10-5	Merchant quality hot rolled carbon steel round bar ASTM A-36 or AISI 1020 * * *	357	32	41	44	54
10-7	Merchant quality carbon steel flat bars ASTM A-36 or AISI 1020 * * *	324	32	41	44	54
11-1	Hot rolled Ni-Cr-mo alloy steel round bar AISI 8620	528	58	66	78	98
11-6	Spheroidize annealed high carbon Cr steel round bar AISI 52100	590	58	66	78	98
12-1	Cold finished carbon steel round bar AISI 1008 through 1029	529	39	50	55	77
12-2	Cold finished round steel bar AISI 1212 through 1215	597	39	50	55	77
12-3	Cold finished round steel bar AISI 12L14 and 12L15	627	39	50	55	77
12-5	Cold finished, Ni-Cr-No-alloy steel round bar AISI 8620	528	58	66	78	98
12-7	Cold finished spheroidized annealed, high carbon Cr steel round bar, AISI 52100, 50100, 51100	590	58	66	78	98
14-1	ERW Carbon steel pressure tubing for use in boilers, heat exchangers, condensers, etc.	590	[3]	[3]	[3]	[3]
14-6	Continuous butt welded standard pipe	448	[3]	[3]	[3]	[3]
14-8	ERW pipe, exlcuding oil well casing, wihtout coupling	470	[3]	[3]	[3]	[3]
14-13	Submerged arc welded pipe	509	[3]	[3]	[3]	[3]
14-16	ERW structural tubing to ASTM A-500 grades, A, B and C	439	[3]	[3]	[3]	[3]
14-22	ERW standard pipe	455	[3]	[3]	[3]	[3]
14-24	Electric resistance welded standard pipe ASTM A-120 (larger sizes)	[3]	[3]	[3]	[3]	[3]
14-26	Piling pipe ASTM A-252	396	[3]	[3]	[3]	[3]
14-30	Electric resistance welded hot dipped galvanized fence pipe and tubing in plain ends	[3]	[3]	[3]	[3]	[3]
14-32	ERW mechanical tubing ASTM A-513	529	[3]	[3]	[3]	[3]
15-1	Seamless carbon steel oil well casing, not threaded, up to 7" in outside diameter	495	[3]	[3]	[3]	[3]
15-4	Seamless carbon steel oil well casing, not threaded 7 inches and over in outside diameter	491	[3]	[3]	[3]	[3]
15-7	Seamless carbon steel oil well casing, threaded 7 and coupled inches and over in outside diameter	557	[3]	[3]	[3]	[3]
15-10	Seamless carbon steel oil well casing, threaded and coupled, up to 7 inches in outside diameter	563	[3]	[3]	[3]	[3]
15-13	Electric resistance welded carbon steel oil well casing, not threated	492	[3]	[3]	[3]	[3]
15-15	Electric resistance welded carbon steel oil well casing, threaded	[3]	[3]	[3]	[3]	[3]
15-17	Seamless carbon steel pressure tubing suitable for use in boilers, superheaters, heat exchangers, condensers, refining furnaces, feed water heaters, cold finish	946	[3]	[3]	[3]	[3]
15-43	Seamless carbon steel oil well tubing EUE with threading and coupling	742	[3]	[3]	[3]	[3]
15-45	Seamless carbon steel line pipe	506	[3]	[3]	[3]	[3]
15-48	Hot rolled high carbon Cr steel tube suitable for use in manufacture of ball or roller bearings AISI 52100	719	72	84	100	113
15-49	Cold rolled high carbon Cr steel tube suitable for use in manufacture of ball or roller bearings AISI 52100	1069	70	84	100	113
15-50	Seamless stainless steel round ornamental tube AISI TP 304, 1¼ x 0.049"	2425	68	81	101	115
15-52	Seamless stainless steel square ornamental tube AISI TP 304, 1½ x 1½ x 0.065"	2643	68	81	101	115
16-1	Cold heading round wire AISI 1018 killed 0.192" hard drawn	539	50	59	61	79
16-1	Cold heading drawn from annealed rods	612	50	59	61	79
16-1	Cold heading drawn from spheroidized annealed rods	627	50	59	61	79
16-1	Cold heading anneal in process	631	50	59	61	79
16-1	Cold heading spheroidize anneal in process	642	50	59	61	79
16-1	Cold heading anneal in process and drawn from annealed rods	680	50	59	61	79
16-1	Cold heading spheroidize anneal in process and drawn from annealed rods	693	50	59	61	79
16-1	Cold heading anneal at finish size	612	50	59	61	79
16-1	Cold heading spheroidize anneal at finish size	627	50	59	61	79
16-1	Cold heading anneal at finished size and drawn from annealed rods	661	50	59	61	79
16-1	Cold heading spheroidize anneal at finished size and drawn from annealed rods	676	50	59	61	79
16-4	Bright basic round wire AISI 1008 Number 8 gauge rimmed	444	49	57	60	79
16-5	Galvanized iron round wire AISI type I coating Number 8 gauge	558	49	56	60	79

Table 3.—*Product Base Prices for Shipment Exported During Fourth Quarter 1980—Continued*

[All figures in dollars per metric ton]

Page [1]	Product	Fourth quarter 1980 base prices	Fourth quarter ocean freight			
			P.	G.	A.	L
16-8	Round baling wire 14.50	620	49	56	60	79
16-9	Cold finished spheroidize annealed, Si-Mn-Cr high carbon steel wire AISI 9254	603	67	84	87	98
16-11	Cold finished spheroidized annealed Mo alloy steel wire AISI 4037	629	67	84	87	98
16-13	High carbon Cr steel wire in coil AISI 52100, 50100, 51100, suitable for use in manufacture of ball or roller bearings	941	67	84	87	98
16-15	Upholstery spring wire automatic coiling and knotting type	555	47	62	64	81
16-16	Mechanical spring wire ASTM A-227 and A-648	585	47	62	64	81
16-17	Oil tempered steel spring wire ASTM A-229	589	47	62	64	81
16-18	Carbon steel valve spring quality ASTM A-230	979	97	115	115	121
16-19	Automobile tire bead wire	686	100	116	116	122
16-20	Galvanized core wire for A.C.S.R. ASTM B 498 class "A"	732	59	68	70	84
16-21	Stainless steel wire	([8])	([8])	([8])	([8])	([8])
19-1	Field Fence	669	51	65	70	79
20-1	Wire Nails Bright Common 20d #6 1 3/8 x 4"	518	51	65	70	79
21-1	Barbed Wire 2 Ply, 12.50	704	51	65	70	79
22-1	Black Plate ASTM A625-76 0.0083" x 34" x Coil	463	32	38	42	54
23-1	Elecrolytic Tin Plate SR-25/25 75L x 34" x C	628	35	42	46	56
25-1	Hot Rolled Steel Sheets ASTM A-569 0.121" x 48" x Coil	319	32	38	42	52
25-2	Hot Rolled Steel Band ASTM 569 0.121" x 48" x Coil	305	32	38	42	52
26-1	Electrical Steel Sheets Grain Oriented M-4 0.012" x 33" x C	1305	35	42	49	56
26-3	Electrical Steel Sheets Non Oriented M-45 0.018" x 36" x C	726	35	42	49	56
26-5	Cold Rolled Sheets ASTM A-366 1.0 m/m x 48" x C	400	32	38	42	52
27-1	Electro Galvanized Sheets EGC 10g/M 1.0 m/m x 48" x C	473	33	38	42	55
27-4	Galvanized Sheet ASTM A525G90	475	32	38	42	55
29-1	Hot Rolled Carbon Steel Strip Produced on Bar Mills Cut Lengths [8]	362	32	41	44	54
29-3	Hot Rolled Carbon Steel Strip Produced on Sheet Mills, Coils Only	312	32	41	44	54
32-1	Tin Free Steel Sheets SR 75L x 34" x C	537	35	42	46	55

[1] Page references are to the Trigger Price Manual published by the Department of Commerce. The first figure of each page reference corresponds to the AISI product category of that product.

[2] Electric Furnace, Group A.

[3] Electric Furnace, Group B.

[4] Electric Furnace, Group C.

[5] Deleted, see Rev. 14-22.

[6] Deleted, see Rev. 15-13.

[7] See freight table.

[8] See attached pages 16-21 through 16-33.

Table 4.—*Pages From the Trigger Price Manual 4th Quarter 1980*

AISI category and TPM manual page reference	Product description	Revision
14-2	Pipe and tube products.	Fourth quarter freight rates.
16-22	Stainless steel wire.	Fourth quarter base prices and extras.
27-4	Galvanized sheets	Revised thickness/width/coating extras.

Dated: October 10, 1980.

John D. Greenwald,

Deputy Assistance Secretary for Import Administration.

Freight Charges on Pipe and Tube Products

[Dollars per metric ton—Applies to all products in category 14 and 15]

Freight	Pacific	Gulf	Atlantic	Great Lakes
Pipe (up to 40') Outside diameter up to:				
4"	36	50	52	67
5"	38	50	52	67
6"	40	51	52	69
8"	41	52	54	71
10"	42	53	54	73
12"	43	54	56	75
14"	44	56	56	77
16"	44	57	59	78
18"	45	58	59	80
20"	46	60	62	82
22"	48	62	66	85
24"	49	64	67	87
26"	50	65	70	89
28"	52	66	70	92

Freight Charges on Pipe and Tube Products

Freight	Pacific	Gulf	Atlantic	Great Lakes
Pipe (up to 40') Outside diameter up to:				
30"	54	67	70	94
32"	56	68	72	96
34"	57	70	73	98
36"	59	72	75	102
38"	62	75	78	104
40"	64	79	82	108
42"	67	83	85	112
44"	70	85	88	116
46"	75	89	92	121
48"	78	92	95	125

Group I.—*Annealed Wire*

[Annealed: The condition of soft wire in which there is no further cold drawing after the last annealing treatment. Wire of this temper is made by annealing in open fired furnaces or molten salt followed by annealing in open fired furnaces or molten salt followed by pickling, which produces a clean gray matte finish. It is also made with a bright by annealing wet, oil or grease drawn wire in a protective atmosphere, and is sometimes described as bright annealed wire.]

Grade	4th quarter, 1980 dollars per metric ton wire base price
301	2,233
302	2,178
303	2,288
304	2,233
305	2,426
310	4,213
314	4,983
316	3,333
316-L	3,526

Group I.—*Annealed Wire*—Continued

[Annealed: The condition of soft wire in which there is no further cold drawing after the last annealing treatment. Wire of this temper is made by annealing in open fired furnaces or molten salt followed by annealing in open fired furnaces or molten salt followed by pickling, which produces a clean gray matte finish. It is also made with a bright by annealing wet, oil or grease drawn wire in a protective atmosphere, and is sometimes described as bright annealed wire.]

Grade	4th quarter, 1980 dollars per metric ton wire base price
317	3,883
317-L	4,076
304-L	2,426
17-4PH [1]	2,591
308	2,398
308-L	2,591
309	3,003
309-L	3,196
321	2,591
312	NA
302 HQ (18-19LW) [2]	2,371
347	2,948
384	2,893
15-5PH [3]	NA
409	1,639
410	1,309
416	1,276
420	1,364
430	1,364
430-F	1,584
434	1,694
434-A	1,474
446	1,969

[1] May also be designated as type 630 or as UNS 17400.
[2] May also be designated as type 302 CU and as 306.
[3] May also be designated as typed XM-12 and UNS 15500.
NA=Not available.

Group I.—*Annealed Wire*

[Dollars per metric ton]

Size [1]	4th quarter, 1980, size extras		
	300 series and 17-7PH	400 series	17-4PH 15-5PH
.574" to .703"	202	517	202
.501" to .573"	202	517	202
.500"	218	517	218
.375" to .499"	237	517	237
.3125" to .374"	253	517	253
.250" to .312"	339	517	339
.234" to .249"	385	517	385
.216" to .233"	437	556	437
.200" to .215"	603	603	603
.185" to .199"	621	632	621
.170" to .184"	636	660	636
.155" to .169"	648	689	648
.142" to .154"	666	816	666
.128" to .141"	694	942	694
.113" to .127"	774	1,040	688
.099" to .112"	894	1,129	721
.086" to .098"	981	1,194	752
.076" to .085"	1,039	1,259	787
.067" to .075"	1,094	1,318	949
.058" to .066"	1,194	1,360	1,107
.051" to .057"	1,243	1,400	1,158
.044" to .050"	1,290	1,442	1,206
.038" to .043"	1,401	1,484	1,316
.033" to .037"	1,518	1,651	1,433
.030" to .032"	1,575	1,763	1,575
.027" to .029"	1,727	NA	1,900
.024" to .026"	1,869	NA	1,869
.021" to .023"	2,011	NA	2,016
.019" to .020"	2,153	NA	2,153
.018"	2,293	NA	2,293
.017"	2,326	NA	2,326
.016"	2,366	NA	2,366
.015"	2,478	NA	2,478
.014"	2,606	NA	2,606
.013"	2,718	NA	2,718
.012"	2,836	NA	2,836
.011"	2,948	NA	2,948
.010"	3,217	NA	3,217
.009"	3,340	NA	3,340
.008"	3,492	NA	3,492
.0075"	3,649	NA	3,649

Group I.—*Annealed Wire*—Continued

[Dollars per metric ton]

Size [1]	4th quarter, 1980, size extras		
	300 series and 17-7PH	400 series	17-4PH 15-5PH
.007"	3,816	NA	3,816
.0065"	4,209	NA	4,209
.006"	4,657	NA	4,657
.00575"	5,105	NA	5,105
.0055"	5,554	NA	5,554
.00525"	6,451	NA	6,451
.005"	6,618	NA	6,618
.00475"	6,730	NA	6,730
.0045"	6,954	NA	6,954
.00425"	7,572	NA	7,572
.004"	8,132	NA	8,132
.00375"	17,098	NA	17,098
.0035"	20,405	NA	20,405
.00325"	23,318	NA	23,318
.003"	26,232	NA	26,232
.0027"	27,186	NA	27,186
.0025"	28,307	NA	28,307
.002"	36,712	NA	36,712

[1] All intermediate sizes to take next higher price.
NA=Not available.

Deduction to allow for absence of annealing and pickling (cold drawn "bar" in wire gauges):

[Dollars per metric ton]

Size Range	Deduction
.703" through .375"	74
.374" through .216"	78
.215" through .187"	101

Group II.—*Hard/Spring Wire*

[Annealed: A condition of wire drawn several drafts as required to produce the high tensile strengths required for such products as spring wire.]

Grades	4th quarter, 1980 dollars per metric ton wire base price
301	2,233
302	2,178
303	2,288
304	2,233
305	2,426
310	4,213
314	4,983
316	3,333
316-L	3,526
317	3,883
317-L	4,076
321	2,591
17-4PH [3]	2,591
17-7PH [4]	3,333
330	NA
308	2,398
308-L	2,591
309	3,003
309-L	3,196
312	NA
302 HQ (18-18LW) [3]	2,371
347	2,948
384	2,893
15-5PH [4]	NA
409	1,639
410	1,309
416	1,276
420	1,364
430	1,364
430-F	1,584
434	1,694
434-A	1,474
446	1,969

[1] May also be designated as type 630 or as UNS 17400.
[2] May also be designated as type 631 and UNS 17700.
[3] May also be designated as type 302 CU and as 306.
[4] May also be designated as type XM-12 and UNS 15500.
NA=Not available.

Group II.—*Hard/Spring Wire*

[Dollar per metric ton]

Size [1]	4th quarter, 1980, size extras	
	300 series and 17-7PH	400 series
Over 0.375"	669	NA
.3125" to .374"	669	NA
.250" to .312"	669	NA
.234" to .249"	669	NA
.216" to .233"	699	NA
.200" to .215"	699	NA
.185" to .199"	669	NA
.170" to .184"	669	NA
.155" to .169"	669	NA
.142" to .154"	646	NA
.128" to .141"	646	NA
.113" to .127"	646	NA
.099" to .112"	681	NA
.086" to .098"	752	NA
.076" to .085"	807	NA
.067" to .075"	873	NA
.058" to .066"	967	NA
.051" to .057"	1,162	NA
.044" to .050"	1,332	NA
.038" to .043"	1,401	NA
.033" to .037"	1,536	NA
.030" to .032"	1,607	NA
.027" to .029"	1,935	NA
.024" to .026"	2,112	NA
.021" to .023"	2,322	NA
.019" to .020"	2,598	NA
.018"	3,142	NA
.017"	3,418	NA
.016"	3,502	NA
.015"	3,586	NA
.014"	3,754	NA
.013"	3,893	NA
.012"	4,171	NA
.011"	5,338	NA
.010"	5,478	NA
.009"	5,700	NA
.008"	5,889	NA
.007"	[2]	NA
.0065"	[2]	NA
.006"	[2]	NA
.00575"	[2]	NA
.0055"	[2]	NA
.00525"	[2]	NA
.005"	[2]	NA
.00475"	[2]	NA
.0045"	[2]	NA
.00425"	[2]	NA
.004"	[2]	NA
.00375"	[2]	NA
.0035"	[2]	NA
.00325"	[2]	NA
.003"	[2]	NA
.0027"	NA	NA
.0025"	NA	NA
.002"	NA	NA

[1] All intermediate sizes to take next higher price.
[2] Under Review.
NA=Not available.

Group III(a).—*Soft/Intermediate Wire*

[Soft/Intermediate: A condition of wire drawn one or more drafts after annealing as required to produce minimum strength or hardness. The properties of such wire can be varied between those of soft temper and those approaching spring temper wire. Wire in this temper is usually produced in a variety of dry drawn tempers. Cold heading wire, by example, belongs in this group.]

Grades	1st quarter, 1980 dollars per metric tons wire base price
301	2,233
302	2,178
302 (302HQ, 18-9LW)	2,371
303	2,288
304	2,233
305	2,426
310	4,213
314	4,983

Group III(a).—*Soft/Intermediate Wire*—Continued

[Soft/Intermediate: A condition of wire drawn one or more drafts after annealing as required to produce minimum strength or hardness. The properties of such wire can be varied between those of soft temper and those approaching spring temper wire. Wire in this temper is usually produced in a variety of dry drawn tempers. Cold heading wire, by example, belongs in this group.]

Grades	1st quarter, 1980 dollars per metric tons wire base price
316	3,333
316-L	3,526
317	3,883
317-L	4,076
321	2,591
17-4PH [1]	2,591
330	NA
308	2,398
308-L	2,591
309	3,003
309-L	3,196
312	NA
347	2,948
384	2,893
15-5PH [2]	NA
409	1,639
410	1,309

	4th quarter, 1980 dollars per metric tons wire base price
416	1,276
420	1,364
430	1,364
430-F	1,584
434	1,694
434-A	1,474
446	1,969

[1] May also be designated as type 630 or as UNS 17400.
[2] May also be designated as type XM-12 and UNS 15500.
NA=Not available.

Group III(b).—*Soft/Intermediate Wire*

[Dollars per metric ton]

Size [1]	4th quarter, 1980, size extras		
	300 series and 17-7PH	400 series	17-4PH 15-5PH
Over .375"	448	314	448
.3125" to .374"	448	314	448
.250" to .312"	448	326	448
.234" to .249"	448	349	448
.216" to .233"	448	371	448
.200" to .215"	448	401	448
.185" to .199"	555	429	555
.170" to .184"	583	452	583
.155" to .169"	612	491	612
.142" to .154"	633	554	633
.128" to .141"	684	661	684
.113" to .127"	820	736	820
.099" to .112"	900	837	900

Group III(b).—*Soft/Intermediate Wire*—Cont.

[Dollars per metric ton]

Size [1]	4th quarter, 1980, size extras		
	300 series and 17-7PH	400 series	17-4PH 15-5PH
.086" to .098"	952	864	952
.076" to .085"	1,061	915	1,061
.067" to .075"	1,168	999	1,168
.058" to .066"	1,275	1,211	1,275
.051" to .057"	1,321	1,431	1,321
.044" to .050"	1,372	1,472	1,372
.038" to .043"	1,490	1,526	1,490
.033" to .037"	1,582	1,707	1,582
.030" to .032"	1,689	1,818	1,689
.027" to .029"	1,842	NA	1,842
.024" to .026"	1,990	NA	1,990
.021" to .023"	2,142	NA	2,142
.019" to .020"	2,285	NA	2,285

[1] All intermediate sizes to take net higher price.

Material provided uncoated or coated with lime (or equivalent to lime) and/or soap will carry no extra. Other coatings require an appropriate extra where additional costs are involved.

Metallic coatings include copper, nickel, and lead. Non-metallic coatings include plastics, molybdenum disulfide, etc.

Coating Extras.—*4th Quarter, 1980*

[Dollars per metric ton]

Size range	Type of coating			
	Oxide	Metallic		Nonmetallic
		Copper	Nickel	
Over .155"	None	113	35	24
.154" to .099"	None	170	35	24
.098" to .063"	None	226	47	32
.062" to .041"	None	NA	73	49
.040" to .030"	None	NA	100	63
.029" to .025"	None	NA	100	63
.024" to .020"	None	NA	135	91
.019" to .015"	None	NA	171	121
.014" to .010"	None	NA	211	147

Finish Extras.—*4th Quarter, 1980*

Size range [1]	Centerless ground—300 series, 17-7PH, 400 series, 17-4PH, and 15-5PH	Centerless ground and polished—300 series, 17-7PH, 400 series, 17-4PH, and 15-5PH
.703" to .595"	487	613
.594" to .501"	487	613
.500"	538	681
.499" to .375"	550	703
.374" to .3125"	550	703
.3124" to .250"	550	703

Finish Extras.—*4th Quarter, 1980* — Cont.

Size range [1]	Centerless ground—300 series, 17-7PH, 400 series, 17-4PH, and 15-5PH	Centerless ground and polished—300 series, 17-7PH, 400 series, 17-4PH, and 15-5PH
.249" to .234"	846	1,027
.233" to .216"	846	1,027
.215" to .200"	935	1,141
.199" to .185"	1,093	1,322
.184" to .170"	1,288	1,531
.169" to .155"	1,543	1,804
.154" to .142"	1,797	2,059
.141" to .128"	2,116	2,376
.127" to .113"	2,649	2,933
.112" to .093"	5,394	5,938

[1] All intermediate sizes to take next higher price.
17-4PH to be included in 400 series.
Straightening and cut to length extras are already included in the above finish extras in case of centerless ground and polished.

Tolerance Extras.—*4th Quarter, 1980*

[Dollars per metric ton]

	Standard: AISI or JIS Specification
Diameter tolerance:	
Standard	$0
Not less than ½ standard	105
Closer than ½ to ¼ standard	([1])
Closer than ¼ standard	([2])
Straightening and cut to length extras:	
Size range:	
.703" to .595"	102
.594" to .501"	102
.500"	102
.499" to .375"	128
.374" to .3125"	128
.3124" to .170"	231
.169" to .099"	576
.098" to .051"	1667
.050" to .032"	1923
Length:	
Under 12"	90
12" to under 18"	58
18" to under 24"	58
24" to under 30"	38
30" to under 36"	38
36" to under 48"	38
48" to under 60"	38
60" to under 72"	38
72" to under 120"	32
120" to under 168"	32
168" to under 192"	32
192" to under 216"	32
216" to under 240"	32
240" to under 264"	25
264" to under 288"	25
288" to 316"	25
Packaging Extras:	
Type:	
Bundle	28
Wooden Boxes	94
Fibre Drums	86
Coil Carriers	28
Spools: Sizes under .020"	167
Both Spools and Wooden Boxes:	
Sizes .020" and greater	94
Sizes under .020"	261

[1] 25 pct. of size extra.
[2] 50 pct. of size extra.

Extras for Galvanized Steel Sheet

1. Price base.
   Quality: Commercial.
   Size: GSG23 (under .032" through .029") x over 42" through 48" x coil.
   Coating: G90.
   Weighing: Actual.
2. Extras for other than price base products (Unit: US$ per M/T).
   (1) Thickness/width/coating.

Thickness (inches)	Width (inches)					Coating	
	24<W<30	30<W<36	36<W<42	42<W<48	48<W<60	0.6 oz/ft²	G60
0.130 and thicker	−92	−92	−92	−92			−2
0.129–0.116	−75	−75	−75	−75	−73		−2
0.115–0.101	−72	−72	−72	−72	−69		−2
0.100–0.086	−68	−66	−71	−71	−66		−2

Extras for Galvanized Steel Sheet—Continued

Thickness (inches)	Width (inches)					Coating	
	24<W<30	30<W<36	36<W<42	42<W<48	48<W<60	0.6 oz/ft²	G60
0.085–0.075	−51	−51	−53	−53	−51		−3
0.074–0.067	−47	−47	−51	−51	−47		−3
0.066–0.061	−45	−45	−47	−47	−45		−6
0.060–0.055	−24	−24	−27	−27	−24		−6
0.054–0.049	−21	−21	−23	−23	−21	−15	−7
0.048–0.043	−18	−18	−21	−21	−18	−17	−7
0.042–0.038	−14	−14	−16	−16	−14	−21	−8
0.037–0.035	−9	−9	−12	−12	−5	−21	−8
0.034–0.032	−7	−7	−9	−9	−6	−22	−9
0.031–0.029	−3	−3	−6	−6	0	−22	−9
0.028–0.026	24	24	22	22	31	−25	−13
0.025–0.023	27	27	25	30	39	−25	−13
0.022–0.021	65	65	65	69	80	−27	−17
0.020–0.019	62	62	62	74		−27	−17
0.018–0.017	88	88	88	108		−28	−20
0.016	91	91	103	117		−28	−20
0.015	92	92	110	121		−30	−22
0.014	116	111	117	132		−30	−22
0.013	116	123	123	136		−30	−22

Width under 24"—Subject to negotiation.
Culvert stock coating extra use in conjunction with width/thickness extra from above chart.

0.159 and thicker	$16
0.158–0.129	17
0.128–0.101	22
0.100–0.072	29
0.071–0.057	35
0.056–0.046	43

[FR Doc. 80-32429 Filed 10-20-80; 8:45 am]

BILLING CODE 7020-02-M

National Oceanic and Atmospheric Administration

Bureau of Fisheries, New York State Department of Environmental Conservation; Receipt of Application for Permit

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Parts 217–222).

1. Applicant:

a. Name: Bureau of Fisheries, New York State Department of Environmental Conservation.

b. Address: 50 Wolf Road, Albany, New York 12233.

2. Type of Permit: Scientific Purposes.

3. Names and Number of Animals: Shortnose sturgeon (Acipenser brevirostrum)—500.

4. Type of Take: Shortnose sturgeon incidentally taken in the course of gamefish study will be weighed, measured, and released. Dead specimens will be retained, preserved and deposited in scientific collections.

5. Location of Activity: Hudson River, New York.

6. Period of Activity: 5 Years.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235, on or before November 20, 1980. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Northeast Region, Federal Building, 14 ELm Street, Gloucester, Massachusetts 01930.

Dated: October 14, 1980.

Richard B. Roe,

Acting Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service.

[FR Doc. 80-32760 Filed 10-20-80; 8:45 am]

BILLING CODE 3510-22-M

Department of Game, State of Washington; Issuance of Permit

On July 8, 1980, Notice was published in the **Federal Register** (45 FR 45937), that a application had been filed with the National Marine Fisheries Service by the State of Washington, Department of Game, 53 Portway Street, Astoria, Oregon 97103 to take 150 Pacific harbor seals by killing; to tag 100 harbor seals of which 25 adults may be radio-tagged; to census pinniped populations which may inadvertently harass 50 California sea lions and 50 Northern Sea lions; and to salvage marine mammals killed incidental to commercial fishing operations.

Notice is hereby given that on October 10, 1980, the National Marine Fisheries Service issued a Scientific Research Permit, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) to the State of Washington, Department of Game subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Assistant Administrator for Fisheries, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Northwest Region, 1700 Westlake Avenue, North, Seattle, Washington, 98109.

Dated: October 10, 1980.

Terry L. Leitzell,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 80-32761 Filed 10-20-80; 8:45 am]

BILLING CODE 3510-22-M

Office of the Secretary

[Dept. Organization Order 10-1, Amdt. 6]

Assistant Secretary for Productivity, Technology, and Innovation; Statement of Organization and Function and Delegation of Authority

Effective date: September 26, 1980.

This order effective September 26, 1980 further amends the material appearing at 41 FR 18536 of May 5, 1976, 41 FR 26593 of June 28, 1976, 42 FR 40963 of August 12, 1977, 43 FR 39167 of September 1, 1978, 44 FR 63127 of November 2, 1979, and 45 FR 6141 of January 25, 1980.

Department Organization Order 10-1 of April 9, 1976 is hereby further amended as shown below. The purpose of this amendment is to change the title of the Assistant Secretary for Science and Technology to the Assistant Secretary for Productivity, Technology, and Innovation.

1. *Section 2. Administrative Designation,* is revised to read as follows:

Section 2. Administrative Designation.

"The position of Assistant Secretary of Commerce, established by the Act of February 16, 1962, (Pub. L. 87-405; 15 U.S.C. 1507) shall be designated as the Assistant Secretary for Productivity, Technology, and Innovation. The Assistant Secretary is appointed by the President by and with the advice and consent of the Senate."

2. All Department Orders referring to the Assistant Secretary for Science and Technology are hereby constructively amended to refer to the Assistant Secretary for Productivity, Technology, and Innovation.

Elsa A. Porter,

Assistant Secretary for Administration.

[FR Doc. 80-32686 Filed 10-20-80; 8:45 am]

BILLING CODE 3510-17-M

[Dept. Organization Order 35-1A, Amdt. 4]

Bureau of Economic Analysis; Statement of Organization and Functions and Delegation of Authority

Effective date: September 26, 1980.

This order effective September 26, 1980 further amends the material appearing at 40 FR 42766 of September 16, 1975, 41 FR 8520 of February 27, 1976, 42 FR 23676 of May 10, 1977, and 43 FR 43534 of September 26, 1978.

Department Organization Order 35-1A of August 4, 1975 is hereby further amended as shown below. The purpose of this amendment is to delegate to the Director, BEA the Secretary's authority to issue regulations for BEA to carry out its functions under the International Investment Survey Act of 1976.

1. In *Section 3. Delegation of Authority,* a. Subparagraph .01d. is deleted; subparagraph .01e. is relettered as .01d., and is revised to read as follows:

"d. Executive Order 11961 of January 19, 1977, as amended by Executive Order 12013 of October 7, 1977, which delegates to the Secretary of Commerce the authority of the President under Sections 4(a) (1), (2), (3), and (4), and 4(b), of the International Investment Survey Act of 1976 (Pub. L. 94-472, 90 Stat. 2059, 22 U.S.C. 3101-3108). The functions thereunder shall be carried out in coordination with the Under Secretary for International Trade (Department Organization Order 10-3), including, to the extent feasible, the division or assignment of responsibilities. All regulations established by BEA to carry out its functions under the Act, shall be issued by the Director in consultation with the Under Secretary for International Trade. All reports to be submitted to the Congress required to be undertaken pursuant to the Act, shall be issued by the Secretary."

b. In pen and ink, add the word "and" after the semicolon in subparagraph .01c.

2. This amendment supersedes amendment 3 of August 23, 1978.

Elsa A. Porter,

Assistant Secretary for Administration.

[FR Doc. 80-32689 Filed 10-20-80; 8:45 am]

BILLING CODE 3510-17-M

[Dept. Organization Order 15-3]

Office of Public Affairs: Statement of Organization and Functions and Delegations of Authority

Effective date: September 26, 1980.

This order effective September 26, 1980 supersedes the material appearing at 43 FR 15479 of April 13, 1978 and 45 FR 64615 of September 30, 1980.

Section 1. Purpose

.01 This Order prescribes the responsibilities and functions of the Office of Public Affairs.

.02 This revision reflects a general update of the organization and functions of the Office, including the transfer of editorial review functions to the Departmental Office of Publications, retention of the publication policy review function, establishment of an Information Center, and increased responsibilities of the Deputy Director.

Section 2. General

The Office of Public Affairs (the "Office"), which is continued as a Departmental office, is headed by the Director of Public Affairs. The Director reports and is responsible to the Secretary; is the principal adviser to the Secretary on public affairs matters; and is responsible for the overall public information program of the Department. The Director serves as the primary liaison for the Department with other Government agencies, and provides functional supervision to the public information offices in the Department's operating units.

Section 3. Functions

The Office of Public Affairs shall:

a. Plan, develop, and implement a coordinated public information program throughout the Department;

b. Prepare and issue press releases and radio/TV material on matters involving the Secretary or Deputy Secretary, and other officials in the Office of the Secretary, as appropriate;

c. Provide, or supervise the provision of, other public affairs services required by the Secretary, Deputy Secretary, and other officials of the Department, including the handling of news conferences, arranging for radio and television broadcasts, and arranging personal appearances;

d. Review and approve for release all:

1. News items and related materials;

2. Speeches;

3. Publications (to the extent specified in subparagraph 4.01a. of this Order);

4. Audiovisual materials for external use; and

5. Advertising programs for public affairs purposes produced in the Department.

e. Provide, as appropriate, editing, editorial policy review, and technical advice and assistance to the operating units with respect to the materials listed in subparagraph d, above;

f. Maintain liaison with the White House Office of the Press Secretary to the President and the counterpart offices in other Government agencies, to promote consistency and coordination between the Department's public information activities and those of the entire Executive Branch;

g. Provide liaison with outside public groups and organizations concerned with the Department's activities, including operation of a Department Information Center;

h. Compile, review, and edit Departmental annual reports;

i. Advise and assist the Office of the Secretary, and other offices as appropriate, by providing information,

analysis, and news services concerning press and radio/TV coverage of Department activities;

j. Authorize the scheduling of news conferences proposed by operating units and provide such staff assistance as may be appropriate;

k. Exercise functional supervision of the public information activities of the operating units, whether performed by information staffs or otherwise;

l. Review and evaluate the effectiveness of public affairs functions in the operating units, and furnish the results of such evaluation to the Secretary and the head of the operating unit concerned;

m. Advise the heads of operating units concerning the selection of persons to fill all positions at GS–13 or above in public information offices in the operating units; provide clearance with respect to such individuals;

n. Review and evaluate all Freedom of Information Act letters of appeal in accordance with section 5.04b. of DAO 205–12, and clear the proposed reply to each such appeal; and

o. Develop briefing books in connection with news conferences and for official travel by Secretary or Deputy Secretary.

Section 4. Organization

Under the direction and supervision of the Director, the functions of the Office shall be organized and carried out as provided below, (with the exception of preparation of speeches for the Secretary, Deputy Secretary, and other high level Departmental officials, which will be personally supervised by the Director).

.01 The Deputy Director of Public Affairs assists the Director in the performance of responsibilities and performs the duties of the Director in the latter's absence. The Deputy Director directly supervises the following activities:

a. Publications policy review, which includes the review of all proposed Departmental publications to insure the appropriate policy content.

b. Coordination of program briefings to the Secretary and Deputy Secretary prior to their national and international appearances.

c. Evaluation of the Secretary's and senior staff's speech invitations and operation of a Speakers Bureau to provide, where appropriate, spokespersons for the Department to groups and organizations which request them.

d. Development, implementation, and administration of the "Advance System", which will provide for prior arrangements and necessary liaison for public appearances by the Secretary and Deputy Secretary.

e. Direction of Public Affairs fields operations, including the conduct of public affairs liaison with the Secretarial Representatives.

f. Evaluation of all Freedom of Information requests from the media. (Information copies of such requests will be furnished the Office of Public Affairs by the FOIA facilities of the Department.)

g. Preparation of the Department's Annual Report.

h. Development of communication plans for the Department.

.02 The *Special Projects Division* is responsible for:

a. Assigning, editing, and arranging for publication of articles relating to the Department.

b. Handling Presidential/Secretarial messages to organizations and individuals.

c. Providing a focal point for public outreach through an *Information Center.*

d. Providing an *Audiovisual Branch* which is responsible for the coordination and control of technical and editorial quality of audiovisual materials produced by the Department, including the approval of proposed audiovisual productions, developing specifications and guidelines and providing technical consultation for the procurement of audiovisual equipment, placement of audiovisual equipment for in-house meetings and conferences, and the coordination of Commerce exhibits. The Branch consists of:

1. An *Audiovisual Technical Staff,* which will:

(a) Provide audiovisual services for the Secretary and Deputy Secretary, and other elements of the Office of the Secretary.

(b) Provide advice and assistance to Departmental offices and opperating units on the technical aspects of audiovisual production.

(c) Provide advice and suitable audiovisual equipment to be used in conference rooms.

2. An *Audiovisual Review Committee,* composed of audiovisual specialists from operating units of the Department, which:

(a) Reviews for approval of technical and editorial quality and policy content all proposed film productions, slide shows, or other audiovisual productions that will be used for public viewing.

(b) Reviews for approval requests for major audiovisual equipment for the entire Department to insure quality, compatibility, and elimination of duplicate equipment.

(c) Recommends guidelines for developing, producing, procuring, and distributing audiovisual materials.

(d) Assists operating units with technical advice.

3. An *Exhibit Committee,* composed of exhibit specialists from operating units of the Department, which:

(a) Considers exhibit events for joint participation by the Department's exhibiting units.

(b) Decides purchases of exhibit materials for joint exhibits.

e. Developing and implementing special public affairs projects, as assigned, which are not the responsibility of other elements of the Office.

.03 The *News Relations Division* is responsible for relationships with the media. The Division shall consist of:

a. A *News Room,* which is responsible for:

1. Coordinating media interviews.

2. Providing liaison with and assistance to representatives of the press on a day-to-day basis.

3. Reviewing and approving for issuance press releases from operating units.

4. Preparing press releases, articles, and other materials on Department-level matters.

5. Advising and assisting the public information staffs in the operating units in preparation and distribution of releases and material.

b. A *Broadcast Branch,* which will be responsible for:

1. Developing and producing radio/TV news and features, including the Department's Spotmaster service.

2. Evaluating and determining what news or feature items will be disseminated to radio and television.

3. Advising and assisting the Departmental offices and operating units in the use of the Department's radio facilities.

Section 5. The Public Affairs Council

The Public Affairs Council, headed by the Director of Public Affairs, shall consist of the head of the public information function in each operating unit. The Council shall:

a. Serve as a coordinating mechanism for disseminating Department policy concerning public affairs matters.

b. Advise the Director with respect to public information problems and developments.

c. Coordinate, as assigned, major public affairs projects affecting all elements of the Department.

d. Represent the views of the heads of the operating units in discussions with the Director of Public Affairs.

Elsa A. Porter,

Assistant Secretary for Administration.

[FR Doc. 80-32687 Filed 10-20-80; 8:45 am]

BILLING CODE 3510-17-M

[Dept. Organization Order 10-3, Amdt. 1]

Under Secretary for International Trade; Statement of Organization and Function and Delegation of Authority

Effective date: September 26, 1980.

This order effective September 26, 1980 amends the material appearing at 45 FR 6141 of January 25, 1980.

Department Organization Order 10-3 of January 2, 1980 is hereby amended as shown below. The purpose of this amendment is to delegate to the Under Secretary the Secretary's authority to issue regulations for ITA to carry out its functions under the International Investment Survey Act of 1976.

In Section 4. Delegation of authority, Subparagraph .01ii. of Section 4. is revised to read as follows:

"ii. Executive Order 11961 of January 19, 1977, as amended by Executive Order 12013 of October 7, 1977, which delegates to the Secretary of Commerce the authority of the President under Sections 4(a) (1), (2), (3), (4), and 4(b) of the International Investment Survey Act of 1976, (Pub. L. 94-472, 90 Stat. 2059, 22 U.S.C. 3101-3108). The functions thereunder shall be carried out in coordination with the Bureau of Economic Analysis, Office of the Chief Economist (Department Organization Order 35-1A), including, to the extent feasible, the division or assignment of responsibilities. All regulations established by ITA to carry out its functions under the Act shall be issued by the Under Secretary for International Trade in consultation with the Director, Bureau of Economic Analysis. All reports to be submitted to the Congress required to be undertaken pursuant to the Act, shall be issued by the Secretary."

Elsa A. Porter,

Assistant Secretary for Administration.

[FR Doc. 80-32688 Filed 10-20-80; 8:45 am]

BILLING CODE 3510-17-M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 80-2]

Imperial Carpets, Inc.; Prehearing Conference

Notice is hereby given that a prehearing conference in the above entitled matter will be held on Friday, October 31, 1980 at 10:00 a.m. in Hearing Room 2, Gelman Building, 2120 L Street, N.W., Washington, D.C., before the undersigned administrative law judge.

The issues presented by the complaint in this proceeding are as follows:

1. Whether respondents have failed to meet the acceptance criterion of the Standard for the Surface Flammability of Carpets and Rugs, 16 CFR Part 1630, Subpart A.

2. Whether the alleged practices of respondents are unlawful and constitute unfair medthods of competition and unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

The agenda for this prehearing conference includes a discussion of the following:

(1) Pending discovery requests.

(2) Consideration of the possibility of settling this case.

(3) Setting a schedule for the filing of all prehearing motions besides those going to discovery.

(4) Establishing a schedule for the exchange of witness lists, expected testimony, and documents.

(5) Setting a firm date for start of formal hearings.

Morton Needelman,

Administrative Law Judge.

October 8, 1980.

[FR Doc. 80-32626 Filed 10-20-80; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Department of the Army

Army Medical Research and Development Advisory Panel Ad Hoc Study Group on Medicinal Chemistry; Partially Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92-463), announcement is made of the following Committee meeting:

Name of Committee: United States Army Medical Research and Development Advisory Panel Ad Hoc Study Group on Medicinal Chemistry.

Date of Meeting: 14 November 1980.

Time and Place: 0845 hrs, Room 3092, Walter Reed Army Institute of Research, Washington, DC.

Proposed Agenda: This meeting will be open to the public on 14 November 1980 from 0845 to 1015 to discuss the scientific research program of the Medicinal Chemistry Branch, Walter Reed Army Institute of Research. Attendance by the public at open sessions will be limited to space available.

In accordance with the provisions set forth in Section 552b(c)(6), Title 5, U.S. Code and Section 10(d) of P.L. 92-463, the meeting will be closed to the public from 1015 to 1630 for the review, discussion and evaluation of individual programs and projects conducted by the U.S. Army Medical Research and Development Command, including consideration of personnel qualifications and performance, the competence of individual investigators, medical files of individual research subjects, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Howard Moyes, Associate Director for Research Management, Walter Reed Army Institute of Research, Building 40, Room 1111, Walter Reed Army Medical Center, Washington, DC 20012 (202/576-3061) will furnish committee summary minutes, roster of Committee members and substantive program information.

For the Commander.

Harry G. Dangerfield, M.D.,

Colonel, MC, Deputy Commander.

[FR Doc. 80-32712 Filed 10-20-80; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board.

Dates of Meeting: November 13 and 14, 1980.

Place: U.S. Army Combined Arms Combat Development Agency, Fort Leavenworth, Kansas.

Time: 0830-1630 hours, 13 Nov 80; and 0830-1200 hours, 14 Nov 80.

Proposed Agenda:

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. An Army Science Board Ad Hoc Sub-Group will meet to receive briefings on and examine Army plans to use modern instrumentation technology to evaluate unit exercises at the Army's National Training Center.

Persons desiring to attend the meetings should contact the Army Science Board, (202) 697-9703, for specific room location.

Helen Pipon,

Administrative Officer.

[FR Doc. 80-32705 Filed 10-20-80; 8:45 am]

BILLING CODE 3710-08-M

Office of the Secretary

Defense Science Board Task Force on ECM; Advisory Committee Meeting

The Defense Science Board Task Force on ECM will meet in closed session November 12–13, 1980 at the Pentagon, Washington, D.C.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense.

The Task Force will discuss potential technical solutions to several current problems in electronic countermeasures.

In accordance with 5 U.S.C. App. I section 10(d) (1976), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1976); and that accordingly, this meeting will be closed to the public.

M. S. Healy,

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

October 16, 1980.

[FR Doc. 80-32763 Filed 10-20-80; 8:45 am]

BILLING CODE 3810-70-M

Privacy Act of 1974; Amendments to Systems of Records

AGENCY: Defense Logistics Agency, DOD.

ACTION: Notice of amendments to systems of records.

SUMMARY: The Defense Logistics Agency (DLA) proposes to amend three systems of records subject to the Privacy Act of 1974. The specific changes to the systems being amended are set forth below followed by the systems published in their entirety as amended.

DATES: Proposed actions shall be effective November 20, 1980 unless public comments result in a contrary determination requiring republication for further comments.

ADDRESS: Send any comments to the system manager identified in the record system notice.

FOR FURTHER INFORMATION CONTACT: Mr. William A. Smith, Chief, Administrative Management Division (DLA–XA), Defense Logistics Agency, HQ DLA, Cameron Station, Alexandria, Va. 22314, Telephone 202–274–6250.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency's systems of records inventory as prescribed by the Privacy Act of 1974, 5 U.S.C. 552a(e)(4), have been published in the Annual Compilation at 44 FR 74719, December 17, 1979. The systems of records being amended are not deemed to be within the purview of 5 U.S.C. 552a(o) of the Privacy Act which requires submission of a new or altered system report to Office of Management and Budget guidance set forth in the **Federal Register** (40 FR 45877) on October 3, 1975.

October 15, 1980.

M. S. Healy,

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

Amendments

S322.10DLA-LZ

System name:

322.10 Defense Manpower Data Center Data Bases (44 FR 74740) December 17, 1979.

Changes:

Categories of individuals covered by the system:

Add "individuals receiving Veterans Administration Disability Benefits or having entitlement to VA medical care."

Routine uses:

Add new Routine use; "To the Office of Child Support Enforcement, Department of Health Education and Welfare, pursuant to Pub. L. 93–647, for the purpose of assisting state child support enforcement offices in locating absent parents in order to establish and/or enforce child support obligations."

Add new Routine use; "To the Director of the Selective Service System for use in wartime or emergency mobilization and for mobilization planning."

Add new Routine use; "To the Veterans Administration for analysis of the costs to the individual of military service connected disabilities."

S322.20DLA-LZ

System name:

322.20 Reenlistment Eligible File (RECRUIT) (44 FR 74742) December 17, 1979.

Changes:

System location:

Delete: "Manpower Research and Data Analysis Center" and insert "Manpower Data Center".

Categories of individuals covered by the system:

Delete: "and who are eligible for immediate reenlistment.".

Routine uses:

Delete: "Manpower Research and Data Analysis Center" and insert "Defense Manpower Data Center".

System manager(s) and address:

Delete: "Director, Manpower Research and Data Analysis Center" and insert "Chief, On-Line Systems Division, Defense Manpower Data Center".

Notification procedure:

Delete: "Manpower Research and Data Analysis Center, 300 N. Washington St., 7th Floor, Alexandria, VA 22314, Telephone: Area Code 703/325–0490" and insert "Defense Manpower Data Center, 550 Camino El Estero, Monterey, California 93940, Telephone: Area Code 408/375–4131."

Record access procedures:

Delete: "Manpower Research and Data Analysis Center, 300 N. Washington St., Alexandria, VA 22314" and insert "Defense Manpower Data Center, 550 Camino El Estero, Monterey, California 93940."

S322.35DLA-LZ

System name:

322.35 Survey Data Base (44 FR 74743) December 17, 1979

Changes:

System location:

Delete: "Manpower Research and Data Analysis Center" and insert "Defense Manpower Data Center".

Categories of individuals covered by the system:

Delete: "." and insert "and is part of the survey program of the recruiting market research program."

Routine uses:

Delete: "Research and Data Analysis Center" and insert "Defense Manpower Data Center."

System manager(s) and address:

Delete: "Director, Manpower Research and Data Analysis Center, 550 Camino El Estero, Monterey, California 93940" and insert "Chief, Defense Manpower Data Center, 300 North Washington Street, Alexandria, Virginia 22314."

Notification procedure:

Delete: "Chief, Market and Survey Research Division, Manpower Research and Data Analysis Center" and insert "Chief, Defense Manpower Data Center."

Record access procedures:

Delete: "Chief, Market and Survey Research Division" and insert "Chief, Defense Manpower Data Center."

S322.10DLA-LZ

SYSTEM NAME:

322.10 Defense Manpower Data Center Data Base.

SYSTEM LOCATION:

Primary location: W. R. Church Computer Center, Navy Postgraduate School, Monterey, CA 93940.

Back-up locations for processing: Air Force Data Services Center, Room 1D167, The Pentagon, Washington, D.C. 20330.

U.S. Army Management Systems Support Agency, Room BD972, The Pentagon, Washington, D.C. 20310.

National Military Command Systems Support Center, Room BE685, The Pentagon, Washington, D.C. 20331.

Back-up files maintained at two offices of the Defense Manpower Data Center, 7th Floor, 300 N. Washington St., Alexandria, VA 22314 and 2nd Floor, 550 Camino El Estero, Monterey, CA 93940.

Selected historic files are maintained at Air Force Data Services Center, Room 1D167, The Pentagon, Washington, D.C. pursuant to court order in IBM anti-trust case. These files will be withdrawn from current location when legally permissible.

Decentralized segments—Military personnel centers of the services; selected civilian contractors with research contracts in manpower area; other Federal agencies.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All officers and enlisted personnel who served on active duty from July 1, 1968 and later; or who have been a member of a reserve component since July 1975; or are retired military, participants in Project 100,000 and project transition and the evaluation control groups for these programs; all individuals examined to determine eligibility for military service at an Armed Forces Entrance and Examining Station from July 1, 1970, and later; DoD civilian employees or civilian employees separated since January 1, 1971; all veterans who have utilized Vietnam-era or GI Bill education and training entitlements, who visited a State Employment Service office since July 1, 1971, or who participated in a Department of Labor special training program since July 1, 1971; all individuals who ever participated in an educational program sponsored by the U.S. Armed Forces Institute, all individuals who participated in the Armed Forces Vocational Aptitude Testing Programs at the high school level since September 1969, individuals who responded to various paid advertising campaigns seeking enlistment information since July 1, 1973; participants in the DHEW, Office of Education and Longitudinal Survey, individuals responding to Recruiting Advertisements since January 1978; individuals receiving Veterans Administration Disability Benefits or having entitlement to VA medical care.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Service Number, Selective Service Number, Social Security Account Number, demographic information such as hometown, age, sex, race, and educational level; civilian occupational information, military personnel information such as rank, length of service, military occupation; aptitude scores, post-service education, training, and employment information for veterans; participating in various inservice education and training programs, military hospitalization records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 136.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The purpose of the system of records is to provide a longitudinal statistical analysis capability for accessing military manpower trends and evaluation programs impacting of military personnel, potential enlistees, and veterans.

Defense Manpower Data Center—used to analyze accession patterns and trends, promotion and occupation patterns and trends, loss patterns and trends, qualification rates, effectiveness of recruiting programs, participation in education and training programs, force characteristics, post-service experiences of veterans, evaluation of military special pays and bonuses; evaluation of special programs affecting military personnel; to select sample population for surveys; to provide statistical data to OMB, GAO, the Military Services, DoD civilian contractors, educational institutions and other Federal agencies.

Personnel Research and Personnel Management activities of the Military Services—uses are same as those specified above.

Veterans Administration, Management Sciences Staff, Reports and Statistics Service, Office of the Comptroller—used to select sample for surveys asking veterans about the use of veterans benefits and satisfaction with VA services, and to validate eligibility for VA benefits.

Office of Research and Statistics, Social Security Administration—used for statistical analyses of impact of military service and use of GI Bill benefits on long term earning.

DoD Civilian Contractors—used by contractors performing research on manpower problems for statistical analyses.

Aggregate data and/or individual records in the record system may be transferred to other Federal agencies having legitimate use for such information and applying appropriate safeguards to protect data so provided.

Records may be disclosed to the Civil Service Commission concerning pay, benefits, retirement deductions; and other information necessary for the Commission to carry out its Government-wide personnel management functions.

Any record contained in the system of records may be transferred to any other component of the Department of Defense having the need-to-know in the performance of official business.

Name and address information of former military personnel obtained from the Veterans Administration or the Military Department may be released to a number of DoD Components for use in attempting to recruit and reenlist prior service personnel through direct contact methods. These components are as follows: U.S. Army Recruiting Command; U.S. Army Forces Command; Navy Recruiting Command; Chief of Naval Personnel; Chief of Naval Reserve; U.S. Air Force Recruiting Service; U.S. Air Force Tactical Air Command; Headquarters Air Force Reserve; National Guard Bureau; Headquarters, U.S. Marine Corps; District Directors, U.S. Marine Corps; Commanding General 4th Marine Division; Commanding General, 4th Marine Air Wing; Commandant, U.S. Coast Guard.

Information on the name, rank, social security accounting number, duty station, birth date, retirement date, and retirement annuity may be disclosed to the Department of Health, Education, and Welfare (DHEW) for the following purposes:

To the Office of Education, DHEW, for the purpose of identifying individuals who appear to be in default on their guaranteed student loans so as to permit the DHEW to take action, where appropriate, to accelerate recoveries of defaulted loans.

To the Bureau of Supplemental Security Income, Social Security

Administration, DHEW, in order to verify and adjust as necessary payments made to active and retired military members under the Supplemental Security Income Program.

To the Office of the Inspector General, DHEW, for the purpose of identifying and investigating DoD employees (military and civilian) who may be improperly receiving funds under the Aid for Families of Dependent Children program.

To the Office of Child Support Enforcement, Department of Health Education and Welfare, pursuant to PL93–647, for the purpose of assisting state child support enforcement offices in locating absent parents in order to establish and/or enforce child support obligations.

To the Director of the Selective Service System for use in wartime or emergency mobilization and for mobilization planning.

To the Veterans Administration for analysis of the costs to the individual of military service connected disabilities.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic computer tape.

RETRIEVABILITY:

Retrievable by name, SSAN, age, occupation, or any other data element contained in system.

SAFEGUARDS:

Primary location—at W. R. Church Computer Center, tapes are stored in a locked cage in machine room, which is a controlled access area; tapes can by physically accessed only by computer center personnel and can be mounted for processing only if the appropriate security code is provided.

At back-up locations in Alexandria, VA And Monterey, CA tapes are stored in rooms protected with cypher locks, buildings are locked after hours, and only properly cleared and authorized personnel have access.

The Air Force Data Services Center, the U.S. Army Management Systems Support Agency, and the National Command Systems Support Center are all TOP SECRET facilities.

RETENTION AND DISPOSAL:

Files constitute a historical data base and are permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief, Defense Manpower Data Center (DMDC), 550 Camino El Estero, Monterey, CA 93940.

NOTIFICATION PROCEDURE:

Information may be obtained from: Deputy Chief, Defense Manpower Data Center, 550 Camino El Estero, Monterey, CA 93940. Telephone: Area Code 408/646–2951.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to Deputy Chief, Defense Manpower Data Center (DMDC), 550 Camino El Estero, Monterey, CA 93940.

Written requests for information should contain the full name, Social Security Account Number, date of birth, and current address and telephone number of the individual.

For personal visits, the individual should be able to provide some acceptable identification such as drivers license, or military or other ID card.

CONTESTING RECORD PROCEDURES:

The agency's rules for access to records for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSTEM MANAGER.

RECORD SOURCE CATEGORIES:

The Military Services, the Veterans Administration, the Office of Education of the Department of HEW, from individuals via survey questionnaires, the Department of Labor, the Civil Service Commission.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

S322.20DLA-LZ

SYSTEM NAME:

322.20 Reenlistment Eligible File (RECRUIT).

SYSTEM LOCATION:

Primary location: W. R. Church Computer Center, Naval Postgraduate School, Monterey, CA 93940.

Back-up file: Department of Defense Manpower Data Center, 7th Floor, 300 N. Washington St., Alexandria, VA 22314.

Back-up file: Department of Defense Manpower Data Center, 5450 Camino El Estero, Monterey, CA 93940.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Former enlisted personnel of the military services who separated from active duty during the immediately preceding forty-eight months.

CATEGORIES OF RECORDS IN THE SYSTEM:

Social Security Account Number, Name, Service, Date of Birth and Date of Separation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 136

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The purpose of the system is to assist recruiters in reenlisting prior-service personnel.

Department of Defense Manpower Data Center, used to provide to recruiters in the military service and the Coast Guard information on individuals eligible for immediate reenlistment; for statistical analyses of prior-service reenlistment trends and of demographic characteristics of applicants for reenlistment; such analyses may require merging with other record systems.

Any individual records contained in the system might be transferred to any component of the Department of Defense having a need to know in the performance of official business.

Any record may be disclosed to law enforcement or investigatory authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Most recent thirty-six months separation stored on magnetic disc; full forty-eight months stored on magnetic tape.

RETRIEVABILITY:

Retrievable by Social Security Account Number.

SAFEGUARDS:

DISC File is protected by password access and hard-wire system.

Alexandria, Virginia location has tape storage areas in locked room accessible only to authorized personnel; building is locked after hours.

Monterey, California location has tape storage area in locked room accessible only to authorized personnel; building is locked after hours.

Recruiters making telephone inquiries must have valid recruiter identification and call back number.

RETENTION AND DISPOSAL:

Records more than forty-eight months old are purged from the system.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, On-Line Systems Division, Defense Manpower Data Center, 550 Camino El Estero, Monterey, California 93940.

NOTIFICATION PROCEDURE:

Information may be obtained from: Manager, RECRUIT System, Defense Manpower Data Center, 550 Camino El Estero, Monterey, California 93940, Telephone: Area Code 408/375–4131.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to: Manager, RECRUIT System, Defense Manpower Data Center, 550 Camino El Estero, Monterey, California 93940.

Written request for information should contain the full name, current address, telephone number, Social Security Account Number, and date of separation of the individual.

For personal visits, the individual should be able to provide some acceptable identification such as driver's license.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSTEM MANAGER.

RECORD SOURCE CATEGORIES:

The data contained in the system are obtained from the Army, Navy, Air Force, Marine Corps, and Coast Guard.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

S322.35DLA–LZ

SYSTEM NAME:

322.35 Survey Data Base.

SYSTEM LOCATION:

Primary location: W. R. Church Computer Center, Naval Postgraduate School, Monterey, CA 93940.

Decentralized locations for back-up files: Department of Defense, Defense Manpower Data Center, 7th Floor, 300 N. Washington St., Alexandria, VA 22314 and 2nd Floor, 550 Camino El Estero, Monterey, CA 93940.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who were selected at random for survey administration and who completed survey forms. Survey data is collected on a periodic basis. Current data were collected at selected Armed Forces Entrance and Examining Stations (AFEES), during September 1974, May 1975, or since January 1975; additional data were collected by Gilbert Youth Organization (civilian contractor) in nation-wide surveys during May or November 1973, or May or November 1974 and is part of the survey program of the recruiting market research program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Social Security Account Number, and responses to survey items dealing with attitudes toward the military.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 136.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The purpose of the file is to sample attitudes toward enlistment in the military and determine reasons for enlistment decisions.

Manpower Data Center: Used to analyze trends in enlistment motivation, attitudes toward military service, attractiveness of various enlistment incentives; survey files are linked with military personnel inventory, gain and loss files to statistically relate survey data to later advancement, attritions, and reenlistment patterns.

Any individual record in the system may be transferred to any component of the Department of Defense having the need to know in the performance of official business.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic Computer Tape.

RETRIEVABILITY:

Records can be retrieved by Service of accession, period of survey, race, sex, education level, or Social Security Account Number.

SAFEGUARDS:

Tapes stored at the primary location are kept in a locked storage cage in a controlled access area; tapes stored at the back-up locations are kept in locked storage areas in buildings which are locked after hours.

RETENTION AND DISPOSAL:

Records are permanent. Survey answer sheets which are opscanned to create tape are destroyed after tape is created.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Defense Manpower Data Center, 300 N. Washington St., Alexandria, VA 22314.

NOTIFICATION PROCEDURE:

Information may be obtained from Chief, Defense Manpower Data Center, 300 N. Washington St., 7th Floor, Alexandria, VA 22314. Telephone: Area Code 703/325–0490.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to: Chief, Defense Manpower Data Center, 300 N. Washington St., Alexandria, VA 22314.

Written requests for information should contain the full name, Social Security Account Number, and current address and telephone number of the individual. In addition, the approximate date and location where the survey was completed should be provided.

For personal visits, the individual should be able to provide some acceptable identification such as driver's license or military or other ID card.

CONTESTING RECORD PROCEDURES:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSTEM MANAGER.

RECORD SOURCE CATEGORIES:

The survey information is provided by the individual; additional data which are linked to survey data as described in the routine uses section, are obtained from the military services.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 80–32715 Filed 10–20–80; 8:45 am]

BILLING CODE 3620–01–M

DEPARTMENT OF EDUCATION

National Advisory Council on Bilingual Education; Meeting

AGENCY: National Advisory Council on Bilingual Education.

ACTION: Notice.

SUMMARY: This notice sets forth the schedule and proposed agenda of forthcoming meetings of the National Advisory Council on Bilingual Education. Notice of these meetings is required under the Federal Advisory Committee Act (5 U.S.C. Appendix 1, 10(a)(2)). This document is intended to notify the general public of their opportunity to attend.

DATES: November 8, 9, and 10, 1980, 9:00 a.m.–5:00 p.m.

ADDRESS: Council meetings will be held at the Fort Brown Motor Hotel, 1900 E. Elizabeth Street, Aztec Room, Brownsville, Texas 78520. For further information contact: Joan Cassidy, Office of Bilingual Education and Minority Languages Affairs, Reporters Building, Room 421, Department of Education, 400 Maryland Avenue, S.W., Washington, DC 20202 (202–245–2595).

The National Advisory Council on Bilingual Education is established under Section 732(a) of the Bilingual Education Act (20 U.S.C. 3242) to advise the Secretary of the Department of Education concerning matters arising in the administration of the Bilingual Education Act.

The meetings of November 8, 9, and 10, 1980 will be open to the public beginning at 9:00 a.m.

November 8, 1980: A meeting of the Council on the following subjects is scheduled from 9:00 a.m. until 5:00 p.m. The proposed agenda includes the following:

Business Meeting

a. Call to Order
b. Approval of Minutes
c. Chairperson's Report
d. Committee Reports
e. Ad Hoc Reports

11:00–12:30—Review of Denver Meeting
1:30–3:00—Establish New Committees
3:00–4:30—Discuss Annual Report
4:30–5:00—Public Participation

November 9, 1980: The proposed agenda includes the following:

9:00–5:00—OBEMLA Director's Report.
a. Update on Lau
b. Part C
c. Bilingual Vocational Education
d. Refugee Issues
e. 1980–81 Funding Process: (1) Reader Selection, (2) Problems in Funding, (3) Funding Procedures, (4) Breakdown on Applications
f. Discussion on OBEMLA Reorganization

November 10, 1980: The proposed agenda includes the following:

9:00–11:30—Old Business: Action Items; New Business: Action Items; Agenda for next meeting; Public Participation.
1:00–until—Committee Meetings Adjournment.

Records will be kept of all Council proceedings and shall be available for public inspection after approval, by the Full Council, of said records has been obtained. These records will be available in Room 421, Reporters Building, 300 7th Street, S.W., Washington, DC. Written requests for such records should be sent to 400 Maryland Avenue, S.W., Reporters Building, Room 421, Washington, DC 20202. Stop number REP 421.

In the event that the proposed agenda is completed prior to the projected date or time, the Council will adjourn the meeting.

Signed at Washington, DC on October 16, 1980.

Joan E. Cassidy,

Program Delegate, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 80-32701 Filed 10-20-80; 8:45 am]

BILLING CODE 4000-01-M

Advisory Panel on Financing Elementary and Secondary Education; Meeting

AGENCY: Advisory Panel on Financing Elementary and Secondary Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Panel on Financing Elementary and Secondary Education. It also describes the functions of the Panel. Notice of this meeting is required under the Federal Advisory Committee Act, section 10(a)(2). This document is intended to notify the general public of its opportunity to attend.

DATE: November 6, 7, and 8, 1980.

ADDRESS: November 6 and 7, Hubert H. Humphrey Auditorium, 200 Independence Avenue, SW., Washington, D.C. and November 8, Bunker Hill Room, Hyatt Regency Washington Hotel, 400 New Jersey Avenue, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Will S. Myers, Executive Director, Advisory Panel on Financing Elementary and Secondary Education, 1325 G Street, NW., Suite 710, Washington, D.C. 20005, (202) 724–0875.

SUPPLEMENTARY INFORMATION: The Advisory Panel on Financing Elementary and Secondary Education is established under Section 1203, Title XII of the Education Amendments of 1978 (Pub. L. 95–561). The Panel is directed to provide the Secretary and the Congress with periodic advice and counsel concerning public policies on raising and distributing revenues to support elementary and secondary education. The views and recommendations of the Advisory Panel shall provide periodic advice to the Secretary concerning the conduct of studies authorized by Section 1203 and make interim reports to the President and the Congress in 1980, 1981, and 1982 on the results of the studies conducted. The Advisory Panel shall also provide comments on the Secretary's annual reports and such additional recommendations for legislation or other apropriate action to the Congress no later than sixty days after submission of such reports.

The meeting of the Panel will be open to the public on November 6 and 8 from 10:00 a.m. to 5:00 p.m., and on November 7 from 10:00 a.m. to 3:00 p.m.

The agenda for the meeting will include the following items:

1. Discussion of alternative Federal roles in financing elementary and secondary education.
2. Adoption of subject matter areas and schedule of hearings and meetings through February 1983.
3. Status report on the School Finance Project.
4. Management of Panel affairs.

On Friday, November 7 from 3:00 p.m. to 5:00 p.m., the meeting will be closed to the public, if necessary, to discuss internal personnel rules and practices. This meeting will be closed under the authority of the Federal Advisory Committee Act, section 10(d) and under the Government in the Sunshine Act, 5 U.S.C. 522b(c), exemption (2).

A record of the proceedings including a summary of the closed session which are informative to the public consistent with the policy of 5 U.S.C. 552b(c) shall be available for public inspection at the offices of the Advisory Panel on Financing Elementary and Secondary Education, located at 1325 G Street, NW., Suite 710, Washington, D.C. 20005, within 14 days following the session.

Signed at Washington, D.C. on September 29, 1980.

Will S. Myers,

Executive Director, Advisory Panel on Financing Elementary and Secondary Education.

[FR Doc. 80-32747 Filed 10-20-80; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

National Petroleum Council, Coordinating Subcommittee of the Committee on Arctic Oil and Gas Resources; Meeting

Notice is hereby given that the Coordinating Subcommittee of the Committee on Arctic Oil and Gas Resources will meet in December 1980. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Committee on Arctic Oil and Gas Resources will analyze the various issues bearing on expeditious resource development of this promising frontier area. Its analysis and findings will be based on information and data to be gathered by the various task groups. The time, location and agenda of the Coordinating Subcommittee meeting follows:

The fourth meeting of the Coordinating Subcommittee will be held on Friday, December 5, 1980, starting at 10:00 a.m., in the Board Room of DeGolyer and MacNaughton, 400 One Energy Square, Dallas, Texas.

The tentative agenda for the meeting follows:

1. Introductory remarks from Chairman and Government Cochairman.
2. Review the progress of the task groups.
3. Discuss the timetable of the Coordinating Subcommittee.
4. Discuss any other matters pertinent to the overall assignment of the Coordinating Subcommittee.

The meeting is open to the public. The Chairman of the Coordinating Subcommittee is empowered to conduct the meeting in a fashion that will, in his judgement, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Coordinating Subcommittee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform L. A. Vickers, Office of Oil and Natural Gas, Resource Applications, 202/633–8383, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E–190, DOE, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C., between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on October 10, 1980.

R. D. Langenkamp,

Deputy Assistant Secretary, Resource Development and Operations, Resource Applications.

October 10, 1980.

[FR Doc. 80-32764 Filed 10-20-80; 8:45 am]

BILLING CODE 6450-01-M

National Petroleum Council, Coordinating Subcommittee of the Committee on Environmental Conservation; Meeting

Notice is hereby given that the Coordinating Subcommittee of the Committee on Environmental Conservation will meet in November 1980. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Committee on Environmental Conservation will analyze the environmental problems of the oil and gas industries and the impact of current environmental control regulations on the availability and costs of petroleum products and natural gas. Its analysis and findings will be based on information and data to be gathered by the various task groups. The time, location and agenda of the Coordinating Subcommittee meeting follows:

The Coordinating Subcommittee will hold its second meeting on Thursday, November 6, 1980, starting at 10:00 a.m., in the Conference Room of the National Petroleum Council, 1625 K Street, NW., Washington, D.C.

The tentative agenda for the meeting follows:

1. Review assignments from the NPC Committee on Environmental Conservation.
2. Discuss study assignments for the task groups.
3. Discuss schedule of Subcommittee and task group activities.
4. Discuss any other matters pertinent to the overall assignment from the Secretary.

The meeting is open to the public. The Chairman of the Coordinating Subcommittee is empowered to conduct the meeting in a fashion that will, in his judgement, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Coordinating Subcommittee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform L. A. Vickers, Office of Oil and Natural Gas, Resource Applications, 202/633–8383, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E–190, DOE, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on October 10, 1980.

R. D. Langenkamp,

Deputy Assistant Secretary, Resource Development & Operations Resource Applications.

October 10, 1980.

[FR Doc. 80-32765 Filed 10-20-80; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Publication of Alternative Fuel Price Ceilings and Incremental Price Threshold for High Cost Natural Gas

The Natural Gas Policy Act of 1978 (NGPA) (Pub. L. 95–621), signed into law on November 9, 1978, mandated a new framework for the regulation of most facets of the natural gas industry. In general, under Title II of the NGPA, interstate natural gas pipeline companies are required to pass through certain portions of their acquisition costs for natural gas to industrial users in the form of a surcharge. The statute requires that the ultimate cost of gas to the industrial facility does not exceed the cost of the fuel oil which the facility could use as an alternative.

Pursuant to Title II of the NGPA of 1978, Section 204 (e), the Energy Information Administration (EIA) herewith publishes for the Federal Energy Regulatory Commission (FERC) computed natural gas ceiling prices and a high cost gas incremental pricing threshold which are to be effective November 1, 1980. These prices are based on the prices of alternative fuels.

For further information contact: Leroy Brown, Jr., Energy Information Administration, Federal Building, 12th & Pa. Ave., NW., Rm. 4121, Washington, D.C. 20461, (202) 633–9710.

Section I. Alternative Fuel Price Ceilings

As required by FERC Order No. 50, computed prices are shown for the 48 contiguous States. The District of Columbia's ceiling is included with the ceiling for the State of Maryland. The price ceiling is expressed in dollars per million British Thermal Units (BTU's). The method used to determine the price ceilings is described in Section III.

State	Dollars per million BTU's
Alabama	3.16
Arizona	2.81
Arkansas	3.24
California	2.75
Colorado	2.71
Connecticut	3.39
Delaware	3.24
Florida	3.01
Georgia	3.14
Idaho	3.32
Illinois	2.54
Indiana	2.54
Iowa	2.91
Kansas	2.43
Kentucky	3.49
Louisiana	2.53
Maine	3.45
Maryland	3.37
Massachusetts	3.41
Michigan	2.98
Minnesota	2.84
Mississippi	2.78
Missouri	2.90
Montana	2.62
Nebraska	2.83
Nevada	2.81
New Hampshire	3.44
New Jersey	3.26
New Mexico	2.27
New York	3.23
North Carolina	3.12
North Dakota	2.98
Ohio	2.11
Oklahoma	3.27
Oregon	3.04
Pennsylvania	3.40

State	Dollars per million BTU's
Rhode Island	3.44
South Carolina	3.16
South Dakota	3.10
Tennessee	3.37
Texas	3.26
Utah	2.71
Vermont	3.66
Virginia	3.15
Washington	2.86
West Virginia	2.86
Wisconsin	2.77
Wyoming	2.63

Section II. Incremental Pricing Threshold for High Cost Natural Gas

The EIA has determined that the volume-weighted average price for No. 2 distillate fuel oil landed in the greater New York City Metropolitan area during August 1980 was $33.22 per barrel. In order to establish the incremental pricing threshold for high cost natural gas, as identified in the NGPA, Title II, Section 203(a)(7), this price was multiplied by 1.3 and converted to its equivalent in millions of BTU's by dividing by 5.8. Therefore, the incremental pricing threshold for high cost natural gas, effective November 1, 1980, is $7.45 per million BTU's.

Section III. Method Used To Compute Price Ceilings

The FERC, by Order No. 50, issued on September 28, 1979, in Docket No. RM79–21, established the basis for determining the price ceilings required by the NGPA. FERC also, by Order No. 81, issued in the same docket on May 7, 1980, established that only the price paid for No. 6 high sulfur content residual fuel oil would be used to determine the price ceilings until November 1, 1981.

A. Data Collected

The following data were required from all companies identified by the EIA as sellers of No. 6 high sulfur content (greater than 1% sulfur content by weight) residual fuel oil: For each selling price, the number of gallons sold to large industrial users in the months of June 1980, July 1980 and August 1980.[1] All reports of volume sold and price were identified by the State into which the oil was sold.

[1] Large Industrial User—A person/firm which purchases No. 6 fuel oil in quantities of 4,000 gallons or greater for consumption in a business, including the space heating of the business premises. Electric utilities, governmental bodies (Federal, State or Local) and the military are excluded.

B. Method Used To Determine Alternative Price Ceilings

(1) Calculation of Volume-Weighted Average Price

The prices which will become effective November 1, 1980, (shown in Section I) are based on the reported price of No. 6 high sulfur content residual fuel oil, for each of the 48 contiguous States, for each of the 3 months, June 1980, July 1980, and August 1980. Reported prices for sales in June 1980 were adjusted by the percent change in the nationwide volume-weighted average price from June to August 1980. Prices for July 1980 were similarly adjusted by the percent change in the nationwide volume-weighted average price from July to August 1980. The volume-weighted 3-month average of the adjusted June 1980 and July 1980, and the reported August 1980 prices were then computed for each State.

(2) Adjustment for Price Variation

States were grouped into the regions identified by the FERC (see Section III.C.). Using the adjusted prices and associated volumes reported in a region during the 3-month period, the volume-weighted standard deviation of prices was calculated for each region. The volume-weighted 3-month average price (as calculated in Section III.B.(1) above) for each State was adjusted downward by two times this standard deviation for the region to form the adjusted weighted average price for the State.

(3) Calculation of Ceiling Prices

The lowest selling price within the State was determined for each month of the 3-month period (after adjusting up or down by the percent change in oil prices at the national level as discussed in Section III.B.(1) above). The products of the adjusted low price for each month times the State's total reported sales volume for each month were summed over the 3-month period for each State and divided by the State's total sales volume during the 3 months to determine the State's average low price. The adjusted weighted average price (as calculated in Section III.B.(2)) was compared to this average low price, and the higher of the values was selected as the base for determining the alternative fuel price ceiling for each State. For those States which had no reported sales during one or more months of the 3-month period, the appropriate regional volume-weighted alternative fuel price was computed and used in combination with the available State data to calculate the State's alternative fuel price ceiling base. The appropriate lag adjustment factor (as discussed in Section III.B.(4)) was then applied to the alternative fuel price ceiling base. The alternative fuel price (expressed in dollars per gallon) was multiplied by 42 and divided by 6.3 to estimate the alternative fuel price ceiling for the State (expressed in dollars per million Btu's).

(4) Lag Adjustment

The EIA has implemented a procedure to partially compensate for the two-month lag between the end of the month for which data are collected and the beginning of the month for which ceiling prices become effective. It was determined that *Platt's Oilgram Price Report* publication provides timely information relative to the subject. The prices found in *Platt's Oilgram Price Report* publication are given for each trading day in the form of high and low prices for No. 6 residual oil in 21 cities throughout the United States. The low posted prices for No. 6 residual oil in these cities were used to calculate a national and a regional lag adjustment factor. The national lag adjustment factor was obtained by calculating a weighted average price for No. 6 high sulfur residual fuel oil for the ten trading days ending October 10, 1980, and dividing that price by the corresponding weighted average price computed from prices published by Platt's for the month of August 1980. A regional lag adjustment factor was similarly calculated for four regions. These are: one for FERC Regions A and B combined; one for FERC Region C; one for FERC Regions D, E, and G combined and one for FERC Regions F and H combined. The lower of the national or regional lag factor was then applied to the alternative fuel price ceiling for each State in a given region as calculated in Section III.B.(3).

C. Listing of States by Region

States were grouped by the FERC to form eight distinct regions as follows:

Region A: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.
Region B: Delaware, Maryland, New Jersey, New York, and Pennsylvania.
Region C: Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia.
Region D: Illinois, Indiana, Kentucky, Michigan, Ohio, West Virginia, and Wisconsin.
Region E: Iowa, Kansas, Missouri, Minnesota, Nebraska, North Dakota, and South Dakota.
Region F: Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.
Region G: Colorado, Idaho, Montana, Utah, and Wyoming.

Region H: Arizona, California, Nevada, Oregon, and Washington.

Issued in Washington, D.C., on October 16, 1980.

Jimmie Petersen,

Acting Administrator, Energy Information Administration.

[FR Doc. 80-32813 Filed 10-20-80; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[Docket No. ERA-FC-80-030; ERA Case No. 51998-2322-07-22]

Powerplant and Industrial Fuel Use Act of 1978

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Acceptance of Exemption Petition.

SUMMARY: On March 27, 1980, Nevada Power Company (Nevada Power) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Eneregy (DOE) seeking a permanent peakload powerplant exemption from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act) (42 U.S.C. 8301 *et seq.)* The Act prohibits the use of petroleum or natural gas in new powerplants. Criteria for petitioning for a permanent peakload powerplant exemption from the prohibitions of FUA are published at 10 CFR 501.3 and 503.41.

Nevada Power proposes to install an 86,566 kilowatt natural gas/oil-fired gas combustion turbine unit to be known as Clark Unit No. 7, and certifies that the unit will be operated solely as a peakload powerplant and will be operated to meet peakload demand for the life of the plant.

ERA has accepted this petition pursuant to 10 CFR 501.3 and 501.63. In accordance with the provisions of Sections 701(c) and (d) of FUA, and 10 CFR 501.31 and 501.33, 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 December 5, 1980. A request for a public hearing may be made by any interested person within this same 45 day period.

ADDRESSES: Fifteen copies of written comments shall be submitted to: Department of Energy, Case Control Unit, Box 4629, Room 2313, 2000 M Street, NW., Washington, D.C. 20461.

Docket Number ERA-FC-80-030 should be printed clearly on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

William L. Webb, Office of Public Information Economic Regulatory Administration, Department of Energy, 2000 M Street, NW., Room B-110, Washington, D.C. 20461, Phone (202) 653-4055.

Louis T. Krezanosky, New Powerplants Branch, Economic Regulatory Administration, Department of Energy, 2000 M Street, NW., Room 3012 B, Washington, D.C. 20461, Phone (202) 653-4208.

Marilyn Ross, Office of General Counsel, Department of Energy, 6G-087 Forrestal Building, Washington, D.C. 20461, Phone (202) 252-2967.

SUPPLEMENTARY INFORMATION: FUA prohibits the use of natural gas or petroleum in certain new powerplants unless an exemption for such use has been granted by ERA. Nevada Power has filed a petition for a permanent peakload powerplant exemption to use natural gas or petroleum as a primary energy source.

As part of its petition, Nevada Power submitted a sworn statement by a duly authorized officer, Mr. J. H. Zornes, Vice President, Generation, as required by 10 CFR 503.41(b)(1). In his statement, Mr. Zornes certified that the proposed natural gas/oil-fired combustion turbine will be operated solely as a peakload powerplant and will be operated only to meet peakload demand for the life of the plant.

Mr. Zornes also certified that the maximum design capacity of the powerplant is 86,566 kilowatts and that the maximum generation that will be allowed during any 12-month period is the design capacity times 1,500 hours or 129,849,000 Kwh.

Under the requirements of 10 CFR 503.41(a)(2)(ii), if a petitioner proposes to use natural gas or to construct a powerplant to use natural gas in lieu of an alternate fuel as a primary energy source, he must obtain a certification from the Administrator of the Environmental Protection Agency or the director of the appropriate state air pollution control agency. This certification must state that the use by the powerplant of any available alternate fuel as a primary energy source will cause or contribute to a concentration, in an air quality control region or any area within the region, of a pollutant for which any national air quality standard is or would be exceeded. However, since ERA has determined that there are no presently available alternate fuels which may be used in the proposed powerplant, no such certification can be made. The certification requirement is therefore waived with respect to this petition.

ERA retains the right to request additional relevant information from Nevada Power at any time during the pendency of these proceedings where circumstances or procedural requirements may require.

The public file, contraining documents on these proceedings and supporting materials, is available for inspection upon request at: ERA, Room B-110, 2000 M Street, NW., Washington, D.C. 20461, Monday-Friday, 8:00 a.m.—4:30 p.m.

Issued in Washington, D.C., on October 14, 1980.

Robert L. Davies,

Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration.

[FR Doc. 80-32658 Filed 10-20-80; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[SA-FRL-1639-8]

Science Advisory Board, Clean Air Scientific Advisory Committee; Cancellation of Open Meeting

Notice is hereby given in accordance with Public Law 92-463 that the meeting of the Subcommittee on Carbon Monoxide, Clean Air Scientific Advisory Committee of the Science Advisory Board scheduled to be held on October 27, 1980, starting at 10 am in Room 3906 in the Mall of EPA Headquarters, 401 M Street, SW, Washington, D.C. 20460 is cancelled.

This meeting was cancelled because the conflict of scheduling between two Science Advisory Board committees. For further information contact Mr. Terry F. Yosie, Staff Officer (202) 755-0263.

Dated: October 17, 1980.

Richard M. Dowd,

Director, Science Advisory Board.

[FR Doc. 80-32887 Filed 10-20-80; 8:45 am]

BILLING CODE 6560-34-M

EXECUTIVE OFFICE OF THE PRESIDENT

Office of Administration

Advisory Committee on Financial Reporting for the Executive Office of the President

In accordance with the provisions of the Federal Advisory Committee Act and Office of Management and Budget Circular A-63, the Office of Administration publishes notice that the

Advisory Committee on Financial Reporting for the Executive Office of the President has been renewed for an additional two years. A description of the Committee's purpose and functions was published in the **Federal Register** on October 19, 1978. Comments should be directed to the Assistant to the Director for Audit and Assessment, Office of Administration, 726 Jackson Place, NW, Washington, D.C. 20503, telephone number 202 395–6877.

Sarah T. Kadec,

Deputy Director.

[FR Doc. 80–32718 Filed 10–20–80; 8:45 am]

BILLING CODE 3115–01–M

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 80–604; FCC 80–569]

American Telephone & Telegraph Co.; Revisions to Tariff; Memorandum Opinion and Order Instituting Investigation

Adopted: October 3, 1980.

Released: October 16, 1980.

In the matter of the American Telephone and Telegraph Company, Revisions to Tariff FCC Nos. 260 and 267, Maintenance of Service Charge Associated with Private Line Service and Dataphone Digital Service, Transmittal No. 13512.

By the Commission:

1. Before the Commission is a petition by Aeronautical Radio, Inc. (ARINC) seeking suspension and investigation of revisions filed by the American Telephone and Telegraph Company (AT&T) to Tariffs FCC Nos. 260 and 267.[1] These revisions, scheduled to become effective on October 5, 1980, provide for an increase in the maintenance of service charge found in AT&T's Private Line and Dataphone Digital Service (DDS) tariffs.[2] For the reasons explained below, we will deny the petition and permit the revisions to become effective. However, we are instituting on our own motion an investigation to determine whether AT&T is engaged in an unreasonable and unlawfully discriminatory tariff practice under the Communications Act by imposing a separate maintenance charge under its Private Line and DDS tariffs where customer provided equipment is involved, while at the same time including costs for comparable maintenance functions in bundled rates applicable to customers with AT&T provided equipment.

2. In seeking suspension and investigation, ARINC contends that the tariff revisions raise questions under Section 201(b) of the Communications Act, 47 U.S.C. § 201(b), regarding the reasonableness of the proposed increased rate levels for the maintenance of service charge. In support of this contention, ARINC argues that the magnitude of the rate increase is unfair and inequitable when considered in connection with AT&T tariff limitations on its liability to customers who incur maintenance expenses attributable to problems with AT&T's service.[3] ARINC additionally asserts that suspension and investigation are warranted because AT&T has failed to comply with Section 61.38 of the Commission's Rules by not providing an explicit explanation and justification of the rate increase. For its part, AT&T disagrees with ARINC that it has failed to comply with Section 61.38 and further submits that ARINC's remaining arguments are not relevant to the lawfulness of the proposed increase in the maintenance of service charge.

3. The Commission will suspend and investigate a tariff filing where it finds significant questions of lawfulness exist. However, in the present instance, we find that ARINC's main argument, that the proposed maintenance of service charge is disproportionately high in relation to AT&T's liability limitation, does not bring into question the reasonableness, and therefore the lawfulness, of the proposed rate levels for the maintenance of service charges. This conclusion stems from the fact that the maintenance of service charge and AT&T's liability limitation, as set forth in separate and distinct tariff provisions, have different underlying purposes. The maintenance of service charge, to be reasonable, must be based on AT&T's cost of providing this service.[4] Unlike the maintenance of service charge, AT&T's liability limitation is not a service charge but an assessment against AT&T to compensate a customer for expenses incurred as a result of nonintentional torts or service failures by AT&T. Furthermore, this assessment does not purport to reflect the full or even a substantial part of a customer's potential consequential losses or additional expenses. In any case, a common carrier has the right to reasonably limit liability and the resonableness of the liability limitation rests in striking a balance between the rights of aggrieved customers and the public interest in the provision of telephone service at the lowest possible cost.[5] Since it is evident that AT&T's liability limitation has no bearing on whether the proposed maintenance of service charge is at a reasonable level, we find that ARINC's arguments in this regard do not warrant suspension and investigation of the proposed tariff revisions.

4. As for ARINC's contention that AT&T has failed to comply with Section 61.38 of the Commission's Rules, we note that ARINC has failed to state in what respects AT&T's Section 61.38 support material is deficient. For this reason alone the contention fails. In any event, our independent analysis indicates that AT&T's support material complies with Section 61.38 requirements.

5. Although we are denying ARINC's petition and allowing these revisions to become effective, we are concerned that AT&T may be engaged in a discriminatory and unreasonable tariff practice when charging customers of non-AT&T equipment for maintenance service. AT&T's current maintenance of service charge involves maintenance functions and costs associated with isolating a trouble condition on the premises of a non-AT&T equipment customer. It applies only in instances where the trouble condition is found in the customer provided equipment. If, however, the problem is found to be in the connecting AT&T private line, there is no charge. In this latter case, the costs associated with these maintenance functions are presumably absorbed in the customer's private line rates. When a customer who leases both equipment and private line from AT&T calls upon AT&T to isolate a trouble condition, similar maintenance functions are performed and costs incurred. Nevertheless, under this scheme the AT&T equipment customer will incur no

[1] ARINC additionally asks the Commission to impose an accounting order on AT&T in connection with these revisions. Also before us is an opposition by AT&T and letters from Universal Electric Company, Lavino Shipping Company, and Management Cybernetics protesting the increased maintenance of service charge.

[2] The maintenance of service charge applies to a customer requested visit by an AT&T repairperson to isolate a trouble condition which is subsequently found to be in non-telephone company provided equipment or facilities used in connection with AT&T's private line services or DDS. The revisions would increase the maintenance of service charge to $80 from current rates of $11.35 for private line service and $27.05 for DDS.

[3] Except for willful misconduct, AT&T's tariffs limit liability "to an amount equal to the proportionate charge for the service for the period during which the service was affected." Tariff F.C.C. No. 260 § 2.1.3(A) and Tariff No. 267 § 2.4.2.(A). Additionally, AT&T's tariffs provide for a service interruption credit to compensate for loss. ARINC notes that AT&T's maximum liability for a customer's expenses relating to failure for one day of a typical 50-mile private line circuit would be $7.80.

[4] See, *Associated Press*, 55 FCC 2d 220, 222 (1975).

[5] See, *AT&T*, 76 FCC 2d 195, 198 (1980).

charge for isolating the trouble condition whether or not the fault lies with the equipment. Here, by contrast to the situation involving customer provided equipment, the cost of comparable maintenance functions must be recovered through both equipment and private line rates.

6. What becomes apparent from the foregoing is that AT&T's practice of including these maintenance functions with other service functions in bundled rate elements where AT&T equipment is involved precludes the Commission and the public from ascertaining whether unreasonable or unlawfully discriminatory charges are being levied against non-AT&T equipment customers for the performance of similar maintenance functions. For example, although the cost support material submitted by AT&T to justify the increase in the maintenance of service charge for non-AT&T equipment customers appears to justify the level of the charge, we note that AT&T has not filed a corresponding increase in its bundled rates for comparable maintenance functions being performed for AT&T equipment users. Although this may indicate that comparable charges are not being assessed for similar maintenance functions, the ability to determine whether and to what extent this is the case is impeded by AT&T's selective rate element bundling practice which prevents tracking of maintenance function costs. Furthermore, we believe that this disparate treatment of AT&T and non-AT&T equipment customers when charging for maintenance service functions could also have anticompetitive marketing implications against sellers of non-AT&T equipment. In recent years, this Commission has opened the terminal equipment market to competitive forces by permitting the attachment of customer provided equipment to the national telephone network.[6] We must ensure that tariff practices, such as the selective imposition of a separate maintenance charge where customer provided equipment is at fault, do not become a vehicle for discriminating against customers who provide their own equipment.

7. In *AT&T-Private Line Rate Structure (Notice)*, 74 FCC 2d 226 (1979), we instituted an inquiry and proposed rulemaking of AT&T tariff practices which we found to result in confusing, overly complex, and inconsistent service offerings and rate structures in all AT&T's private line tariffs. Among the tariff practices we considered to be unreasonable and unduly discriminatory was selective rate element bundling. There too we noted how this practice precludes the Commission and communications customer from ascertaining the true charges associated with various communications service functions. We ordered AT&T to submit a rate and tariff restructuring proposal to cure such unreasonable and discriminatory tariff practices. AT&T has since submitted a rate and tariff restructuring proposal which is now under consideration. Although the *Notice* was silent as to the final rate structure configurations themselves, AT&T was required to follow certain proposed rules and give recognition to certain principles which were set forth in the *Notice*. Among these was the requirement that once a service function is shown as a separate rate element in one rate schedule, it must be shown in like manner in all other schedules in which it appears. Keeping this principle in mind and recognizing the potential unlawfully discriminatory and anticompetitive effects of AT&T's practice of selectively unbundling maintenance charges, we believe that inquiry into this specific issue is warranted independent of our broader and more general treatment of AT&T's private line rate structures.

8. Therefore, we are here instituting on our own motion an investigation to determine whether AT&T is engaged in an unreasonable and unlawfully discriminatory tariff practice under Sections 201 and 202 of the Communications Act, 47 U.S.C. 201 and 202, by imposing under its Private Line and DDS tariffs a separate maintenance charge where customer provided equipment is involved, while at the same time imposing no charge for comparable maintenance functions except in bundled rates applicable to customers of AT&T equipment.[7] Should comments submitted by all interested parties show that inclusion of maintenance functions in bundled rate elements is an unreasonable and unlawfully discriminatory practice, we will consider ordering AT&T to unbundle its equipment rates and represent as a separate rate element within its Private Line and DDS tariffs all maintenance functions currently included in its maintenance of service charge applicable to customer provided equipment.[8]

9. We believe the questions raised here can be satisfactorily and promptly addressed and resolved through the use of written comment procedures. AT&T will have the burden of proving the questioned practice just, reasonable and not unduly discriminatory under Sections 201 and 202 of the Act.

10. Accordingly, it is ordered, that the petition filed by ARINC for suspension and investigation of revisions to AT&T Tariffs FCC Nos. 260 and 267 submitted under Transmittal No. 13512 is denied.

11. It is further ordered, that pursuant to the provisions of Sections 4(i), 4(j), 201, 202, 203, 204, 205, and 403 of the Communications Act, 47 U.S.C. 154(i), 154(j), 201, 202, 203, 204, 205, and 403, an investigation is hereby instituted into the foregoing matters.

12. It is further ordered, that AT&T and all interested persons wishing to participate may file comments on or before November 17, 1980. Reply comments shall be filed on or before December 15, 1980.

13. It is further ordered, that the Chief, Common Carrier Bureau is delegated authority to require the submission of additional information, make further inquiries, and modify dates and procedures, if necessary, to provide for a fuller record and more efficient proceeding.

14. It is further ordered, that the Secretary will cause this Memorandum Opinion and Order to be published in the **Federal Register.**

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 80-32736 Filed 10-20-80; 8:45 am]

BILLING CODE 6712-01-M

[BC Dockets Nos. 80-628 and 80-629, Files Nos. BPED-2613 and BPED-2617]

Arkansas University and Arkansas Broadcasting Foundation, Inc.; Hearing Designation Order

Adopted: October 6, 1980.

Released: October 21, 1980.

In the matter of applications of the Board of Trustees of the University of Arkansas on behalf of the University of Arkansas at Little Rock, Little Rock, Arkansas, Req: 88.3 MHz, Channel 202, 100kW (H&V), 822.2 feet; Arkansas Broadcasting Foundation, Inc., Little Rock, Arkansas, Req: 88.3 MHz, Channel

[6] See, Part 68 of the Commission's Rules and *Second Computer Inquiry*, 77 FCC 2d 384 (1980).

[7] We stress that we are not investigating the actual rate levels at this time. Instead, we are calling into question a tariff practice which we believe may prevent comparison of the charges imposed upon two classes of customers for similar maintenance functions.

[8] Since AT&T's maintenance of service charge does not include the actual repair of customer provided equipment, this latter function would not necessarily have to be unbundled from AT&T's equipment rates.

202, 100kW (H&V), 768 feet for construction permits for a new non-commercial educational FM station.

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has under consideration the above-captioned mutually exclusive applications filed by The Board of Trustees of The University of Arkansas on Behalf of the University of Arkansas at Little Rock (University) and the Arkansas Broadcasting Foundation, Inc.

2. *University.* 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 the University published the required notice. To remedy this deficiency, it will be required to publish local notice of its application and to file a statement of publication with the presiding Administrative Law Judge.

3. Analysis of the financial data submitted by the University reveals that $120,944 will be required to construct the proposed station and operate for three months, itemized as follows:

Equipment	$96,694
Building	3,000
Operating costs (3 months)	21,250rn,s
Total	120,944

The applicant plans to finance construction and operation with $24,923 in state appropriations and a $74,770 grant from HEW–EBFP. The University has not shown that the grant from HEW–EBFP will be available. Therefore only $24,923 has been shown to be available to the University. A limited financial issue will be specified.

4. The University has failed to comply with the requirements of the *Primer on Ascertainment of Community Problems by Noncommercial Educational Broadcast Applicants,* 58 FCC 2d 526 (1976). In Exhibit 9 of its application, UALR stated that an ascertainment of community leaders would be accomplished and submitted as an amendment to the application. Commission records do not show that this amendment was submitted. Accordingly, a general ascertainment issue will be specified.

5. Neither applicant has indicated whether an attempt has been made to negotiate a share-time arrangement. Therefore, an issue will be specified to determine whether a share-time arrangement between the applicants would be the most effective use of the frequency and thus better serve the public interest. *Granfalloon Denver Educational Broadcasting, Inc.,* 43 FR 49560, published October 24, 1978. In the event that this issue is resolved in the affirmative, an issue will also be specified to determine the nature of such an arrangement. It should be noted that our action specifying a "share-time issue" is not intended to preclude the applicants, either before the commencement of the hearing or at any time during the course of the hearing, from participating in negotiations with a view toward establishing a share-time agreement between themselves.

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 Secton 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 the University of Arkansas at Little Rock:

(a) The source and availability of additional funds over and above the $24,923 indicated; and

(b) Whether, in light of the evidence adduced pursuant to (a) above, the applicant is financially qualified.

2. To determine the efforts made by the University 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 whether a share-time arrangement between the applicants would result in the most effective use of the channel and thus better serve the public interest, and, if so, the terms and conditions thereof.

4. To determine the extent to which each of the proposed operations will be integrated into the overall educational operation and objectives of the respective applicants; or whether other factors in the record demonstrate that one applicant will provide a superior FM educational broadcast service.

5. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

8. It is further ordered, That the University of Arkansas at Little Rock 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.

9. 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.

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 Section 73.3594(g) 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, Broadcast Bureau.

[FR Doc. 80-32737 Filed 10-20-80; 8:45 am]

BILLING CODE 6712-01-M

[CC Dockets Nos. 80-612 and 80-813, File Nos. 3842-CM-P-78 and 740-CM-P-79]

Microband Corp. of America and Multipoint Network Corp.; Hearing Designation Order

Adopted: October 6, 1980.

Released: October 14, 1980.

In the matter of applications of Microband Corporation of America and Multipoint Network Corporation for construction permits in the multipoint distribution service for a new station in the Scranton-Wilkes Barre, Pennsylvania area.

By the Chief, Common Carrier Bureau:

1. The Commission has before it the above-referenced application of Microband Corporation of America, filed on September 28, 1978 (accepted on Public Notice October 10, 1978) and the application of Multipoint Network Corporation filed on December 6, 1978 (accepted on Public Notice December 26, 1978). Both applications are for a construction permit in the Multipoint Distribution Service and both propose to operate on Channel 1 in the Scranton-Wilkes Barre, Pennsylvania area. The applications are therefore mutually exclusive and require comparative consideration. Both applications have been amended as a result of informal requests by the Commission staff for

additional information, and no petitions to deny or other objections to either of the applications have been filed.

2. Upon review of the captioned applications, we find that both applicants are legally, technically, financially, and otherwise qualified to provide the services which they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

3. Accordingly, it is hereby ordered, That pursuant to 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. § 309(e) and Section 0.291 of the Commission's Rules, 47 CFR 0.291, the above-captioned applications are designated for hearing, in a consolidated proceeding, at a time and place to be specified in a subsequent order, to determine, on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered: [1]

(a) The relative merits of each proposal with respect to efficient frequency use, particularly with regard to compatibility with co-channel use in the same city;

(b) The anticipated quality and reliability of the service proposed, including installation and maintenance programs; and

(c) The comparative cost of each proposal considered in context with the benefits of efficient spectrum utilization and the quality and reliability of service as set forth in issues (a) and (b).

4. It is further ordered, That Microband Corporation of America, Multipoint Network Corporation and the Chief, Common Carrier Bureau, are made parties to this proceeding.

5. It is further ordered, That parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of Section 1.221 of the Commission's Rules.

Thomas J. Casey,

Deputy Chief, Operations, Common Carrier Bureau.

[FR Doc 80-32738 Filed 10-20-80; 8:45 am]

BILLING CODE 6712-01-M

[BC Docket Nos. 80-630 and 80-631, File Nos. BPH-790329AC and 790808AE]

Mountain View Broadcasting Corp. and White River Broadcasting Co.; Hearing Designation Order

Adopted: October 6, 1980.

Released: October 20, 1980.

In the matter of applications of Mountain View Broadcasting Corporation, Mountain View, Arkansas, Req: 103.3 MHz, Channel 277C 100 kW (H&V), 947 feet (BC Docket No. 80-630, File No. BPH-790329AC), and The White River Broadcasting Company, Mountain View, Arkansas, Req: 103.3 MHz, Channel 277C 100 kW (H&V), 955 feet (BC Docket No. 80-631, File No. BPH-790808AE) for a construction permit for a new FM station.

By Chief, Broadcast Bureau:

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has under consideration the above-captioned mutually exclusive applications of Mountain View Broadcasting Corporation (Mountain) and The White River Broadcasting Company for a construction permit for a new FM Station.

2. *Mountain.* Analysis of the financial data submitted by Mountain reveals that $214,615 will be required to construct the proposed station and operate for three months, itemized as follows:

Equipment	$149,000
Grand National Bank loan repayments including interest (5 months)	26,665
Miscellaneous	16,500
Operating costs (3 months)	22,450
Total	214,615

The applicant plans to finance its proposal from the following sources:

Grand National Bank loan	$200,000
First National Bank of Batesville loan	125,000
Bank of Mountain View loan	10,000
Shareholders' contributions	40,000
Existing capital	800
Total	375,800

The loan commitment from the First National Bank expired, by its own terms, on February 22, 1980. Mountain has not documented its shareholders' agreements to contribute $40,000, for example, by submitting copies of the agreements. Since the applicant has only documented $210,800 in funds available to meet a requirement of $214,615, a financial issue will be specified.

3. *Other matters.* Data submitted by the applicants indicate that there would be a significant difference in the populations which would receive service from the proposals since the applicants have specified slightly different areas to be served. Consequently, for the purpose of comparison, the 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.

4. Except as indicated by the issue 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.

5. 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 Mountain View Broadcasting Corporation:

(a) the source and availability of additional funds over and above the $210,800 indicated; and

(b) in light of the evidence adduced pursuant to (a) above, whether the applicant is financially qualified to construct and operate the proposed station.

2. To determine which of the proposals would, on a comparative basis, better serve the public interest.

3. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

6. 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.

7. 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(g) 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.

[1] Consideration of these factors shall be made in light of the Commission's discussion in *Applications of Frank K. Spain*, 77 FCC 2d 20 (1980).

Federal Communications Commission.
Jerold L. Jacobs,
Chief, Broadcast Facilities Division.
[FR Doc. 80-32739 Filed 10-20-80; 8:45 am]
BILLING CODE 6712-01-M

[BC Dockets Nos. 80-624 and 80-625, File Nos. BPH-790521AB and BPH-790831AF]

Rainbow Broadcasting Corp. and Brown Broadcasting Enterprises, Inc.; Hearing Designation Order

Adopted: October 6, 1980.
Released: October 17, 1980.

In the matter of applications of Rainbow Broadcasting Corporation, Lincoln City, Oregon, Req: 96.7 MHz, Channel 244 .610 kW (H&V), 670 feet; Brown Broadcasting Enterprises, Inc., Lincoln City, Oregon, Req: 96.7 MHz, Channel 244 3 kW (H&V), 300 feet. 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 filed by Rainbow Broadcasting Corporation (Rainbow) and Brown Broadcasting Enterprises, Inc. (Brown).

2. *Rainbow.* In paragraph 5 of the June 4, 1980 amendment Charles Rowe-Rook is listed as owning 51% of Rainbow stock while in Table I of Form 301 as originally filed he is listed as owning 50%. Accordingly, Rainbow will be required to file a statement resolving this discrepancy with the presiding Administrative Law Judge.

3. Rainbow proposes independent programming while Brown proposes to duplicate some of the programming of its commonly-owned station, KCBH(AM). Therefore, evidence regarding program duplication will be admissible under the standard comparative issue. When duplicated programming is proposed, the showing permitted will be limited to evidence concerning the benefits to be derived from the proposed duplication which would offset its inefficiency. *Jones T. Sudbury,* 8 FCC 2d 360, 10 RR 2d 114 (1967).

4. Data submitted by the applicants indicate that there would be 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.

5. 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.

6. 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 which of the proposals would, on a comparative basis, better serve the public interest.

2. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which of the applications, if either, should be granted.

7. It is further ordered, That, Rainbow Broadcasting Corporation file a statement of Charles Rowe-Rook's ownership interest with the presiding Administrative Law Judge.

8. It is further ordered, That in the event the application of Brown Broadcasting Enterprises, Inc. is granted, it is subject to the condition that if the Commission ultimately adopts a rule prohibiting commonly owned AM and FM stations in the same market, Brown will divest itself of either its AM station or FM station in accordance with the requirements established in such rulemaking proceeding.

9. 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.

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 Section 73.3594(g) 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 Broadcast Bureau.
[FR Doc. 80-32740 Filed 10-20-80; 8:45 am]
BILLING CODE 6712-01-M

[BC Dockets Nos. 80-626 and 80-627, Files Nos. BPH-781101AF and BPH-790328AJ]

R & S Broadcasting Co., Inc., and Summersville, W. Va.; Hearing Designation Order

Adopted: October 6, 1980.
Released: October 20, 1980.

In the matter of applications of R & S Broadcasting Company, Inc. Summersville, West Virginia, Req: 92.9 MHz, Channel 225 30.9 kW (H&V) 656 feet; Bright Broadcasting Corporation, Summersville, West Virginia, Req: 92.9 MHz, Channel 225 6.67 kW (H&V) 1305 feet. 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 filed by R&S Broadcasting Company, Inc. (R&S) and Bright Broadcasting Corporation (Bright).

2. *R&S.* The applicant's transmitter site is short-spaced for one mile with the reference point for Mullens, West Virginia and with the pending application of Slab Fork Broadcasting Company, Mullens, West Virginia. For this reason, R&S has requested a waiver of Section 73.207(a) of the Commission's Rules.[1] Normally, when one application in a mutually exclusive group is short-spaced with an existing station, we give the applicant 30 days to amend to a non-short-spaced site, or face dismissal. This policy will not be applied in the present case since R&S is short-spaced and timely filed with another pending application, whose status depends on the outcome of a comparative hearing. Thus, we had a choice of either consolidating the Summersville and Mullens/Pineville applications for hearing in a single proceeding or conducting what would normally be two distinct hearings. Because of the Section 307(b) issue presented in the Mullens/Pineville case, we believe that the public interest would be better served by holding two separate hearings. Finally, because R&S's site is short-spaced with the Mullens reference point and the Slab Fork application by only one mile, we will waive Section 73.207(a).

[1] Section 73.207(a) specifies the minimum milage separations between co-channel and adjacent-channel stations on commercial channels.

3. R&S has not provided us with a current FAA clearance. Accordingly, an appropriate issue will be specified.

4. R&S submitted substantially the same application on January 31, 1978. The applicant conducted ascertainment surveys in August and September, 1977. On January 23, 1978, the Commission dismissed the R&S application because of a minor violation of the short-spacing criteria of Section 73.207(a). As a result of certain technical criteria explained in *Report and Order,* Docket No. 21037, adopted May 2, 1977; *Erratum,* Docket No. 21037, released September 11, 1979, the applicant was encouraged by the staff to resubmit its application. R&S did so on November 1, 1978. Thus, the ascertainment surveys were conducted more than 6 months before the filing of the instant application. However, under the circumstances, we will not specify an issue.

5. *Bright.* The applicant has requested a waiver of Section 73.210(a) of the Commission's Rules to permit its main studio to be located outside the city of license. We will not rule on the request at this juncture. Rather, an issue will be specified so that the matter may be explored in hearing.

6. 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 subsequent Order, upon the following issues:

1. To determine whether there is a reasonable possibility that the tower height and location proposed by R&S would constitute a hazard to air navigation.

2. To determine whether good cause exists for Bright to locate its main studio outside its community of license as required by Section 73.210(a) of the Commission's Rules.

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 of R&S for waiver of Section 73.207(a) of the Commission's Rules is granted.

9. 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.

10. It is further ordered, That the Federal Aviation Administration is made a party to the proceeding.

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 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. 80-32741 Filed 10-20-80; 8:45 am]

BILLING CODE 6712-01-M

[CC Dockets Nos. 80-617 and 80-618, Files Nos. 2437-CM-P-73 and 2438-CM-P-73]

Southeast Mobilphone, Inc., and Chattanooga Signal Corp.; Memorandum Opinion and Order

Adopted: October 6, 1980.

Released: October 14, 1980.

In the matter of applications of Southeast Mobilphone, Inc.(CC Docket No. 80-617, File No. 2437-CM-P-73) and Chattanooga Signal Corporation (CC Docket No. 80-618, File No. 2438-CM-P-73) for construction permits in the multipoint distribution service for a new station at Chattanooga, Tennessee.

By the Chief, Common Carrier Bureau:

1. The Commission has before it the above-referenced application of Southeast Mobilphone, Inc., filed on October 4, 1972 (Accepted on Public Notice October 16, 1972) and the application of Chattanooga Signal Corporation filed on October 4, 1972 (Accepted on Public Notice October 16, 1972).[1] Both applications are for a construction permit in the Multipoint Distribution Service and both propose to operate on Channel 1 in Chattanooga, Tennessee. The applications are therefore mutually exclusive and require comparative consideration. Both applications have been amended as a result of informal requests by the Commission staff for additional information, and no petitions to deny or other objections to either of the applications have been filed.

2. Upon review of the captioned applications, we find that both applicants are legally, technically, financially, and otherwise qualified to provide the services which they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

3. Accordingly, it is hereby ordered, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. § 309(e) and Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, the above-captioned applications are designated for hearing, in a consolidated proceeding, at a time and place to be specified in a subsequent order, to determine, on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered: [2]

(a) The relative merits of each proposal with respect to efficient frequency use, particularly with regard to compatibility with co-channel use in nearby cities and adjacent channel use in the same city;

(b) The anticipated quality and reliability of the service proposed, including installation and maintenance programs; and

(c) The comparative cost of each proposal considered in context with the benefits of efficient spectrum utilization and the quality and reliability of service as set forth in issues (a) and (b).

4. It is further ordered, that Southeast Mobilphone, Inc., Chattanooga Signal Corporation and the Chief, Common Carrier Bureau, are made parties to this proceeding.

5. It is further ordered, that parties desiring to participate herein shall file their notices of appearance in

[1] Chattanooga Signal Corporation's application (File No. 2438-CM-P-73) was dismissed without prejudice on May 18, 1977, pursuant to Section 21.17 (a), (b), (e) and (f) of Commission's Rules. Application for Review was filed pursuant to Section 1.115 of the Rules on June 13, 1977. On June 27, 1977, Texas Microwave, Inc. filed an "Opposition to Application for Review." The Commission reinstated *nunc pro tunc* application File No. 2438-CM-P-73 by Memorandum Opinion and Order, adopted on December 4, 1979 and released December 10, 1979 (Mimeo 79-811, #15266).

[2] Consideration of these factors shall be made in light of the Commission's discussion in *Applications of Frank K. Spain,* 77 FCC 2d 20 (1980).

accordance with the provisions of Section 1.221 of the Commission's Rules.

Thomas J. Casey,

Deputy Chief, Operations, Common Carrier Bureau.

[FR Doc 80-32742 Filed 10-20-80; 8:45 am]

BILLING CODE 6712-01-M

[CC Dockets Nos. 80-614 and 80-615, Files Nos. 22-CM-P-73 and 562-CM-P-73]

Southeast Mobilphone, Inc., et al.; Memorandum Opinion and Order

Adopted: October 6, 1980.

Released: October 14, 1980.

In the matter of applications of Southeast Mobilphone, Inc., (CC Docket No. 80-614, File No. 22-CM-P-73) and Midwest Corporation (CC Docket No. 80-615, File No. 562-CM-P-73) and Knoxville Signal Corporation (CC Docket No. 80-616, File No. 1703-CM-P-73) for construction permits in the multipoint distribution service for a new station at Knoxville, Tennessee.

By the Chief, Common Carrier Bureau:

1. The Commission has before it the above-referenced application of Southeast Mobilphone, Inc., filed on July 7, 1972 (accepted on Public Notice July 17, 1972); the application of Midwest Corporation, filed on July 26, 1972 (accepted on Public Notice August 7, 1972) and the application of Knoxville Signal Corporation, filed on September 14, 1972 (accepted on Public Notice September 25, 1972).[1] These applications are for a construction permit in the Multipoint Distribution Service and they propose to operate on Channel 1 in Knoxville, Tennessee. The applications are therefore mutually exclusive and require comparative consideration. These applications have been amended as a result of informal requests by the Commission staff for additional information, and no petitions to deny or other objections to any of the applications have been filed.

2. Upon review of the captioned applications, we find that these applicants are legally, technically, financially, and otherwise qualified to provide the services which they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

3. Accordingly, it is hereby ordered, that pursuant to Section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. § 309(e) and Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291 the above-captioned applications are designated for hearing, in a consolidated proceeding, at a time and place to be specified in a subsequent order, to determine, on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered: [2]

(a) The relative merits of each proposal with respect to efficient frequency use, particularly with regard to compatibility with co-channel use in nearby cities and adjacent channel use in the same city;

(b) The anticipated quality and reliability of the service proposed, including installation and maintenance programs; and

(c) The comparative cost of each proposal considered in context with the benefits of efficient spectrum utilization and the quality and reliability of service as set forth in issues (a) and (b).

4. It is further ordered, that Southeast Mobilphone, Inc., Midwest Corporation, Knoxville Signal Corporation and the Chief, Common Carrier Bureau, are made parties to this proceeding.

5. It is further ordered, that parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of Section 1.221 of the Commission's Rules.

Thomas J. Casey,

Deputy Chief, Operations, Common Carrier Bureau.

[FR Doc. 80-32743 Filed 10-20-80; 8:45 am]

BILLING CODE 6712-01-M

[BC Docket No. 80-622 and 80-623, Filed Nos. BPH-780822AA and BPH-790112AF]

Wuenschel Broadcasting Co., Inc. and Manzano Broadcasting Inc., Hearing Designation Order

Adopted: September 30, 1980.

Released: October 17, 1980.

In the matter of applications of Wuenschel Broadcasting Company, Inc. Belen, New Mexico, Req: 97.7 MHz, Channel 249 3kW (H&V), 276 feet (BC Docket No. 80-622, File No. BPH-780822AA) and Manzano Broadcasting Incorporated Belen, New Mexico, Req: 97.7 MHz, Channel 249 3kW (H&V), 57 feet (BC Docket No. 80-623, File No. BPH-790112AF) 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 filed by Wuenschel Broadcasting Co., Inc. (Wuenschel) and Manzano Broadcasting Incorporated (Manzano).[1]

2. *Wuenschel.* Analysis of the financial data submitted by Wuenschel reveals that $69,670 will be required to construct the proposed station and operate for three months, itemized as follows:

Equipment	$51,680
Other	2,500
Operating costs (three months)	15,490
Total	69,670

Wuenschel plans to finance construction and operation with $54,000 in existing capital and a $100,000 SBA loan. To obtain the $100,000 SBA loan, Wuenschel is required to inject $54,000. To meet this requirement, applicant intends to rely upon $5,000 from Shalako Communications, Inc.; $1,176.80 from Fred Wuenschel; and $17,951 in pre-paid expenses. Nothing has been submitted to show that Shalako communications, Inc. is either committed to or has the $5,000 to pay Wuenschel. Fred Wuenschel has failed to submit an individual balance sheet or financial statement as required by paragraph 4(b) of Section III of Form 301. The June 26, 1978 financial statement was jointly submitted by Fred and Patricia Wuenschel prior to their divorce. In order to demonstrate his ability to contribute funds, Fred Wuenschel will be required to submit an updated individual financial statement. Lastly, $17,951.07 in pre-paid expenses is not reflected in estimated costs. Accordingly, since the SBA loan of $100,000 is conditioned upon Wuenschel's ability to raise $54,000, it has failed to show the necessary documentation to support more than $29,892 available to meet the $69,670 required for construction and operation. A limited financial issue will therefore be specified.

3. *Manzano.* Applicants for new broadcast stations are required by Section 73.3580(f) of the Commission's

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[1] Knoxville Signal Corporation's application (File No. 1703-CM-P-73) was dismissed without prejudice on May 18, 1977, pursuant to Sections 21.7 (a), (b), (e), and (f) of Commission's Rules. An application for Review was filed pursuant to Section 1.115 of the Rules on June 13, 1977. On June 27, 1977, Texas Microwave, Inc. filed an "Opposition to Application for Review." The Commission reinstated *nunc pro tunc* application File No. 1703-CM-P-73 by Memorandum Opinion and Order, adopted on December 4, 1979 and released December 10, 1979 (Mimeo 79-811 No. 15266).

[2] Consideration of these factors shall be in light of the Commission's discussion in *Applications of Frank K. Spain*, 77 FCC 2d 20 (1980).

[1] Manzano's August 26, 1980 petition for leave to amend will be granted and the amendment accepted to correct an error in shareholdings because the information is required by Section 1.65 of the Rules, will not afford a comparative advantage to Manzano, and will not prejudice any other party.

Rules to give local notice of the filing of their applications. They must then file with the Commission the statement described in Section 73.5380(h) of the Rules. We have no evidence that Manzano published the required notice. To remedy this deficiency, Manzano will be required to publish local notice of its application, if it has not already done so, and to file a statement of publication with the presiding Administrative Law Judge.

4. 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.

5. Except as indicated above, 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.

6. 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 Wuenschel Broadcasting Co., Inc.:

(a) the source and availability of additional funds over and above the $29,892 indicated; and

(b) whether, in light of the evidence adduced pursuant to (a) above, the applicant is financially qualified.

(2) To determine which of the proposals would, on a comparative basis, better serve the public interest.

(3) To determine, in the light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

7. It is further ordered, that Manzano Broadcasting Incorporated 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.

8. It is further ordered, that the petition for leave to amend filed by Manzano Broadcasting Incorporated is granted, and the August 26, 1980 amendment is accepted.

9. 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.

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 Section 73.3594(g) 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, Broadcast Bureau.

[FR Doc. 80-32744 Filed 10-20-80; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1252]

Petitions for Reconsideration of Actions in Rule Making Proceedings

October 15, 1980.

The following listings of petitions for reconsideration filed in Commission rulemaking proceedings is published pursuant to 47 CFR 1.429(e). Oppositions to such 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 the time for filing oppositions has expired.

Subject: Amendment of rules to provide for emergency medical service (EMS) communications systems requirements. (RM-3500)

Rule section: Part 90.

Filed by: Joan Claybrook, Administrator for Department of Transportation (National Highway Traffic Safety Administration) on 10-2-80.

Subject: Modification of procedures for dealing with applications for review of staff actions in non-hearing matters. (RM-3157)

Rule section: 1.115.

Filed by: John H. Midlen, Jr., Attorney for The Way of Life Television Network, Inc. on 9-26-80.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 80-32778 Filed 10-20-80; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreements Filed

The Federal Maritime Commission hereby gives notice that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of each of the agreements and the justifications offered therefor at the Washington Office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10218; or may inspect the agreements at the Field Offices located at New York, N.Y.; New Orleans, Louisiana; San Francisco, California; Chicago, Illinois; and San Juan, Puerto Rico. Interested parties may submit comments on each agreement, including requests for hearing, to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before November 10, 1980. Comments should include facts and arguments concerning the approval, modification, or disapproval of the proposed agreement. Comments shall discuss with particularity allegations that the agreement is unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or operates to the detriment of the commerce of the United States, or is contrary to the public interest, or is in violation of the Act.

A copy of any comments should also be forwarded to the party filing the agreements and the statement should indicate that this has been done.

Agreement No.: T-2590-8.

Filing Party: Francis D. Barrett, Curry and Dolan, Counsellors at Law, 716 Southern Building, Washington, D.C. 20005.

Summary: Agreement No. T-2590-8, between the Albany Port District Commission (Port) and United Brands Company modifies the parties' basic agreement providing for the use of certain office space and the preferential use of certain storage space at Transit Shed No. 2, Albany, New York. The purpose of the modification is to exercise the seventh option to renew the initial term of the agreement by: (1) extending the term from December 1, 1980, until November 30, 1981;

and (2) increasing the amount of compensation paid to Port from $26,250 to $27,750.

Agreement No.: T–3928.

Filing Party: Leslie E. Still, Jr., Senior Deputy City Attorney, Harbor Branch Office, Harbor Administration Building, P.O. Box 570, Long Beach, California 90801.

Summary: Agreement No. T–3928, between the City of Long Beach (City) and Atlantic Richfield Company (A.R.Co.) provides for the 40-year lease by A.R.Co., upon completion of certain tanker terminal improvements, of Berths 120–121, Pier E, at Long Beach, California. The premises will be used for the receipt, handling, unloading, transporting and other disposition of crude oil, petroleum, and refined products by A.R.Co. A.R.Co. further agrees that the premises shall not be used in connection with furnishing terminal facilities or services to common carriers or carriers by water. A.R.Co. shall pay City a guaranteed annual minimum compensation and accrued tariff charges for dockage and wharfage, subject to certain apportionments. Upon completion of terminal improvements, this agreement will terminate Agreement No. T–639.

Dated: October 16, 1980.

By Order of the Federal Maritime Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 80–32654 Filed 10–20–80; 8:45 am]

BILLING CODE 6730–01–M

[Independent Ocean Freight Forwarder License No. 226]

A. V. Berner & Co., Inc.; Order of Revocation

Section 44(c), Shipping Act, 1916, provides that no independent ocean freight forwarder license shall remain in force unless a valid bond is in effect and on file with the Commission. Rule 510.9 of Federal Maritime Commission General Order 4 further provides that a license will be automatically revoked or suspended for failure of a licensee to maintain a valid bond on file.

The bond issued in favor of A. V. Berner & Company, Incorporated, 107 Washington Street, New York, NY 10006, FMC No. 226, was cancelled effective September 28, 1980.

By letter dated September 4, 1980, A. V. Berner & Company, Incorporated was advise by the Federal Maritime Commission that Independent Ocean Freight Forwarder License No. 226 would be automatically revoked or suspended unless a valid surety bond was filed with the Commission.

A. V. Berner & Company, Incorporated has failed to furnish a valid surety bond.

By virture of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 201.1 (Revised), section 5.01(d) dated August 8, 1977;

Notice is hereby given, that Independent Ocean Freight Forwarder License No. 226 be and is hereby revoked effective September 28, 1980.

It is ordered, that Independent Ocean Freight Forwarder License No. 226, issued to A. V. Berner & Company, Incorporated be returned to the Commission for cancellation.

It is further ordered, that a copy of this Order be published in the **Federal Register** and served upon A. V. Berner & Company, Incorporated.

Robert G. Drew,

Director, Bureau of Certification and Licensing.

[FR Doc. 80–32656 Filed 10–20–80; 8:45 am]

BILLING CODE 6730–01–M

Meiko Warehousing, Inc., et al. Independent Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as independent ocean freight forwarders pursuant to section 44(a) of the Shipping Act, 1916 (75 Stat. 522 and U.S.C. 841(c)).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, D.C. 20573.

Meiko Warehousing, Inc., 2220 East Carson St., Long Beach, CA 90810.
Officers: Jiro Takahashi, President/Director, Naoharu Miwa, Vice President/Secretary/Director, Nobuyoshi, Yonemori, Treasurer, Ichimatsu Torii, Director, Keiichi Kawakatsu, Director, Kenzo Asami Director, Fusao Onishi, Director.

Les Lewis (Leslie David Lewis, dba), P.O. Box 59681, Dallas, TX 75229.

Ryuichiro Ishida dba Ace AirMarine Transport, 2874 Theresa Court, Castro Valley, CA 94546.

Dated: October 16, 1980.

By the Federal Maritime Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 80–32657 Filed 10–20–80; 8:45 am]

BILLING CODE 6730–01–M

Toko Kaiun Kaisha, Ltd./Korea Line Corp. Space Charter Agreement; Cancellation

Filing Party: Dennis N. Barnes, Morgan, Lewis & Bockius, 1800 M Street, N.W., Washington, D.C. 20036.

Agreement No. 10329.

Summary: On September 3, 1980, the Commission received notification of the termination of Agreement No. 10329 by the member parties. The termination was effective as of September 3, 1980, the date of receipt of the notice.

Dated: October 16, 1980.

By order of the Federal Maritime Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 80–32655 Filed 10–20–80; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Batavia Banc Corp.; Formation of Bank Holding Company

Batavia Banc Corporation, Chicago, Illinois, has applied for the Board's approval under § 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 Batavia Bank, Batavia, Illinois. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than November 14, 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, October 14, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80–32663 Filed 10–20–80; 8:45 am]

BILLING CODE 6210–01–M

Cutler Corp.; Proposed Retention of Lending and Insurance Agency Activities

Cutler Corporation, Newport, Minnesota, 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 the activities of making or acquiring loans for its own account and conducting a general insurance agency activity in a town having a population under 5,000. These activities would be performed from offices of Applicant's subsidiary in Green Isle, Minnesota, and the

geographic areas to be served are Washington County, Minnesota. Such activities have been specified by the Board in section 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of indiivdual proposals in accordance with the procedures of section 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 Minnesota.

Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than November 12, 1980.

Board of Governors of the Federal Reserve System, October 14, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-32661 Filed 10-20-80; 8:45 am]

BILLING CODE 6210-01-M

First Banc Group, Inc.; Formation of Bank Holding Company

First Banc Group, Inc., Centralia, Illinois, has applied for the Board's approval under § 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 per cent of the voting shares of First National Bank and Trust Company, Centralia, Illinois. The factors that are considered in acting on the application are set forth in § 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 St. Louis. 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 November 14, 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, October 14, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-32664 Filed 10-20-80; 8:45 am]

BILLING CODE 6210-01-M

Nebo Corp., Pisgah, Iowa; Proposed Retention of Assets by a Bank Holding Company Engaged in Nonbanking Activities

Nebo Corporation, Pisgah, 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 retain the assets of its general insurance business.

Applicant states that the proposed subsidiary would continue to engage in the sale of general insurance in a town with a population of less than 5,000. These activities would be performed from offices of Applicant in Pisgah, Iowa, and the geographic area to be served is Pisgah, Iowa. Such activities have been specified by the Board in section 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 section 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, conflict 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 person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than November 12, 1980.

Board of Governors of the Federal Reserve System, October 14, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-32662 Filed 10-20-80; 8:45 am]

BILLING CODE 6210-01-M

Norwood Bancshares, Inc.; Formation of Bank Holding Company

Norwood Bancshares, Inc., Norwood, Minnesota, has applied for the Board's approval under § 3(a)(1) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(1)) to become a bank holding company by acquiring 88.9 percent or more of the voting shares of the Citizens State Bank of Norwood, Norwood, Minnesota. The factors that are considered in acting on the application are set forth in § 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 November 12, 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, October 10, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-32665 Filed 10-20-80; 8:45 am]

BILLING CODE 6210-01-M

Owenton Bancorp, Inc.; Formation of Bank Holding Company

Owenton Bancorp, Inc., Owenton, Kentucky, has applied for the Board's approval under § 3(a)(1) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(1)) to become a bank holding company by acquiring 80 per cent or more of the voting shares of Peoples Bank & Trust Company Owenton, Owenton, Kentucky. The factors that are considered in acting on the application are set forth in § 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 St. Louis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be

received not later than November 13, 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, October 14, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-32668 Filed 10-20-80; 8:45 am]

BILLING CODE 6210-01-M

Worcester Bancorp, Inc.; Proposed Acquisition of Wornat Development Corp.

Worcester Bancorp, Inc., Worcester, Massachusetts, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. § 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to retain its interest in Wornat Development Corporation, Worcester, Massachusetts.

Applicant proposes to continue to engage in lending activities in connection with the liquidation of real estate acquired by Wornat Development Corporation in satisfaction of debts previously contracted, specifically the retention of loans receivable and making loans to facilitate such liquidation. These activities will continue to be performed from offices in Worcester, Massachusetts, and the geographic areas to be served are Massachusetts and Vermont. Such activities have been specified by the Board in section 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 section 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 Boston.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than November 7, 1980.

Board of Governors of the Federal Reserve System, October 14, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-32660 Filed 10-20-80; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Early Termination of the Waiting Period of the Premerger Notification Rules; Correction

AGENCY: Federal Trade Commission.

ACTION: Correction.

SUMMARY: This document corrects a Commission document previously published in the **Federal Register** on Thursday, Oct. 2, 1980, by adding language inadvertently omitted from the Summary.

DATE: The correction is effective October 21, 1980.

FOR FURTHER INFORMATION CONTACT: FTC/CDM, Naomi Licker, Washington, D.C. 20580, (202) 523-3894.

SUPPLEMENTARY INFORMATION: In FR Doc. 80-30753, appearing in **Federal Register** issue for Thursday, Oct. 2, 1980, 45 FR 65316, in the "SUMMARY:", language was inadvertently omitted from line 6. Therefore, line 6 should read:

"Agency Management Systems, an asset of Seibels Bruce & Co. from"

Carol M. Thomas,

Secretary.

[FR Doc. 80-32781 Filed 10-20-80; 8:45 am]

BILLING CODE 6750-01-M

COMMISSION OF FINE ARTS

Meeting; Projects Affecting Appearance of Washington, D.C.

The Commission of Fine Arts will next meet in open session on Tuesday, November 4, 1980, at 10:00 a.m. in the Commission's offices at 708 Jackson Place, N.W., Washington, D.C. 20006 to discuss various projects affecting the appearance of Washington, D.C.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Mr. Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address.

Dated in Washington, D.C., October 14, 1980.

Charles H. Atherton,

Secretary.

[FR Doc. 80-32711 Filed 10-20-80; 8:45 am]

BILLING CODE 6330-01-M

GENERAL ACCOUNTING OFFICE

Regulatory Reports Review; Receipt of Report Proposal

The following request for clearance of a report intended for use in collecting information from the public was received by the Regulatory Reports Review Staff, GAO, on October 15, 1980. See 44 U.S.C. 3512 (c) and (d). The purpose of publishing this notice in the **Federal Register** is to inform the public of such receipt.

The notice includes the title of the request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed NRC request are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed request, comments (in triplicate) must be received on or before November 10, 1980, and should be addressed to Mr. John M. Lovelady, Senor Group Director, Regulatory Reports Review, United States General Accounting Office, Room 5106, 441 G Street, NW, Washington, DC 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202-275-3532.

Nuclear Regulatory Commission

The NRC requests an extension-without-change clearance for all application, recordkeeping and reporting requirements contained in 10 CFR Part 70, Domestic Licensing of Special Nuclear Material. These regulations govern the requirements for the issuance of licenses to receive title to, own, acquire, deliver, receive, possess, use or transfer special nuclear material. The regulations were issued pursuant to the Atomic Energy Act of 1954, as amended, and Title II of the Energy Reorganization Act of 1974. Respondents and respondent burdens vary from section to section. NRC states that the total estimated burden anticipated for all respondents is 116,797 hours annually,

and applicants and licensees are expected to number 539.

Norman F. Heyl,

Regulatory Reports Review Officer.

[FR Doc. 80-32770 Filed 10-20-80; 8:45 am]

BILLING CODE 1610-01-M

GENERAL SERVICES ADMINISTRATION

Intent to Prepare Environmental Impact Statement and Notice of Three Scoping Meetings for the Historic U.S. Courthouse Renovation and Annex Construction, Charleston, South Carolina.

AGENCY: General Services Administration.

ACTION: Construction of a 39,000-gross-square-foot Courthouse Annex, repair and alteration of the existing Post Office and Courthouse; Charleston, South Carolina.

PURPOSE: To provide space for the U.S. District Court and court-related activities.

FOR FURTHER INFORMATION CONTACT: William H. Capes, Public Buildings Service (4PG), General Services Administration, Region 4, 75 Spring Street, SW, Atlanta, GA 30303, (404) 221-3080.

SUMMARY: 1. Description of the Proposed Action: The proposed Courthouse Annex consists of approximately 39,000 gross square feet to house the U.S. District Court and court-related activities necessitated by the addition of two new U.S. District Court Judges to be domiciled in Charleston, South Carolina. The site for the project is located to the rear of the existing Post Office and Courthouse (PO & CT) and is owned and operated by the General Services Administration.

The proposal also includes the repair and alteration of the PO & CT necessitated by the construction of an on-site annex. The alterations are also necessary as the two buildings will be physically connected. The PO & CT is listed on the *National Register of Historic Places* and is within a historic district also listed on the *National Register.*

2. Description of Alternatives: The alternatives to be considered include the following:

a. Federal construction on Government-owned land to the rear of the PO & CT.

b. Acquisition of leased space.

c. Purchase of an existing building including properties of historic, architectural or cultural significance.

d. Federal construction on a site adjacent to the PO & CT.

e. Maintenance of the status quo.

3. Public participation in the EIS Process: Full participation by interested Federal, state and local agencies, as well as all other interested organizations and individuals, is invited.

An Environmental Assessment has been prepared, and the significant items to be discussed in the EIS presently include the following:

a. Historic environment, including reference to Section 106 of the National Historic Preservation Act of 1966.

b. Effects on transportation and parking within the site and proximate area.

c. Effects on local zoning.

d. Natural hazards including 100-year floodplain and seismic activity.

The Environmental Assessment and other information is available for review. For an appointment, contact W. H. Capes, General Services Administration, on (404) 221-3080.

4. Scoping: The General Services Administration will sponsor three scoping meetings to determine the scope of the Draft EIS. The meetings will be held on Thursday, October 23, 1980, at the Federal Building, 334 Meeting Street, Charleston, South Carolina, in Room 333. The first meeting, which will be for public officials, will be held from 9:00 a.m. to 10:00 a.m. The second meeting, which will be for historic preservation interest groups, will be held from 10:30 a.m. to 11:30 a.m. The final meeting, which will be for the general public, will be held from 1:00 p.m. to 2:00 p.m.

All interested parties are encouraged to attend the appropriate meeting. If you wish to comment and are unable to attend a scoping meeting, written comments will be accepted until November 6, 1980.

5. Timing: It is expected that the Draft EIS will be available for public review within three months.

6. Request for copies of the Draft EIS: All interested persons or organizations are encouraged to submit their names and addresses to the person indicated above for inclusion on the distribution list for the Draft EIS.

Paul L. Allison,

Acting Regional Administrator.

October 8, 1980.

[FR Doc. 80-32710 Filed 10-20-80; 8:45 am]

BILLING CODE 6820-23-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Durg Administration (FDA). This notice also sets forth a summary of the procedures governing committee meetings and methods by which interested persons may participate in open public hearings conducted by the committees and is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA regulations (21 CFR Part 14) relating to advisory committees. The following advisory committee meetings are announced:

Psychopharmacologic Drugs Advisory Committee

Date, time, place. November 6, 9 a.m., Conference Rm. M, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 4 p.m.; Cynthia Rushing, Bureau of Drugs (HFD-120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3800.

General function of the Committee. The Committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational drugs for use in the practice of psychiatry and related fields.

Agenda—Open public hearing. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the Committee.

Open Committee discussion. The Committee will discuss proposed revisions to the guidelines for clinical evaluation of antidepressant drugs guidelines for clinical evaluation of antianxiety drugs; and will also discuss Restoril (NDA 18-163).

Applications for reimbursement. Must be received by October 27, 1980.

Oncologic Drugs Advisory Committee

Date, time, and place. November 7, 9 a.m., Conference Room A, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open committee discussion, 9 a.m. to 11:15 a.m.; open public hearing, 11:15 a.m. to 12:15 p.m.; open committee discussion, 1 p.m. to 5 p.m.; Ann Greenstein, Bureau of Drugs (HFD-150),

Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5197.

General function of the Committee. The Committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational drugs for use in the treatment of cancer.

Agenda—Open public hearing. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the Committee.

Open Committee discussion. The Committee will discuss Ifosphamide (NDA 17–275, Mead Johnson) and Vindesine (NDA 18–348, Eli Lilly).

Applications for reimbursement. Must be received by October 27, 1980.

Miscellaneous External Drug Products Panel

Date, time, and place. November 7 and 8, 9 a.m., Conference Room C, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD (November 7), Pennsylvania Room, Holiday Inn, Bethesda, MD (November 8).

Type of meeting and contact person. Open public hearing November 7, 9 a.m. to 10 a.m.; open committee discussion, November 7, 10 a.m. to 4:30 p.m., November 8, 9 a.m. to 4:30 p.m.; John T. McElroy, Bureau of Drugs (HFD–510), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1430.

General function of the Committee. the Committee reviews and evaluates data on the safety and effectiveness of nonprescription drug products.

Agenda—Open public hearing. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the Committee. Those who wish to make such a presentation should notify the contact person before November 1, 1980, and submit a brief statement of the general nature of the data, information, or views they wish to present, the names and addresses of proposed participants, and an indication of the approximate time desired for their presentation.

Open Committee discussion. The Panel will review data submitted pursuant to the over-the-counter (OTC) review's call for data for this Panel (see also 21 CFR 330.10(a)(2)). The Panel will be reviewing, voting on, and modifying the content of summary minutes and categorization of ingredients and claims.

Applications for reimbursement. Must be received by Qctober 27, 1980.

Miscellaneous Internal Drug Products Panel

Date, time, and place. November 15 and 16, 9 a.m., Sheraton Inn, Silver Spring, MD.

Type of meeting and contact person. Open public hearing, November 15, 9 a.m., to 10 a.m.; open committee discussion, November 15, 10 a.m. to 4:30 p.m., November 16, 8 a.m. to 3 p.m.; John R. Short, Bureau of Drugs (HFD–510), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6156.

General function of the Committee. The Committee reviews and evaluates data on the safety and effectiveness of nonprescription drug products.

Agenda—Open public hearing. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the Committee. Those who wish to make such a presentation should notify the contact person before November 10, 1980, and submit a brief statement of the general nature of the data, information, or views they wish to present, the names and addresses of proposed participants, and an indication of the approximate time desired for their presentation.

Open committee discussion. The Panel will review data submitted pursuant to the over-the-counter (OTC) review's call for data for this Panel (see also 21 CFR 330.10(a)(2)). The Panel will be reviewing, voting on, and modifying the content of summary minutes and categorization of ingredients and claims.

Applications for reimbursement. Must be received by November 3, 1980.

Drug Abuse Advisory Committee

Date, time, and place. November 17, 9 a.m., Holiday Inn, Lobby Room, 5520 Wisconsin Avenue, Chevy Chase, MD.

Type of meeting and contact person. Open public hearing, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 4:30 p.m.; Robert C. Nelson, Bureau of Drugs (HFD–120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3504.

General function of the Committee. The Committee advises on the scientific and medical evaluation of information gathered by the Department of Health and Human Services and the Department of Justice on the safety, efficacy, and abuse potential of drugs and recommends actions to be taken on the marketing, investigation, and control of such drugs.

Agenda—Open public hearing. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the Committee.

Open Committee discussion. The Committee will discuss the evaluation of the Drug Enforcement Administration's control recommendations for phendimetrazine, phentermine, and diethylpropion.

Applications for reimbursement. Must be received by November 3, 1980.

Orthopedic Device Section of the Surgical and Rehabilitation Devices Panel

Date, time, and place. November 19, 9 a.m., Rm. 425A, 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 5 p.m.; James G. Dillon, Bureau of Medical Devices (HFK–410), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7156.

General function of the Committee. The Committee reviews and evaluates available data on the safety and effectiveness of devices currently in use and makes appropriate recommendations for their regulation.

Agenda—Open public hearing. Interested persons are encouraged to present data, information, or views, orally or in writing, on issues pending before the Committee. Those who wish to make formal presentations should notify the contact person by November 5, 1980, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, references to any data to be relied on, and also in indication of the approximate time required to make their comments.

Open Committee discussion. FDA staff will present to the Section the proposed classification recommendations for orthopedic devices. The Section will also review and make recommendations on the classification of (1) constrained hip prostheses (metal), (2) constrained hip prostheses (metal/polymer), (3) femoral (hip) resurfacing prostheses, (4) acetabular (hemi-hip) prostheses (metal), (5) glenoid (hemi-shoulder) prostheses, (6) constrained femorotibial (knee) trunnion-bearing prostheses, (7) AC-powered cast application/removal instruments, (8) manual cast application/removal instruments, (9) cast components. The Section will also review and discuss the draft preclinical guidelines for orthopedic prosthetic devices if time permits.

Applications for reimbursement. Must be received by November 4, 1980.

Science Advisory Board (Mutagenesis Subcommittee)

Date, time, and place. November 21, 8 a.m., Bldg. 13, National Center for Toxicological Research, Jefferson, AR.

Type of meeting and contact person. Open public hearing, 8 a.m. to 9 a.m.; open committee discussion, 9 a.m. to 4 p.m.; Lawrence Fishbein, National Center for Toxicological Research, Jefferson, AR 72079, 501–541–4390.

General function of the Committee. The Board advises on establishment and implementation of a research program that will assist the Commissioner of Food and Drugs and the Administrator, Environmental Protection Agency, in fulfilling their regulatory responsibilities.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the Board.

Open Committee discussion. The Board will discuss the update of the heritable translocation program; the biochem/genetic data from experiment 309 "Development of Enzyme Activity Profiles on NCTR Microlesion Assay Enzyme Battery for C57BL/6N Strain"; and the effects of altered liver function following alcohol intoxication on metabolism of premutagens and precarcinogens.

Applications for reimbursement. Must be received by November 4, 1980.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in the **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Administrative Proceedings Staff (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, between the hours of 9 a.m. and 4 p.m., Monday through Friday. The FDA regulations relating to public advisory committees may be found in 21 CFR Part 14.

Applications for reimbursement for participation in the meetings listed above should be sent to the Office of Consumer Affairs (HFE–90), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, rather than to the Hearing Clerk as prescribed in § 10.210 of the regulations (21 CFR 10.210). If you wish to submit an application or wish more information regarding the reimbursement program, please call 301–443–5006.

FDA has established expedited procedures for review of any application for reimbursement for participation in the meetings announced in this notice. The Office of Consumer Affairs, FDA, will file any application for reimbursement for participation in the meetings announced in this notice in the docket for this notice.

Dated: October 14, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-32492 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 75F-0355]

Aspartame; Availability of Board of Inquiry Decision

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces the availability of the decision of the Public Board of Inquiry concerning the safety of aspartame.

ADDRESS: Single copies of the decision are available from the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Ted Herman, Compliance Regulations Policy Staff (HFC–10), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3480.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of June 1, 1979 (44 FR 31716), the agency announced that a hearing before a Public Board of Inquiry would be held on the issues raised by objections to the food additive regulation approving the use of aspartame, a low-calorie sweetener. A notice published in the **Federal Register** of January 15, 1980 (45 FR 2908) announced that the hearing would begin January 30, 1980. That hearing began as scheduled, and the Board has now rendered its decision, pursuant to 21 CFR 13.30(j).

The Board concluded that aspartame should not be approved for use in foods. The Board based its conclusion on scientific data suggestive of aspartame's potential for causing brain tumors in laboratory rats. The Board stated that further studies were needed to completely resolve the issue.

Single copies of the Public Board of Inquiry decision are available from the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

Upon objections raised by any of the participants at the hearing, the Board's decision will be reviewed by the Commissioner of Food and Drugs. The Commissioner will then issue a final decision either approving or disapproving the use of aspartame. The final decision, when reached, will be announced publicly.

Dated: October 14, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-32494 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 80N-0408]

Blood Plasma Donor Center, Inc.; Revocation of U.S. License No. 539

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces the revocation on July 17, 1980, of the

establishment license (U.S. License No. 539) and product license issued to the Blood Plasma Donor Center, Inc., for the manufacture of Source Plasma (Human). Because of significant deviations from the biologics regulations in the manufacture of this biological product, the manufacturer requested that the licenses be revoked.

EFFECTIVE DATE: The revocation of the establishment and product licenses was effective on July 17, 1980.

FOR FURTHER INFORMATION CONTACT: Paul K. Hiranaka, Bureau of Biologics (HFB–620), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205, 301–443–1306.

SUPPLEMENTARY INFORMATION: FDA has revoked the establishment license (U.S. License No. 539) and product license issued to the Blood Plasma Donor Center, Inc., 2021 Main St., Kansas City, MO 64108, for the manufacture of Source Plasma (Human).

An inspection of this establishment on February 26 through March 5, 1980, by FDA investigators, revealed numerous deviations from the requirements of 21 CFR Parts 600, 606, and 640, including but not limited to, the collection of more than the maximum permissible amount of whole blood from donors at one time (21 CFR 640.65(b)(5)). Because these deviations were determined by the agency to constitute a danger to the health of donors, the firm's establishment and product licenses were suspended on March 10, 1980.

On May 8, 1980, the firm was allowed to resume limited operation for the purpose of a reinspection. The reinspection took place June 10 through 13, 1980 and revealed many of the same deviations from the regulations cited in previous inspections.

Following the reinspection, FDA issued a letter informing the firm of the agency's intention to publish a Notice of Opportunity for Hearing and its intent to revoke the firm's establishment and product licenses. Before further regulatory action was taken, the firm requested that its establishment and product licenses be revoked and waived the opportunity for a hearing under § 601.5(a) (21 CFR 601.5(a)). The agency has granted the request.

Accordingly, under § 12.38 (21 CFR 12.38) and section 351 of the Public Health Service Act (42 U.S.C. 262) and the authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Director, Bureau of Biologics (21 CFR 5.68), U.S. License No. 539 issued to the Blood Plasma Donor Center, Inc., and the product license for the manufacture of Source Plasma (Human) were revoked by letter dated July 17, 1980. This notice of revocation is published under § 601.8 (21 CFR 601.8).

Dated: October 9, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-32493 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 80F-0374]

General Foods Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: General Foods Corp. has filed a petition proposing to amend the food additive regulations to provide for the safe use of polysorbate 80 as a surfactant and wetting agent for natural and artificial colors intended for use in food.

FOR FURTHER INFORMATION CONTACT: Carl L. Giannetta, Bureau of Foods (HFF–334), Food and Drug Administration 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348)), notice is given that a petition (FAP 9A3461) has been filed by General Foods Corp., Technical Center, 250 North St., White Plains, NY 10625, proposing that § 172.840 *Polysorbate 80* (21 CFR 172.840) be amended to provide for the safe use of polysorbate 80 as a surfactant and wetting agent for natural and artificial colors, intended for use in breakfast cereals.

The potential environmental impact of this action is being reviewed. If the Food and Drug Administration (FDA) finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of FDA's finding of no significant impact and the evidence supporting that document will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c) (proposed December 11, 1979; 44 FR 71742).

Dated: October 7, 1980.

Sanford A. Miller,

Director, Bureau of Foods.

[FR Doc. 80-32491 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

Circulatory System Devices Panel; Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also sets forth a summary of the procedures governing committee meetings and methods by which interested persons may participate in open public hearings conducted by the committees and is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA regulations (21 CFR Part 14) relating to advisory committees. The following advisory committee meeting is announced:

Circulatory System Devices Panel

Date, time, and place. November 3, 8:30 a.m., Room 339A, 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:30 a.m.; open committee discussion, 9:30 a.m. to 12 p.m.; closed committee deliberations, 1 p.m. to 4 p.m.; Glenn A. Rahmoeller, Bureau of Medical Devices (HFK–450), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7156.

General function of the Committee. The Committee reviews and evaluates available data on the safety and effectiveness of devices currently in use and makes appropriate recommendations for their regulation.

Agenda—Open public hearing. Those desiring to make formal presentations should notify the contact person by October 22, 1980, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, references to any data to be relied on, and also an indication of the approximate time required to make their comments.

Closed Committee deliberations. The Panel will review trade secret data from one or more applications for premarket approval. This portion of the meeting will be closed to permit discussion of trade secret data (5 U.S.C. 552b(c)(4)).

Applications for reimbursement. Must be received by October 27, 1980.

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting

involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Administrative Proceedings Staff (HFA–305), Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, between the hours of 9 a.m. and 4 p.m., Monday through Friday. The FDA regulations relating to public advisory committees may be found in 21 CFR Part 14.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94–409), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

Applications for reimbursement for participation in the meeting listed above should be sent to the Office of Consumer Affairs (HFE–90), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, rather than to the Hearing Clerk as prescribed in § 10.210 of the regulations (21 CFR 10.210). If you wish to submit an application or wish more information regarding the reimbursement program, please call 301–443–5006.

FDA has established expedited procedures for review of any application for reimbursement for participation in the meeting announced in this notice. The Office of Consumer Affairs, FDA, will file any application for reimbursement for participation in the meeting announced in this notice in the docket for this notice.

Dated: October 9, 1980.

Jere E. Goyan,

Commissioner of Food and Drugs.

[FR Doc. 80–32632 Filed 10–20–80; 8:45 am]

BILLING CODE 4110–03–M

[Docket No. 80D–0378]

Source Plasma (Human); Revision of Guideline for Immunization of Source Plasma (Human) Donors With Blood Group Substances

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces the availability of a revised guideline for immunization of Source Plasma (Human) donors with Blood Group Substances.

ADDRESS: Written comments and requests for a copy of the revised guideline (identified with the Hearing Clerk docket number found in brackets above) to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joseph Wilczek, Bureau of Biologics (HFB–620), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205, 301–443–1306.

SUPPLEMENTARY INFORMATION: A notice published in the Federal Register on May 17, 1977 (42 FR 25381) announced the availability of a guideline entitled "Guidelines for Immunization Schedules for Source Plasma (Human) Donors." The guideline contains a schedule for administration of primary and booster doses of Blood Group Substances. These products are administerd to donors to raise their antibody levels against Blood Group Substances. Donors who respond to immunization are plasmapheresed, and the plasma is further processed into Anti-A and Anti-B Blood Grouping Sera.

On the basis of new data received in product license amendments the FDA's Bureau of Biologics is revising the guideline, now entitled "Guidelines for Immunization of Source Plasma (Human) Donors with Blood Substances." The immunization schedule has been changed to specify that a booster dose is to be administered only if both of the following criteria are met: (1) the serum isoagglutinin titer is less than 1:256 and (2) more than 1 year has passed since the previous immunization. The revised guideline also permits the administration of Blood

Group Substances only to healthy males, or to females in good health who are either physiologically or surgically incapable of childbearing. This is a necessary precaution to preclude the possibility that immunized women of childbearing age, with elevated isoagglutinin titers, could give birth to infants afflicted with hemolytic disease of the newborn.

Single copies of the revised guideline are available from the office of the Hearing Clerk, at the above-mentioned address.

Interested persons may submit written comments on the guideline to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857. Such comments will be considered in determining whether further amendments to or revisions of this guideline is warranted. Four copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m.and 5 p.m., Monday through Friday.

Dated: October 14, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80–32631 Filed 10–20–80; 8:45 am]

BILLING CODE 4110–03–M

Health Care Financing Administration

Medicare Program; Reimbursement for Costs Incurred in Relation to Union Activities

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of policy interpretation.

SUMMARY: This notice invites public comment on current HCFA policy with respect to Medicare reimbursement for provider costs incurred with respect to union activities. Our current policy interprets "costs related to patient care" to exclude costs incurred by Medicare providers in attempting to influence their employees on the subject of organizing and joining trade unions. The purpose of this notice is to serve as a general restatement of our policy and to provide an opportunity for public comment and suggestions on this issue.

DATE: To assure consideration, comments should be mailed by December 22, 1980.

ADDRESS: Address comments in writing to: Administrator, Department of health and Human Services, Health Care Financing Administration, P.O. Box 17073, Baltimore, Maryland 21235.

If you prefer, you may deliver your comments to Room 309–G Hubert Humphrey Building, 200 Independence Ave, S.W., Washington D.C., or to Room 789, East High Rise Building, 6401 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to BPP–100–N. Agencies and organizations are requested to submit comments in duplicate.

Comments will be available for public inspection, beginning approximately two weeks after publication, in Room 309–G of the Department's office at 200 Independence Ave, S.W., Washington, D.C., 20201 on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (202–245–7890).

FOR FURTHER INFORMATION CONTACT: William Goeller, 301–597–1802.

SUPPLEMENTARY INFORMATION: The Medicare provisions of the Social Security Act provide that health care providers participating in the Medicare program will be reimbursed for the reasonable cost of furnishing covered services to Medicare beneficiaries. The statute further provides that determinations of "reasonable cost" will be made in accordance with the Medicare regulations, which establish the methods of calculating costs and the items to be included in the calculations (42 U.S.C. 1396x(v)(1)(A)).

One of the provisions of these regulations is the general requirement that the determination of reasonable cost must be based on costs related to the delivery of health care to Medicare beneficiaries. To the extent a provider's operating costs included amounts not related to patient care, such amounts will not be allowable under Medicare. (42 CFR 405.451). HCFA has interpreted this provision to preclude reimbursement for costs incurred by providers for the purpose of persuading their employees not to form a collective bargaining unit or not to join a trade union. HCFA believes that such costs are clearly unrelated to patient care and, therefore, not allowable under the statute and regulations. However, HCFA also believes that costs incurred to carry out the provider's obligations under a collective bargaining agreement are directly related to its delivery of appropriate health care and, therefore, are reimbursable under Medicare.

HCFA issued a policy statement on this point in June 1979, because it had received questions that raised concern whether providers were reporting costs in accordance with our position. This statement appears in the *Provider Reimbursement Manual,* section 1280, as follows:

2180.1 Persuasion of Employees.— Costs incurred for activities directly related to influencing employees regarding their right to organize or not to organize and to form a union or to join an existing union are not related to patient care and, therefore, are not allowable costs. Such costs are unallowable whether such activities are performed directly by the provider or through an independent contractor, consultant or outside attorney.

Example: The costs applicable to a consultant who furnishes literature opposing union membership for provider employees or furnishes training to provider management to oppose employee membership in labor organizations are not allowable costs.

2180.2 Collective Bargaining.— Reasonable expenses incurred by a provider for collective bargaining and related activities are allowable costs. Contract negotiations and any procedures which flow from enforcement of contract terms, whether in a collective or individual setting, are necessary to maintain the continued operation of the provider and, thus, are a precondition for the delivery of health services.

Example: The cost of the services of management's representative in collective bargaining activities is an allowable cost.

These two policy statements, and the examples given, represent two widely separate points of what we view as a spectrum of activities related to personnel management. We have not had occasion to review the application of our general policy to factual situations on the spectrum between these two points. Therefore, we believe it would be useful if we sought the viewpoints and suggestions of individuals and agencies outside the Department regarding these and other situations. Moreover, we have been requested, by providers and hospital associations, to review our policy statement further. We have agreed to do so, and seek broad public participation in that review.

Because the instruction quoted above represents HCFA's traditional interpretation of the requirements contained in the statute and regulations, and does not impose new or additional substantive requirements, the rulemaking provisions of the Administrative Procedure Act do not require HCFA to publish a notice of proposed rulemaking or to provide an opportunity for public comment on the policy. While HCFA normally gives participating providers actual notice of

reimbursement policies through the *Provider Reimbursement Manual*, for the reasons stated in the previous paragraph, we have decided to publish this notice in the **Federal Register** to solicit comments from interested members of the public, to determine whether changes or further development of existing policy are appropriate.

(Secs. 1102, 1861(v)(1), 1866(a), and 1871 of the Social Security Act; 42 U.S.C. 1302, 1395f(b), 1395x(v)(1), 1395cc(a), and 1395hh)

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance)

Dated: October 14, 1980.

Howard Newman,

Administrator, Health Care Financing Administration.

[FR Doc. 80-32775 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-35-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Oklahoma; Briefing by the Regional Coal Team for the Western Interior Coal Production Region

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Announcement of Western Interior Regional Coal Team Briefing.

SUMMARY: The second briefing of the regional coal team (RCT) for the Western Interior Coal Region, Oklahoma Subregion, is being held in accordance with the Federal coal management regulations, 43 CFR 3400. The team will review industry expressions of interest, the new Coal Resource Occurrence/Coal Development Potential (CRO/CDP) maps, and additional information developed by Geological Survey (GS), Bureau of Land Management (BLM) and the State of Oklahoma. The RCT will consider this information to develop its recommendations for proceeding with Federal coal activity planning. Public attendance is welcome at the Regional Coal Team Briefing.

DATE: November 19, 1980, 9:00 a.m.

ADDRESS: The regional coal team briefing will be held in the Crystal Room at the Ramada Inn West, 800 South Meridian, Oklahoma City, Oklahoma 73108, (405) 943-8551.

FOR FURTHER INFORMATION CONTACT: H. Robert Moore, Regional Coal Team Chairman, (202) 343-4636.

Dated: October 16, 1980.

Ed Hastey,

Associate Director.

[FR Doc. 80-32684 Filed 10-20-80; 8:45 am]

BILLING CODE 4310-84-M

[AA-8585]

Alaska Native Claims Selection

This decision approves lands located on Chisik Island in the Tuxedni National Wildlife Refuge in Alaska for conveyance to the heirs of Elizabeth M. Haynes as a Native Primary Place of Residence.

On November 26, 1973, Elizabeth M. Haynes filed selection application AA-8585, as amended, under the provisions of Sec. 14(h)(5) and Sec. 14(h)(7) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 704-705; 43 U.S.C. 1601, 1613(h)(5), 1613(h)(7) 1976)) (ANCSA), for the surface estate of certain lands within the Tuxedni National Wildlife Refuge (Executive Order 1039, February 27, 1909, as amended, located on Chisik Island.

Section 14(h)(5) of ANCSA authorized the conveyance to an individual Alaskan Native of the surface estate in not to exceed 160 acres of land occupied as a primary place as residence on August 31, 1971. Section 14(h)(7) further provides that such occupied lands located within the National Wildlife Refuge System may be conveyed for the purpose set forth in Sec. 14(h)(5).

As to the lands described below, the application, as amended, is properly filed and meets the requirements of the Alaska Native Claims Settlement Act and of the regulations issued pursuant thereto. These lands do not include any lawful entry perfected under or being maintained in compliance with laws leading to acquisition of title.

The applicant, Elizabeth M. Haynes, is deceased. Her date of death was January 2, 1978. In view of the foregoing, the surface estate of the following described lands, aggregating approximately 160 acres, is considered proper for acquisition by the heirs of Elizabeth M. Haynes and is hereby approved for conveyance pursuant to Secs. 14(h)(5) and 14(h)(7) of ANCSA:

Tuxedni National Wildlife Refuge

Seaward Meridian, Alaska (Unsurveyed)

That portion of Chisik Island located within:

T. 1 N., R. 19 W. (Protracted)

Sec. 17 (fractional) S½N½SW¼NE¼, (fractional) S½SW¼NE¼, (fractional) S½S½NE¼NW¼, (fractional) S½NW¼, N½NE¼SW¼, N½S½NE¼SW¼, (fractional) NW¼SW¼, (fractional) NW¼NE¼SE¼, N½SW¼NE¼SE¼, (fractional) N½NW¼SE¼, and N½S½NW¼SE¼.

Aggregating approximately 160 acres.

The conveyance issued for the surface estate of the lands described above shall contain the following reservation to the United States:

The subsurface estate therein, and all rights, privileges, immunities, and appurtenances, of whatsoever nature, accuring unto said estate pursuant to the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 704-705; 43 U.S.C. 1601, 1613(h)(5), 1613(h)(7)).

The grant of the above-described lands shall be subject to:

1. Issuance of a patent confirming the boundary description of the unsurveyed lands hereinabove granted after approval and filing by the Bureau of Land Management of the official plat of survey covering such lands;

2. Valid existing rights therein, if any, including but not limited to those created by any lease (including a lease issued under Sec. 6(g) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339, 341; 48 U.S.C. Ch. 2, Sec. 6(g))), contract, perimit, 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; and

3. Requirements of Sec. 22(g) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 714; 43 U.S.C. 1601, 1621(g)), that the above-described lands which were within the boundaries of the Tuxedni National Wildlife Refuge on December 18, 1971, remain subject to the laws and regulations governing use and development of such refuge.

Pursuant to Sec. 14(h)(5) of ANCSA, conveyance of the subsurface estate of the lands described above shall be issued to Cook Inlet Region, Inc., when conveyance is granted to the heirs of Elizabeth M. Haynes for the surface estate, and shall be subject to the same conditions as the surface conveyance.

There are no inland water bodies considered to be navigable within the above described lands.

There are no easements to be reserved to the United States pursuant to Sec. 17(b) of the Alaska Native Claims Settlement Act.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice of

this decision is being published once in the **Federal Register** and once a week, for four (4) consecutive weeks, in the Anchorage Daily News. Any party claiming a property interest in lands affected by this decision, an agency of the Federal government, or regional corporation 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. The time limits for filing an appeal are:

1. Parties receiving service of this decision shall have 30 days from the receipt of this decision to file an appeal.

2. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, and parties who failed or refused to sign the return receipt shall have until November 20, 1980 to file an appeal.

Any party known or unknown who is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Alaska Native Claims Appeal Board.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeals. Further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

If an appeal is taken, the parties to be served with a copy of the notice of appeal are:

Heirs of Elizabeth M. Haynes (unprobated):
Agnes Ulrich (Mork), General Delivery, Pelican, Alaska 99832.
Marie Laws (Mork), General Delivery, Pelican, Alaska 99832.
Anna Breseman (Mork), General Delivery, Pelican, Alaska 99832.
William Mork, General Delivery, Pelican, Alaska 99832.
Elmer Mork, General Delivery, Pelican, Alaska 99832.
Raymond Mork, General Delivery, Pelican, Alaska 99832.
Mary Darby, P.O. Box 223, Wasilla, Alaska 99687.
Kelly Darby, P.O. Box 223, Wasilla, Alaska 99687.
Aaron Darby, P.O. Box 223, Wasilla, Alaska 99687.
Ramona Owens, 577 Penitencia, Apt. 4, Milpitas, California 95035.
Russell Owens, 577 Penitencia, Apt. 4, Milpitas, California 95035.
Donny Joe Owens, 577 Penitencia, Apt. 4, Milpitas, California 95035.
Oscar R. Haynes, Jr., 1200 West Dimond, Space 1431, Anchorage, Alaska 99502.
Claudine Haynes, 1200 West Dimond, Space 1431, Anchorage, Alaska 99502.
Marina Haynes, 1200 West Dimond, Space 1431, Anchorage, Alaska 99502.
Oscar R. Haynes III, 1200 West Dimond, Space 1431, Anchorage, Alaska 99502.
Machelle Haynes, 1200 West Dimond, Space 907, Anchorage, Alaska 99502.
Mary Dapello, 1021 Vineland Avenue, LaPuente, California 91746.
Cook Inlet Region, Inc., P.O. Drawer 4–N, Anchorage, Alaska 99509.
State of Alaska, Department of Natural Resources, Division of Research and Development, 323 East Fourth Avenue, Anchorage, Alaska 99501.

Ann Johnson,
Chief, Branch of Adjudication.

[FR Doc. 80–32852 Filed 10–20–80; 8:45 am]
BILLING CODE 4310–84–M

[F–14866–A]

Alaska Native Claims Selection

The purpose of this decision is to modify page 7 of the decision dated September 30, 1980.

Page 7—T. 17 N., R. 93 W., Seward Meridian, Alaska (Unsurveyed)

The description for Secs. 10 to 18 now reads:

Secs. 10 to 14, inclusive, all;
Secs. 17 and 18 (fractional), excluding Manayagavik Slough.

The description is hereby corrected and modified to read:

Secs. 10 to 14, inclusive, all;
Secs. 15 and 16, excluding Manayagavik Slough;
Secs. 17 and 18 (fractional), excluding Manayagavik Slough.

Except as modified by this decision, the decision of September 30, 1980, stands as written.

Ann Johnson,
Chief, Branch of Adjudication.

[FR Doc. 80–32853 Filed 10–20–80; 8:45 am]
BILLING CODE 4310–84–M

Phoenix District, Phoenix/Lower Gila Resource Areas Grazing Advisory Board; Meeting

Notice is hereby given in accordance with Pub. L. 92–463 that a meeting of the Phoenix/Lower Gila Resource Areas (Phoenix District) Grazing Advisory Board will be held on Wednesday, November 12, 1980.

The meeting will begin at 9:00 a.m. in the conference room of the Bureau of Land Management Office, 2929 West Clarendon Avenue, Phoenix, Arizona 85017.

The agenda for the meeting will include:

1. Status of the Planning and Grazing Environmental Statement.

2. Allotment Management Plan preparation and implementation.

3. Review of proposed range improvement projects for F.Y. 1981.

4. Effects of the Wilderness Programs on Allotment Management Plans and Range Improvements.

5. Experimental Stewardship Program.

6. Arrangements for future meetings—timing and agenda items.

The meeting is open to the public. Anyone wishing to make oral or written statements to the Board is requested to do so through the office of the District Manager, 2929 West Clarendon Avenue, Phoenix, Arizona 85017 at least seven days prior to the meeting date.

Summary minutes of the Board meeting will be maintained in the District Office and be made available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Dated: October 3, 1980.

Barry D. Stallings,
Acting District Manager.

[FR Doc. 80–32914 Filed 10–20–80; 8:45 am]
BILLING CODE 4310–84–M

Fish and Wildlife Service

Endangered Species Permit; Receipt of Application

Applicant: Connell Metcalf & Eddy, Inc., 1320 South Dixie Highway, P.O. Box 341939, Coral Gables, FL 33134.

The applicant requests a permit to take (harass or possibly kill) captive-bred hatchling American crocodiles (*Crocodylus acutus*) in a laboratory experiment for scientific research and enhancement of survival.

Documents and other information submitted with this application are available to the public during normal business hours in Room 605, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wilflife Service (WPO), P.O. Box 3654, Arlington, VA 22203.

This application has been assigned file number PRT 2–7190. Interested persons may comment on this application on or before November 20, 1980, by submitting written data, views, or arguments to the Director at the above address. Please refer to the file number when submitting comments.

Dated: October 16, 1980.

Larry LaRochelle,
Acting Chief, Permit Branch, Federal Wildlife Permit Office, Fish and Wildlife Service.

[FR Doc. 80–32751 Filed 10–20–80; 8:45 am]
BILLING CODE 4310–55–M

Endangered Species Permit; Receipt of Application

Applicant: Regional Director, Region 4, U.S. Fish & Wildlife Service, 75 Spring St., SW., Atlanta, GA 30303.

The applicant requests a permit to conduct activities identified in the Snail darter (*Percina tanasi*) Recovery Plan for enhancement of propagation and survival. These activities may include, but will not necessarily be limited to, the following activities: (1) mark, release and recapture; (2) transplants to establish new populations; (3) surveys to document reproductive success; and (4) artificial propagation for use in temporarily supplementing natural reproduction, or for establishing new populations.

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 605, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service (WPO), P.O. Box 3654, Arlington, VA 22203.

This application has been assigned file number PRT 2–1412. Interested persons may comment on this application on or before November 20, 1980 by submitting written data, views, or arguments to the Director at the above address. Please refer to the file number when submitting comments.

Dated: October 6, 1980.

Donald G. Donahoo,

Chief, Permit Branch, Federal Wildlife Permit Office, Fish and Wildlife Service.

[FR Doc. 80–32754 Filed 10–20–80; 8:45 am]

BILLING CODE 4310–55–M

Endangered Species Permit; Receipt of Application

Applicant: Regional Directors, Region 4, U.S. Fish and Wildlife Service, 75 Spring St., SW., Atlanta, GA 30303.

The applicant requests a permit to conduct activities identified in the Snail darter (*Percina tanasi*) Recovery Plan for enhancement of propagation and survival. These activities may include, but will not necessarily be limited to, the following activities: (1) Mark, release and recapture, (2) transplants to establish new populations, (3) surveys to document reproductive success, and, (4) artificial propagation for use in temporarily supplementing natural reproduction, or for establishing new populations.

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 605, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service (WPO), P.O. Box 3654, Arlington, VA 22203.

This application has been assigned file number PRT 2–1412. Interested persons may comment on this application on or before November 20, 1980, by submitting written data, views, or arguments to the Director at the above address. Please refer to the file number when submitting comments.

Dated: October 16, 1980.

Larry LaRochelle,

Acting Chief, Permit Branch, Federal Wildlife Permit Office, Fish and Wildlife Service.

[FR Doc. 80–32755 Filed 10–20–80; 8:45 am]

BILLING CODE 4310–55–M

Endangered Species Permit; Receipt of Application

Applicant: Mark Louis Weber, 4728 Vista Road, Manitowoc, WI 54220.

The applicant requests a permit to purchase 4 scarlet-chested parakeets (*Neophema splendida*) from Ms. Ethel Meyers from San Gabriel, California. These birds were captive bred and will be used in a captive breeding program.

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 605, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service (WPO), P.O. Box 3654, Arlington, VA 22203.

This application has been assigned file number PRT 2–7167. Interested persons may comment on this application on or before November 20, 1980 by submitting written data, views, or arguments to the Director at the above address. Please refer to the file number when submitting comments.

Dated: October 15, 1980.

Larry LaRochelle,

Acting Chief, Permit Branch, Federal Wildlife Permit Office, United States Fish and Wildlife Service.

[FR Doc. 80–32756 Filed 10–20–80; 8:45 am]

BILLING CODE 4310–55–M

Endangered Species Permit; Receipt of Application

Applicant: Nichols Cactus Nursery, 570 S. Hughes, Fresno, CA 93706.

The applicant requests a permit to sell endangered cacti in interstate commerce. All plants will be of cultivated origin, grown from seed or by vegetative propagation at their nursery.

Care 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 605, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service (WPO), P.O. Box 3654, Arlington, VA 22203.

This application has been assigned file number PRT 2–7141. Interested persons may comment on this application on or before November 20, 1980 by submitting written data, views, or arguments to the Director at the above address. Please refer to the file number when submitting comments.

Dated: October 10, 1980.

Larry LaRochelle,

Acting Chief, Permit Branch, Federal Wildlife Permit Office, Fish and Wildlife Service.

[FR Doc. 80–32757 Filed 10–20–80; 8:45 am]

BILLING CODE 4310–55–M

Endangered Species Permit; Receipt of Application

Applicant: Patuxent Wildlife Research Center, U.S. Fish and Wildlife Service, Laurel, MD 20811.

The applicant requests a permit to import parts or products (e.g. blood, feces, feathers, tissue samples, etc.) of Andean condors *(Vultur gryphus)* collected in Peru for scientific research.

Documents and other information submitted with this application are available to the public during normal business hours in Room 605, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service (WPO), P.O. Box 3654, Arlington, VA 22203.

This application has been assigned file number PRT 2–7149. Interested persons may comment on this application on or before November 20, 1980, by submitting written data, views, or arguments to the Director at the above address. Please refer to the file number when submitting comments.

Dated: October 7, 1980.

Fred L. Bolwahnn,

Acting Chief, Permit Branch, Federal Wildlife Permit Office, Fish and Wildlife Service.

[FR Doc. 80-32758 Filed 10-20-80; 8:45 am]

BILLING CODE 4310-55-M

Marine Mammal Permits; Receipt of Application; Correction

Applicant: Director, National Fish and Wildlife Laboratory, National Museum of Natural History, Washington, D.C. 20560.

On September 16, 1980 a Notice of Application from the National Fish and Wildlife Laboratory for a marine mammal permit to authorize the taking of West Indian manatees (*Trichechus manatus*) was published in **Federal Register** Volume 45, page 61373. Two corrections need to be made to the Notice.

Item No. 3, Name and Number of Animals should have read: West Indian manatees (*Trichechus manatus*)—20 plus all that are found dead, sick or injured.

Item No. 5, Location of Activity was in error and should have read: St. Johns River except sick or injured manatees may be taken wherever found in southeastern U.S.

All other information in this Notice of September 16, 1980, is correct.

Dated: October 7, 1980.

Fred L. Bolwahnn,

Acting Chief, Permits Branch, Federal Wildlife Permit Office, Fish and Wildlife Service.

[FR Doc. 80-32752 Filed 10-20-80; 8:45 am]

BILLING CODE 4310-55-M

Marine Mammal Permits; Receipt of Application; Correction

Applicant: Director, National Fish and Wildlife Laboratory, National Museum of Natural History, Washington, D.C. 20560.

On September 16, 1980 a Notice of Application from the National Fish and Wildlife Laboratory for a marine mammal permit to authorize the taking of West Indian manatees (*Trichechus manatus*) was published in **Federal Register** Volume 45, page 61373. Two corrections need to be made to the Notice.

Item No. 3, Name and Number of Animals should have read: West Indian manatees (*Trichechus manatus*)—20 plus all that are found dead, sick or injured.

Item No. 5, Location of Activity was in error and should have read: St. Johns River except sick or injured manatees may be taken wherever found in southeastern U.S.

All other information in this Notice of September 16, 1980, is correct.

Dated: October 16, 1980.

Fred L. Bolwahnn,

Acting Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc. 80-32753 Filed 10-20-80; 8:45 am]

BILLING CODE 4310-55-M

Heritage Conservation and Recreation Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the Heritage Conservation and Recreation Service before October 10, 1980. Pursuant to § 1202.13 of 36 CFR Part 1202, written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, Heritage Conservation and Recreation Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by November 5, 1980.

Carol Shull,

Acting Chief, Registration Branch.

CALIFORNIA

Alameda County

Alameda, *First Presbyterian Church Sanctuary Building,* 2001 Santa Clara Ave.

Los Angeles County

Hollywood, *Hollywood Studio Club,* 1215 Lodi Pl.

Long Beach, *Pacific Coast Club,* 850 E. Ocean Blvd.

Monterey County

Pacific Grove, *Gosby House Inn,* 643 Lighthouse Ave.

Orange County

Anaheim, *Stanton, Phillip Ackley, House,* 2200 W. Sequoia Ave.

San Joaquin County

Stockton, *Commercial and Savings Bank,* 343 Main St.

Sonoma County

Sonoma, *Sonoma Grammer School,* 276 E. Napa St.

IDAHO

Ada County

Boise, *Lower Main Street Commercial Historic District,* Main St. between 10th and 12th Sts.

Boise, *Tuttle, Bishop, House,* 512 N. 8th St.

Cassia County

Albion, *Albion Normal School Campus,* Off ID 77.

Custer County

Challis Multiple Resource Area. This area includes: Challis, *Old Challis Historic District,* Bounded by Valley and Pleasant Aves., 2nd and 3rd Sts.; *Board-and-Batten Commercial Building,* Main Ave.; *Building at 247 Pleasant Avenue; Buster Meat Market,* Main Ave.; *Bux's Place,* 321 Main Ave.; *Challis Cold Storage,* Main Ave.; *Challis High School,* Main Ave.; *Chivers, Bill House,* 3rd St.; *Chivers, Thomas, Cellar,* Challis Creek Rd.; *Chivers, Thomas, House,* Challis Creek Rd.; *Custer County Jail,* Main Ave.; *False-Front Commercial Building,* Main Ave.; *Hosford, Emmett, House,* 3rd St.; *I.O.O.F. Hall,* Main Ave.; *McKendrick House,* 4th St.; *Peck, Bill, House,* 16 Main Ave.; *Penwell House,* North Ave.; *Rowles, Donaldson, House,* North Ave.; *Smith, Henry, House,* 5th St.; *Stone and Log Building,* Pleasant Ave.; *Stone Building,* 3rd St.; *Twin Peaks Sports,* Main Ave.; *Wilkinson, Clyde, House,* 9th St.

Valley County

McCall, *McCall Building,* 310 E. Lake St.

INDIANA

Allen County

Fort Wayne, *Feustel, Robert M., House,* 4104 W. Taylor St.

KENTUCKY

Barren County

Glasgow vicinity, *Page, William, House,* S of Glasgow off KY 249

Boyle County

Danville vicinity, *Boyle, Judge John, House,* N of Danville on Bellows Mill Rd.

Campbell County

Newport, *St. Paul's Episcopal Church,* 15 Court Pl.

Franklin County

Frankfort, *Meagher, John, House,* 507 W. 2nd St.

Mercer County

Harrodsburg, *Daniel, Benjamin, House,* NE of Harrodsburg off KY 68

Shelby County

Shelbyville vicinity, *Undulata (Weissinger Farm)* S of Shelbyville on Old Zaring Mill Rd.

Taylor County

Campbellsville, *Merchant's Hotel,* 102 E. Main St.

Trigg County

Cadiz vicinity, *Dawson, Thomas, House,* S of Cadiz

LOUISIANA

East Baton Rouge Parish

Baton Rouge, *Manship House,* 2250 Kleinert Ave.

Rapides Parish

Cheneyville vicinity, *Walnut Grove*, E of Cheneyville.
Glenmora vicinity, *Britt Place*, E of Glenmora on Lake Cocodrie Rd.

St. Mary Parish

Franklin, *St. Mary's Episcopal Church*, 805 1st St.

Tangipahoa Parish

Hammond vicinity, *Carter House*, S of Hammond on Happywoods Rd.

Webster Parish

Minden, *Webster Parish Library Building*, 521 E. West St.

MICHIGAN

Gogebic County

Ironwood, *Ironwood City Hall*, McLeod Ave. and Norfolk St.

Washtenaw County

Ann Arbor, *Michigan Theater Building*, 521–609 E. Liberty St.

MINNESOTA

Beltrami County

Bemidji, *Bemidji Public Library*, 426 Bemidji Ave.

Goodhue County

Red Wing, *St. James Hotel and Buildings*, Bush and Main Sts.

NEW MEXICO

Bernalillo County

Alameda, *Tafoya, Domingo, House*, 10021 Edith Blvd., NE.
Albuquerque, *Davis House*, 704 Parkland Circle, SE.
Albuquerque, *Gladding, James N., House*, 634 Cedar St., NE.
Albuquerque, *McAvoy, Harry W., House*, 1401 Las Lomas Rd., NE.
Albuquerque, *Old Post Office*, 123 4th St.
Albuquerque, *Springer Building*, 121 Tijeras Ave., NE.

OKLAHOMA

BUILDINGS IN TULSA, OKLAHOMA DESIGNED BY GEORGE WINKLER THEMATIC RESOURCES. Reference—see individual listings under Tulsa County.
SITES RELATING TO INDIAN ACCULTURATION IN NORTHCENTRAL OKLAHOMA THEMATIC RESOURCES. Reference—see individual listings under Kay, Lincoln, Noble and Osage Counties.

Cleveland County

Norman, *Rickner's*, 575 University Blvd.

Kay County

Ponca City, *Soldani Mansion*, 819 E. Central St.
Ponca City vincinity, *Ponca Indian Agency and Boarding School (Sites Relating to Indian Acculturation in Northcentral Oklahoma Thematic Resources)* S of Ponca City

Le Flore County

Bokoshe vincinity, *Milton Socialist Colony*, SW of Bokoshe

Lincoln County

Cushing vicinity, *One Way Baptist Church (Sites Relating to Indian Acculturation in Northcentral Oklahoma Thematic Resources)* SE of Cushing on OK 99

McCurtain County

Broken Bow vicinity, *Tiner School* E of Broken Bow

Noble County

Red Rock vincinity, *Otoe-Missouria Indian Agency and Boardingschool (Sites Relating to Indian Acculturation in Northcentral Oklahoma Thematic Resources)* NE of Red Rock

Oklahoma County

Oklahoma City, *Eighth Street Methodist Church*, 701 NW. 8th St.
Oklahoma City, *University Heights School*, 6231 N. Western Ave.

Osage County

Grayhorse, *Grayhorse Indian Reserve (Sites Relating to Indian Acculturation in Northcentral Oklahoma Thematic Resources)* Off OK 18
Pawhuska, *Osage Superintendent's House (Sites Relating to Indian Acculturation in Northcentral Oklahoma Thematic Resources)* 621 Grandview Ave.

Payne County

Stillwater, *Berry, James E., House*, 502 S. Duck St.

Pittsburg County

McAlester, *McAlester Scottish Rite Temple*, 2nd St. and Adams Ave.

Rogers County

Claremore, *Hotel Will Rogers*, 524 W. Will Rogers Blvd.

Tulsa County

Tulsa, *Halliburton-Abbott Building*, 504 S. Boulder Ave.
Tulsa, *Kendall Elementary School (Buildings in Tulsa, Oklahoma Designed by George Winkler Thematic Resources)* 715 S. Columbia Ave.
Tulsa, *Manhattan Court (Buildings in Tulsa, Oklahoma Designed by George Winkler Thematic Resources)* 1020 S. Cincinnati Ave. and 115 E. 11th St.
Tulsa, *Trinity Episcopal Church (Buildings in Tulsa, Oklahoma Designed by George Winkler Thematic Resources)* 501 S. Cincinnati Ave.

OREGON

Clackamas County

Damascus, *Damascus School*, 14711 SE. Anderson Rd.

Clatsop County

Astoria, *Flavel, Capt. George, House and Carriage House*, 441 8th St.

Columbia County

Scappoose, *Watts, James Grant, House*, 206 SE 1st St.

Jackson County

Central Point, *Central Point Public School*, 450 S. 4th St.

SOUTH CAROLINA

Anderson County

Belton, *Chamberlain-Kay House*, 205 River St.

Berkeley County

Cordesville vicinity, *Richmond Plantation*, SE of Cordesville

Calhoun County

St. Matthews vicinity, *Houser, David, House*, W of St. Matthews on U.S. 176

Charleston County

Charleston, *Cigar Factory*, Bounded by E. Bay, Columbus, Blake, and Drake Sts.
Charleston vicinity, *Barnwell House (Prospect Hill Plantation)* S of Charleston
McCellanville vicinity, *Wedge, The*, NE of McCellanville

Chester County

Great Falls, *Great Falls Depot*, Republic St.
Great Falls, *Republic Theater*, 806 Dearborn St.

Colleton County

Walterboro, *Hickory Valley Historic District*, Roughly bounded by Ireland Creek, Jeffries Blvd., Wichman, Verdier, and Ivanhoe Sts.

Fairfield County

RIDGEWAY MULIPLE RESOURCE AREA. This area includes: Ridgeway, *Ridgeway Historic District*, U.S. 21 and SC 34; *Ruff's Chapel, U.S. 21 and SC 34; Wilson, Monroe, House*, Railroad Ave. and SR S20–20

Georgetown County

Murrells Inlet, *Murrells Inlet Historic District*, Off U.S. 17

Greenville County

Greenville, *Old Textile Hall*, 322 W. Washington St.

Kershaw County

Camden vicinity, *Mulberry Plantation*, S of Camden on U.S. 521

McCormick County

Mount Carmel vicinity, *Calhoun Mill*, 3 mi. NE of Mount Carmel

Oconee County

Walhalla, *St. John's Lutheran Church*, 301 W. Main St.

TENNESSEE

Bradley County

Cleveland, *Tipton-Fillauer House*, 63 Broad St., NW.

Clairborne County

Speedwell vicinity, *Kincaid House*, NE of Speedwell on Russell Lane

Davidson County

Nashville, *Frost Building (Sunday School Board of the Southern Baptist Convention)* 161 8th Ave. N.

Greene County

Greenville, *Tusculum College Historic District*, U.S. 11 and TN 107

Grundy County

Altamont, *Northcutt House*, TN 56

Monteagle, *DuBose Memorial Church Training School*, Fairmont and College Sts., NE.

Hamilton County

Chattanooga, *Faxon-Thomas Mansion*, 10 Bluff View Ave.

Henry County

Paris, *Grove, E. W.-Henry County High School*, Grove Blvd.

Knox County

Knoxville, *Williams, Col. John, House*, 2325 Dandridge Ave.

Shelby County

Memphis, *Memphis Trust Building*, 12 S. Main St.

Sumner County

Cottontown, *Bridal House*, TN 25

Washington County

Limestone vicinity, *Telford, Thomas, House*, SE of Limestone on Old Jonesboro Water Plant Rd.

Wilson County

Lebanon vicinity, *Campbell, Dr. John Owen, House*, W of Lebanon on U.S 70

UTAH

Cache County

Clarkston vicinity, *Harris, Martin, Gravesite*, N of Clarkston

Summit County

Park City, *Park City Community Church*, 402 Park Ave.

Washington County

St. George, *Woodward School*, 100 West and Tabernacle Sts.

Washington, *Washington School*, Main and Telegraph Sts.

VIRGIN ISLANDS

St. Croix Island

Christiansted vicinity, *Estate La Reine*, Nos. 20 Kings Quarter and 19 Queens Quarter

[FR Doc. 80-32356 Filed 10-20-80; 8:45]

BILLING CODE 4310-03-M

National Park Service

Santa Monica Mountains National Recreation Area Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal advisory Committee act that a meeting of the Santa Monica Mountains National Recreation Area Advisory Commission will be held on November 13, 1980 at 9:30 a.m. at the American Legion Hall, 5320 Fallbrook, Woodland Hills, CA.

The Advisory Commission was established by Pub. L. 95-625 to provide for free exchange of ideas between the National Park Service and the public to facilitate the solicitation of advice or other counsel from members of the public on problems pertinent to the National Park Service in Los Angeles and Ventura Counties.

Members of the Commission are as follows:

Dr. Norman P. Miller, Chairperson
Honorable Marvin Braude
Ms. Sarah Dixon
Ms. Margot Feuer
Dr. Henry David Gray
Mr. Edward Heidig
Mr. Frank Hendler
Ms. Mary C. Hernandez
Mr. Mike Levett
Ms. Susan Barr Nelson
Mr. Carey Peck
Mr. Donald Wallace
Ms. Marilyn Whaley Winters

The major agenda items include the election of the Vice Chairperson, the Superintendent's status report, an update from the General Management Plan committees, a discussion on planning and land acquisition matters relating to lands owned by Los Angeles City, Los Angeles County, California State, and the National Park Service. There will be time available for the public to review the draft General Management Plan with the National Park Service staff.

The meeting is open to the public. Any member of the public may file with the Commission a written statement concerning issues to be discussed.

Persons wishing to receive further information on this meeting or who wish to submit written statements may contact the Superintendent, Santa Monica Mountains National Recreation Area, 23018 Ventura Boulevard, Woodland Hills, California 91364.

Minutes of the meeting will be available for public inspection by December 12, 1980, at the above address.

Dated: October 9, 1980.

Robert S. Chandler,

Superintendent, Santa Monica Mountains National Recreation Area.

[FR Doc. 80-32634 Filed 10-20-80; 8:45 am]

BILLING CODE 4310-70-M

Office of Surface Mining Reclamation and Enforcement

Petition To Designate Certain Federal Lands Unsuitable for Surface Coal Mining Operations; Extension of Time for Filing Comments

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), U.S. Department of the Interior, Washington, D.C. 20240.

ACTION: Extension of public comment period on petition to designate Federal lands unsuitable for surface coal mining operations.

SUMMARY: The Office of Surface Mining is hereby reopening the public comment period on a petition to designate as unsuitable for surface coal mining operations certain Federal lands within the Monongahela National Forest, located in the watershed of Shavers Fork from Cheat Bridge, Randolph County, to Parsons, Tucker County, West Virginia.

At the request of interested parties, the time limit within which written statements must be submitted is being reopened until January 2, 1981.

ADDRESS: Written comments must be mailed or hand-carried to the Division of State and Federal Programs, Office of Surface Mining, Region I, 603 Morris Street, Charleston, West Virginia 25301. The file on the petition is available for public review during normal working hours at the above address of OSM, Region I and also at the United States Forest Service Headquarters, Sycamore Street, Elkins, West Virginia. Copies of the petition and the information sheet presenting the issues to be studied may be obtained from OSM, Region I, at the address given above.

FOR FURTHER INFORMATION CONTACT: Mr. David Halsey, Division of State and Federal Programs, Office of Surface Mining, Region I, 603 Morris Street, Charleston, West Virginia 25301; telephone, (304) 342-8125.

SUPPLEMENTARY INFORMATION: The purpose of this extension is to allow interested parties additional time to submit statements and information on the matters to be analyzed in detailed statement to be issued by the Regional Director, Region I, pursuant to Section 522(d) of the Surface Mining Control and Reclamation Act of 1977 and the rules in 30 CFR 769.17(e). These matters are (1) the potential coal resources of the area involved in petition; (2) the demand for such coal resources; and (3) the impact of the requested designation on the environment, the economy, and the supply of coal.

A public meeting was held on August 12, 1980, to identify relevant issues and to solicit information from the public on a petition to designate as unsuitable for surface coal mining certain Federal lands within the Monongahela National Forest, located in the watershed of Shavers Fork from Cheat Bridge, Randolph County, to Parsons, Tucker County. The petitioner is the West Virginia Highlands Conservancy. The location of the petitioned lands was

given in the notice of receipt of the complete petition published in the **Federal Register** on June 19, 1980, (45 FR 41542). Notice of the public meeting and intent to prepare a detailed statement was published in the **Federal Register** on August 7, 1980, (45 FR 52469–53470).

At the public meeting held on August 12, 1980, in Elkins, West Virginia, several commenters stated that the August 15, 1980, deadline for comments did not allow sufficient time to prepare information for submission. There was also much confusion concerning the August 15, 1980, deadline, versus the comment deadline one week after the public hearing on the petition to be held in February, 1981. To resolve these concerns, this notice extends the August 15, 1980, date for public comments on the issues to be addressed in the proposed detailed statement to January 2, 1981. Comments must be received in the Regional Office by 5:00 p.m. This new deadline will apply only to comments suggesting issues which should be included in the lands unsuitable study and detailed statement required by Section 522(d). Comments on issues relating to the petition itself will continue to be accepted until the end of February, 1981, after the public hearing on the petition.

Dated: October 7, 1980.

R. Bruce Carroll,

Acting Assistant Director, State and Federal Programs, Washington, D.C.

[FR Doc. 80-32672 Filed 10-20-80; 8:45 am]

BILLING CODE 4310-05-M

INTERSTATE COMMERCE COMMISSION

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, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the 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

Notice No. F–65

The following applications were filed in region 1. Send protests to: Interstate Commerce Commission, Regional Authority Center, 150 Causeway Street, Room 501, Boston, MA 02114.

MC 151864 (Sub-1–1TA), filed September 30, 1980. Applicant: T. J. VESCE, INC., P.O. Box 425, Chestertown, NY 12817. Representative: Robert J. Ellsworth, P.O. Box 425, Chestertown, NY 12817. *Contract carrier:* irregular routes: (1) *Log homes & building products needed for their erection,* from Chestertown, NY to points in the US. Supporting shipper: Lincoln Logs Ltd., Route 9, Chestertown, NY 12817.

MC 146933 (Sub-1–2TA), filed September 30, 1980. Applicant: BRANT TRANSPORTATION, INC., 38 Tower Avenue, South Weymouth, MA 02190. Representative: Robert G. Parks, 20 Walnut Street, Suite 101, Wellesley Hills, MA 02181. *Contract carrier:* irregular routes: *Structural steel shapes,* between points in CT, DE, MD, ME, NE, NJ, NY, PA, RI, and VT. Supporting shipper: L. Antonelli Iron Works, Inc., 187 Willard Street, Quincy, MA 02196.

MC 151972 (Sub-1–1TA), filed September 29, 1980. Applicant: JOSEPH FORNINO, d/b/a PARAMOUNT FRUIT, 272 Tolland Street, East Hartford, CT 06108. Representative: John J. Fay, Esq., 663 Maple Avenue, Hartford, CT 06114. *Contract carrier:* irregular routes: *Bakery products* between East Hartford, CT, on the one hand, and, on the other, points and places in MA, RI, NY, NH, and PA, under continuing contract(s) with Hartford East Corp. Supporting shipper: Hartford East Corp., 122 Park Avenue, East Hartford, CT 06108.

MC 120547 (Sub-1–1TA), filed September 29, 1980. Applicant: PARKER'S EXPRESS, INC., 21 Parker Drive, Avon, MA 02322. Representative: John F. O'Donnell, Barrett and O'Donnell, 60 Adams St., P.O. Box 238, Milton, MA 02187. *General commodities, (except household goods as defined by the Commission and Classes A & B explosives)* between points in CT, MA, ME, NH, RI, VT, Putnam, Westchester, Dutchess, Columbia, Rensselaer, Schenectady, Albany, Greene, Rockland, Ulster, Orange counties, NY. Supporting shipper(s): There are 11 statements in support of the application which may be examined at the I.C.C. Regional Office in Boston, MA.

MC 65491 (Sub-1–3TA), filed September 29, 1980. Applicant: GEORGE W. BROWN, INC., 1475 East 222nd Street, Bronx, NY 10469. Representative: William Biederman, 371 Seventh Avenue, New York, NY 10001. *Steel coils* between Milford, CT and Sharon, PA. Supporting shipper: The Eastern Steel Metal Co., One Eastern Steel Rd., Milford, CT 06460.

MC 144598 (Sub-1–2TA), filed October 3, 1980. Applicant: C & J TRANSPORT, INC., P.O. Box 42, North Vassalboro, ME 04962. Representative: R. Emery Clark, 366 Executive Building, 1030 15th St., N.W., Washington, DC 20005. *Wood and steel garage doors and materials, supplied, articles and equipment used in the manufacture, production and distribution thereof,* (1) from those points in the U.S. located in and east of MN, IA, MO, AR and LA, to Sudbury, MA, and (2) from Sudbury, MA to points in ME. Supporting shipper: New England Door Corporation, 25 Union Ave., Sudbury, MA 01776.

MC 2860 (Sub-1–16TA), filed October 3, 1980. Applicant: NATIONAL FREIGHT, INC., 71 West Park Avenue, Vineland, NJ 08360. Representative: Gerald S. Duzinski, 71 West Park Avenue, Vineland, NJ 08360. *Bakery Goods, foodstuffs and material, equipment and supplies used in the manufacture, sale and distribution thereof,* between points in Meriwether County, GA on the one hand, and, on the other, points in Norfolk County, MA; Erie and Niagara Counties, NY; and Cumberland County, PA. Supporting shipper: Nabisco, Inc., East Hanover, NJ 07936.

MC 151773 (Sub-1–9TA), filed October 1, 1980. Applicant: CARGO TRANSPORT, INC., 100 Garfield Avenue, P.O. Box 268, Somerville, MA 02143. Representative: William F. Mix, 153 Grove Street, Lexington MA 02173. *Foodstuffs, frozen or other than frozen, and material, supplies and equipment*

used in the manufacture, sale and distribution thereof (except commodities in bulk), between Boston and its commercial zone, on the one hand, and on the other, points in the U.S. Supporting shipper: Louise's Ravioli Co., Inc. 370 Commercial St., Malden, MA 02148.

MC 123233 (Sub-1–7TA), filed October 3, 1980. Applicant: PROVOST CARTAGE INC., 7887 Grenache Street, Ville d'Anjou, PQ, CD H1J 1C4. Representative: J. P. Vermette, 7887 Grenache Street, Ville d'Anjou, PQ, CD H1J 1C4. *Alcoholic beverages, in bulk, in tank vehicles,* from Lawrenceburg, IN, to the Ports of Entry on the International Boundary Line between the U.S. and CD located in MI and NY. Supporting shipper: Schenley Distillers Inc., 36 East Fourth Street, Cincinnati, OH 45202.

MC 145148 (Sub-1–2TA), filed October 3, 1980. Applicant: SUTTER TRUCKING & EQUIPMENT, INC., 277 Versailles Road, Irving, NY 14081. Representative: John M. Panara, 4388 Clark Street, Hamburg, NY 14075. *Contract carrier:* irregular routes: *Granulated slag in bags,* from the facilities of H. B. Reed Co. at or near Moundsville, WV to points in the state of NY on or west of Interstate Hwy 81. Supporting shipper: H. B. Reed Co., 8149 Kennedy Avenue, Highland, IN 46322.

MC 142603 (Sub-1–10TA), filed October 2, 1980. Applicant: CONTRACT CARRIERS OF AMERICA, INC., P.O. Box 1968, Springfield, MA 01101. Representative: Raymond A. Richards, 35 Curtice Park, Webster, NY 14580. *Contract carrier:* irregular routes: *Plastic and plastic products materials, equipment and supplies used in the manufacture, sale and distribution of plastics and plastic products,* between Middlesex County, MA and points in the U.S., under continuing contract(s) with W. B. C. Extrusion Products, Inc. Supporting shipper: W. B. C. Extrusion Products, 178 Bridge St., Lowell, MA 01852.

MC 35335 (Sub-1–3TA), filed October 1, 1980. Applicant: COOPER–JARRETT, INC., Hanover Plaza, Morristown, NJ 07960. Representative: William J. Hanlon, Esq., Hanover Plaza, Morristown, NJ 07960. *General commodities (except household goods and explosives),* between Cincinnati, OH and points in TX and OK. Applicant requests tacking at Cincinnati, OH with the remainder of its authority. Supporting shipper(s): There are 10 statements in support attached to the application which may be examined at the I.C.C. Regional Office in Boston, MA.

MC 148503 (Sub-1–1TA), filed September 26, 1980. Applicant: BERKSHIRE CHEMICAL HAULERS, INC, 1 Cook Street, Adams, MA 01220. Representative: Wesley S. Chused, 15 Court Square, Boston, MA 02108. *Fuel oils and kerosene, in bulk,* from Rensselaer and Glenmont, NY to points in Berkshire County, MA. Supporting shipper: H. A. George & Sons Fuel Corp., 651 Ashland Street, North Adams, MA 01220.

MC 140379 (Sub-1–2TA), filed September 26, 1980. Applicant: TRANSPORT SERVICE, INC., 216 Amaral Street, P.O. Box 4167, East Providence, RI 02914. Representative: Jeffrey A. Vogelman, Suite 400, Overlook Bldg., 6121 Lincolnia Road, Alexandria, VA 22312. *Contract carrier:* irregular routes: *Brass tubing, copper tubing, aluminum tubing, brass wire, copper wire, and aluminum wire* between the facilities of United Wire & Supply Corp. located at or near Cranston, RI, on the one hand, and, on the other, the facilities of or utilized by United Wire & Supply Corp. located at South Holland, IL and the facilities of or utilized by Central Steel & Wire Co. located at Chicago, IL. Supporting shipper: United Wire & Supply Corp., 1497 Elmwood Avenue, Cranston, RI 02910.

MC 149367 (Sub-1–3TA), filed October 1, 1980. Applicant: TRAFIK SERVICES, INC., 11 Newark Street, Providence, RI 02908. Representative: A. Joseph Mega, 11 Newark Street, Providence, RI 02908. *Contract carrier:* irregular routes: *Chemical, Pharmarceuticals, Herbicides, including hazardous waste, raw materials and supplies used in the production of such commodities,* between all points in the U.S. Supporting shipper: American Hoechst Corporation, 129 Quidnick Road, Coventry, RI 02816.

MC 152063 (Sub-1–1TA), filed September 26, 1980. Applicant: P.E.G. TRUCKING, INC. 600 Washington Street, Wrentham, MA 02093. Representative: Samuel L. Watts, Vice President Consulting Services, 600 Washington Street, Wrentham MA 02093. *Industrial sprinkler systems and parts thereof and materials, equipment and supplies used in manufacture, sale, installation, and distribution of the above products,* between points in Iredell and Rowan Counties, NC, Dallas and Lubbock Counties, TX, Los Angeles County, CA, on the one hand, and, on the other, points in the US (except AK and HI). Supporting shipper: Grinnell Fire Protection Sys. Co., Inc., 10 Dorrance Street, Providence, RI 02903.

MC 143127 (Sub-1–23TA), filed October 6, 1980. Applicant: K. J. TRANSPORTATION, INC., 6070 Collett Road, Victor, NY 14564. Representative: Linda A. Calvo, 6070 Collett Road, Victor, NY 14564. *Paper articles,* from WI to points in the US in and east of ND, SD, NE, CO, OK and TX (except WI). Supporting shipper: Phillip Morris Industrial, Inc., 4200 N. Holton St., Milwaukee, WI 53201.

MC 142603 (Sub-1–11TA), filed October 6, 1980. Applicant: CONTRACT CARRIERS OF AMERICA, INC., P.O. Box 1968, Springfield, MA 01101. Representative: Stephen J. Habash, 100 E. Broad St., Columbus, OH 43215. *Contract carrier:* irregular routes: *General commodities (except household goods as defined by the Commission and Classes A and B explosives),* between points in the US under continuing contracts with Gulf & Western Industries, Inc., and its subsidiaries. Supporting shipper: Gulf & Western Industries, Inc., One Gulf & Western Plaza, New York, NY 10023.

MC 152051 (Sub-1–1TA), filed October 1, 1980. Applicant: A. HUTTAR & SONS, INC., 300 Cedar Court, Belle Mead, NJ 08502. Representative: Zoe Ann Pace, Esq., Zelby, Burstein, Hartman & Burstein, Suite 2373, One World Trade Center, New York, NY 10048. *Contract carrier:* irregular routes: *Salt, salt products, food seasoning compounds and materials and supplies used in the manufacture, packaging, marketing and distribution of salt and salt products,* between all points in NJ, NY and PA, restricted to traffic originating at or destined to the facilities of Morton Salt, division of Morton Norwich. Supporting shipper: Morton Salt Division of Morton Norwich Prod. Inc., 110 N. Wacker Dr., Chicago, IL 60606.

MC 143110 (Sub-1–2TA), filed October 6, 1980. Applicant: K AND B EXPRESS, INC., P.O. Box 801, Union, NJ 07083. Representative: A. Dayton Schell, 6 Eileen Way, Edison, NJ 08817. *Contract carrier:* irregular routes: *General Commodities,* between points in AZ, CO, CA, DE, FL, GA, IA, ID, IL, IN, KS, MD, MI, MN, MO, NE, NJ, NY, NC, OH, OR, PA, SC, TN, TX, UT, VA, WA, WI and WV, under a continuing contract with ABD–TNT and/or Acme Fast Freight, Inc., of Los Angeles, CA 90031. Supporting shipper: ABC–TNT and Acme Fast Freight, 2110 Alhambra Ave., Los Angeles, CA 90031.

MC 152065 (Sub-1–1TA), filed October 1, 1980. Applicant: McCOURT TRANSPORTATION, INC., 303 Hopkins Street, Buffalo, NY 14220. Representative: Robert D. Gunderman, Esq. Suite 710, Statler Building, Buffalo, NY 14202. *Contract carrier:* irregular routes: *Passengers (Veteran's Administration Beneficiaries),* between the Veteran's Administration Medical

Center in Buffalo, NY, on the one hand, and, on the other, points in PA. Supporting shipper: Veteran's Administration Medical Center, 3495 Bailey Avenue, Buffalo, NY 14215.

MC 152097 (Sub-1–1TA), filed October 7, 1980. Applicant: UNITED CONTRACT CARRIER, INC,. P.O. Box 355, Rear, 400 Brook Street, Rocky Hill, CT 06067. Representative: Hugh M. Joseloff, P.O. Box 3258, Hartford, CT 06103. *Contract carrier:* irregular routes: *General commodities, including equipment, materials and supplies as are dealt in and used by retail department stores* between the facilities and subsidiaries of Ames Department Stores, Inc. in CT, DE, NH, NJ, NY, ME, MD, MA, PA, VT, OH, and FL on the one hand, and, on the other, all points in the US (excluding AK and HI) under a continuing contract with Ames Department Stores, Inc. Supporting shipper: Ames Department Stores, 2418 Main Street, Rocky Hill, CT 06067.

MC 152098 (Sub-1–1TA), filed October 7, 1980. Applicant: OAKHURST TRANSPORTATION, INC., 175 Oakhurst Street, Lockport, NY 14094. Representative: James E. Brown, 36 Brunswick Road, Depew, NY 14043. *Petroleum products and antifreeze in bulk in tank vehicles and petroleum products in cans in boxes* between points in DC, NJ, NY, OH and PA, under continuing contracts with Wylie Lubricants, Inc., Buffalo, NY. Supporting shipper: Wylie Lubricants, Inc., 651 Delaware Ave., Buffalo, NY 14202.

MC 145914 (Sub-1–6TA), filed October 7, 1980. Applicant: COASTAL TRUCK LINE, INC., How Lane, P.O. Box 600, New Brunswick, NJ 08903. Representative: Herbert Burstein, Esq., Zelby, Burstein, Hartman & Burstein, Suite 2373, One World Trade Center, New York, NY 10048. *Contract carrier:* irregular routes: *Such commodities as are dealt in by wholesale, retail and chain grocers and food business houses (except commodities in bulk),* between all points in the States of FL, GA, NC, SC, VA, WV, MD, DE, District of Columbia, PA, NY, NJ, CT, RI, MA, ME, NH, VT on the one hand, and, on the other, the facilities of the Wakefern Food Corporation at Wallkill, NY, and Elizabeth & Edison, NJ. Supporting shipper: Wakefern Food Corp., 600 York Street, Elizabeth, NJ 07207.

MC 151639 (Sub-1–2TA), filed October 7, 1980. Applicant: COMMAND TRANSPORTATION INC., 280 Eastern Avenue, Chelsea, MA 02150. Representative: Wesley S. Chused, 15 Court Square, Boston, MA 02108. *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 Framingham, Clinton, Mansfield and Stoughton, MA, on the one hand, and, on the other, points in the US in and east of WI, IL, KY, TN, and MS, restricted to traffic originating at or destined to the facilities of Zayre Corp. Supporting shipper: Zayre Corp., Famingham, MA 01701.

The following applications were filed in Region 2. Send protests to: ICC, Federal Reserve Bank Bldg., 101 N. 7th St., Room 620, Philadelphia, PA 19106.

MC 114569 (Sub-II–30TA), filed September 17, 1980. Applicant: SHAFFER TRUCKING, INC., P.O. Box 418, New Kingstown, PA 17072. Representative: N. L. Cummins (same as Applicant). *Such commodities as are dealt in by retail, wholesale and institutional suppliers* (except in bulk, in tank vehicles) between points in Berks, Franklin, Adams, Perry, York, Cumberland, Lancaster, Dauphin, Lebanon, Northumberland, and Bradford Counties, PA on the one hand, and, on the other, points in the U.S. (except AK and HI), restricted to traffic originating at or destined to points in the named PA counties for 270 days—an underlying ETA seeks 120 days authority. Supporting shippers: There are six (6) supporting shippers. Their statements may be examined at the I.C.C. office in Philadelphia, PA.

MC 151709 (Sub-II–1TA), filed September 16, 1980. Applicant: U.S. SERVICES, INC., 470 Mall Circle Dr., Monroeville, Pa. 15146. Representative: Michael J. Peretto (address same as applicant). *Chemical wastes, in bulk, in drum loads, and tank vehicles, for treatment and/or disposal,* from Koppers Bridgeville, PA., Alleg. Co., to South Carolina SCA Services Inc. Pinewood, South Carolina, Sumter County, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Koppers Co., Inc., 850 Koppers Bldg., Pgh., PA.

MC 45764 (Sub-II–3TA), filed September 17, 1980. Applicant: ROBBINS MOTOR TRANSPORTATION, INC., Industrial Hwy & Saville Ave., Eddystone, Pa. 19013. Representative: Edward Kells (same as applicant). *Machinery, electric copper cathodes, wire, nonferrous metal products, and articles requiring special equipment because of size or weight, in foreign commerce,* between Eagle Pass and Laredo, TX on the one hand, and on the other East St. Louis, IL Kenosha, WI Franklin, KY Carrolton, GA South Bay, FL Buffalo and New York, NY Baltimore, MD and Philadelphia, PA, for 270 days. An underlying ETA seeks 120 days authority. Supporting shippers: Nacional De Cobre, S.A., Poniente 134 #719, Mexico 16, D.F.

MC 21866 (Sub-2–31TA), filed September 15, 1980. Applicant: WEST MOTOR FREIGHT, INC., 740 S. Reading Ave., Boyertown, PA 19512. Representative: Alan Kahn, 1430 Land Title Bldg., Philadelphia, PA 19110. *Automotive parts, accessories and supplies, and equipment* used in the distribution of the foregoing commodities, between the facilities of Chrysler Corporation, Service and Parts Division, at points in MI, on the one hand, and, on the other, Tappan, NY, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Chrysler Corp., Service and Parts Div., 26311 Laurence Ave., Center Line, MI 48015.

MC 116763 (Sub-II–37TA), filed September 15, 1980. Applicant: CARL SUBLER TRUCKING, INC., North West St., Versailles, OH 45380. Representative: Gary J. Jira (same as Applicant). *(1) Such commodities as are dealt in by discount and variety stores, and (2) materials, equipment and supplies used in the manufacturing and distribution of health and beauty aids* (Restricted in (1) and (2) above against the transportation of commodities in bulk, in tank vehicles) Between the facilities of Gibson Coop Warehouse, Inc., located at or near Dallas, TX, on the one hand, and on the other, points in the United States (except AK & HI). Restricted to traffic originating at or destined to the above named facilities, for 270 days. Supporting shipper: Gibson Coop. Warehouse, Inc., 12344 E. Northwest Highway, Dallas, TX.

MC 116763 (Sub-II–36TA), filed September 15, 1980. Applicant: CARL SUBLER TRUCKING, INC., North West St., Versailles, OH 45380. Representative: Gary J. Jira (same as Applicant). *General commodities* (except commodities in bulk, in tank vehicles, used household furniture, commodities the transportation of which because of size or weight require the use of special equipment, automobiles, trucks and buses as described in the Report in Descriptions in Motor Carrier Certificates, 61MCC 209 and 766, and explosives), between points in the United States (except AK and HI), for 270 days. Restricted to the transportation of traffic originating at or destined to the facilities of Bio Lab, Inc., its customers or suppliers. Supporting shippers: Bio Lab, Inc., Division of Lanza, 1730 Dogwood Drive, Conyers, GA 30207.

MC 146320 (Sub-II–3TA), filed September 15, 1980. Applicant: CHARLES A. STOECKLER, INC., 3 Spring St., Wilkes Barre, PA 18702. Representative: Joseph A. Keating, Jr., 121 S. Main St., Taylor PA 18517. Contract carrier, irregular routes, (1) *Printed matter* (2) *Materials, supplies and equipment* used in the manufacture, distribution of printed matter (1) From Luzerne County, PA to points in the US (except AK & HI) (2) on return, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): Putnam Publishing Group, Berkley/Jove Publ. Grp., 200 Madison Ave., New York, N.Y. 10016.

MC 116763 (Sub-II–35), filed September 15, 1980. Applicant: CARL SUBLER TRUCKING, INC., North West St., Versailles, OH 45380. Representative: Gary J. Jira (same as applicant) *General Commodities* (except households goods as defined by the Commission, Classes A & B explosives and commodities in bulk, in tank vehicles, Standard Transportation Commodity Code No. 51), between points in the U.S. in and east of MN, IA, MO, OK and TX, for 270 days. Restricted to the transportation of traffic originating at or destined to the facilities of Marvil Products Company, or its customers or suppliers. Supporting shipper(s): Marwil Products Company, 63 Elm Street, Ft. Loramie, OH 45845.

MC 30237 (Sub-II–9), filed September 15, 1980. Applicant: YEATTS TRANSFER CO., P.O. Box 666, Altavista, VA 24517. Representative: Eston H. Alt, P.O. Box 666, Altavista, VA 24517. *New Furniture,* from Spencer and Debois Counties, IN, and Warsaw, KY, to points in CT, DE, DC, ME, MD, MA, NJ, NH, NY, NC, PA, RI, SC, VT, VA and WV, for 270 days. An underlying ETA seeks 120 days. Supporting shipper(s): (1) Indiana Desk Co., Jasper, IN 47546; (2) Jasper Desk Co., P.O. Box 111, Jasper, IN 47546; (3) Jasper Cabinet Co., P.O. Box 69, Jasper, IN 47546; (4) Indiana Desk Co., Jasper, IN 47546; (5) Jasper Chair Co., Jasper, IN 47546; (6) Hoosier Desk Co., 310 Mill St., Jasper, IN 47546; (7) Dale Cabinet Co., Dale, IN 47523; (8) Mellin Quincy Mfg. Co., Jasper, IN 47546; (9) Jofco, Inc., Jasper, IN 47546; (10) Warsaw Furn. Co., Warsaw, KY 41095.

MC 147021 (Sub-II–2TA), filed September 18, 1980. Applicant: C. SUMMERS, INC., 112 Spruce St., Elizabethville, PA 17023. Representative: John W. Frame, Box 626, 2207 Old Gettysburg Road, Camp Hill, PA 17011. *Foodstuffs,* between the facilities of Iceland Seafood Corporation, Camp Hill, PA, on the one hand, and, on the other, points in DE, MD, NJ, NY, OH, VA, WV and DC for 270 days. Supporting shipper: Iceland Seafood Corp., 1250 Slatehill Rd., Camp Hill, PA 17011.

MC 21866 (Sub-II–32TA), filed September 19, 1980. WEST MOTOR FREIGHT, INC., 740 South Reading Ave., Boyerton, PA 19512. Representative: Leonard A. Jaskiewicz, 1730 M Street NW., Washington, D.C. 20036. (1) *Plastic products,* from Seneca, SC, (2) *Rubber products,* from Kingstree, SC, (3) *Steel products,* from Canfield and Martins Ferry, OH and Malvern, PA, and (4) *Aluminum products,* from Lincoln Park, MI, to the facilities of Kingston-Warren Corp. located at or near Newfields, NH for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Kingston-Warren Corp. Route 85, Newfields, NH 03856.

MC 119632 (Sub-II–16TA), filed September 19, 1980. Applicant: REED LINES, INC., 634 Ralston Ave., Defiance, OH 43512. Representative: Wayne C. Pence (same as applicant). *General Commodities* (except household goods as defined by the Commission and Class A and B explosives), between all points in the U.S. in and east of MN, IA, MO, AR and LA. Restricted to traffic originating at or destined to facilities of Forty-Eight Insulation, Inc., Pittsburgh Corning Corporation, Ovaltine Products, Inc., and T. G. & Y Stores Co. Supporting Shippers: Forty-Eight Insulations, Inc., P.O. Box 1148, Aurora, IL 60507, Pittsburgh Corning Corporation 800 Presque Isle Drive, Pittsburgh, PA 15239, Ovaltine Products, Inc., 150 S. Monterey, Villa Park, IL 60181, T. G. & Y. Stores Co., Box 25964, Oklahoma City, OK 73125, for 270 days.

MC 142976 (Sub-II–3TA), filed October 2, 1980. Applicant: JOHN D. PERFETTI, R.D. #4 Box 265C, Blairsvile, PA 15717. Representative: Eugene A. Waszkiewicz, P.O. Box 8315, Pittsburgh, PA 15218. *Contract; irregular: (a) Iron and Steel Articles, (b) Materials, Equipment and Supplies used in the manufacture and process of commodities in Paragraph (a)* between points in the US (except AK and HI) under a continuing contract with Standard Steel Co. for 270 days. Underlying ETA seeks 120 days authority. Supporting shipper(s): Standard Steel Co., 107 Gertrude St., Latrobe, PA 15650.

MC 136343 (Sub-II–14TA), filed October 2, 1980. Applicant: MILTON TRANSPORTATION, INC., P.O. Box 355, Milton, PA 17847. Representative: Herbert R. Nurick, P.O. Box 1166, Harrisburg, PA 17108. *Toilet preparations and cleaning products in boxes* between pts. in the U.S. in and east of WI, IL, KY, TN and MS for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Minnetonka, Inc., Johnathan Industrial Center, Chaska, MN 55318.

MC 152072 (Sub-II–1TA), filed October 2, 1980. Applicant: PHILLIPS BROS. WAREHOUSING & DISTRIBUTING CORP., 25 Thomas Ave., Baltimore, MD 21225. Representative: Robert L. Cope, Suite 501, 1730 M Street NW., Washington, DC 20036. *Contract; irregular: General Commodities (except household goods as defined by the Commission, and Classes A and B explosives)* between points in DE, MD, NJ, NY, and PA, under continuing contract(s) with Stereo Equipment Sales, Inc., for 270 days. An underlying ETA seeks 120 days. Supporting shipper: Stereo Equipment Sales, Inc. of Baltimore, MD, 6730 Santa Barbara Court, Baltimore, MD 21227.

MC 107012 (Sub-II–87TA), filed October 2, 1980. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy. 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same as applicant). *Toys and games* from the facilities of Fisher-Price Toys at or near Brownsville, TX, to the facilities of Fisher-Price Toys at or near Murray, KY for 270 days. An underlying ETA seeks 120 days authority. Supporting Shipper: Fisher-Price Toys, 636 Girard Ave., East Aurora, NY 14052.

Note.—Common control may be involved.

MC 107012 (Sub-II–88TA), filed October 3, 1980. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy. 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same as applicant). *Such commodities as are utilized in and incidental to the operation of a resturant (except frozen foods)* from the facilities of Hardees Food Systems, Inc., at or near Rocky Mount, NC, to points in AL, DE, FL, GA, IA, KY, LA, MD, MN, ND, NJ, PA, SC, SD, TN, VA and WV for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Hardee's Food System, Inc., P.O. Box 1619, 1233 North Church, Rocky Mount, NC 27801.

Note.—Common control may be involved.

MC 151235 (Sub-II–1TA), filed October 1, 1980. Applicant: A & B BUS COMPANY, 2919 Rhode Island Ave., NE., Washington, DC 20018. Representative: Peter R. Gilbert 1919 Pennsylvania Ave. NW., Suite 850, Washington, DC 20006. *Passengers and their baggage, in the same vehicle with passengers, in round trip charter and special operations,* beginning and ending at points in the Washington, DC commercial zone, and extending to pts. in and east of MN, IA, MO, AR and LA, for 270 days. An underlying ETA seeks

120 days authority. Supporting shippers: There are 14 statements in support attached to this application. They may be examined at the ICC Regional Office in Philadelphia, PA.

MC 142864 (Sub-II–4TA), filed September 2, 1980. Originally published in **Federal Register** dated September 8, 1980. Applicant: RAY E. BROWN TRUCKING, INC., P.O. Box 501, Massillon, OH 44646. Representative: Jerry B. Sellman, 50 W. Broad St., Columbus, OH 43215. *Edible tallow, lard, shortening, vegetable oil, cooking or salad oil, and margarine,* between Kankakee County, IL, on the one hand, and, on the other, pts. in the states of CT, DE, MA, ME, MD, NH, NJ, NY, OH, PA, RI, VA, VT, WV and DC. for 270 days. An underlying ETA seeks 120 authority. Supporting shipper: Bunge Edible Oil Corp., Box 192, Kankakee, IL 60901. The purpose of this republication is to change ND to MD.

MC 117851 (Sub-II–2TA), filed October 1, 1980. Applicant: JOHN CHEESEMAN TRUCKING, INC., 501 N. First St., Ft. Recovery, OH 45846. Representative: Earl N. Merwin, 85 E. Gay St., Columbus, OH 43215. Contract irregular: *General commodities (except household goods as defined by the Commission and Classs A and B explosives),* between points in the U.S., under a continuing contract(s) with Ingersoll-Rand Company and its subsidiaries, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Ingersoll-Rand Co., 277 Park Ave, New York, NY 10017.

MC 110525 (Sub-II–17TA), filed October 1, 1980. Applicant: CHEMICAL LEAMAN TANK LINES, INC., 520 E Lancaster Ave., Downingtown, PA 19335. Representative: Thomas J. O'Brien (same as applicant). *Limestone and limestone products* from Union County, TN to AL, FL, GA, IN, KY, MS, NC, OH, SC, VA, WV for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Tenn-Luttrell Lime Co., P.O. Box 69, Luttrell, TN 37779.

MC 2605 (Sub-II–6TA), filed October 1, 1980. Applicant: COMMERCIAL TRANSPORTATION, INC., 2300 E. Adams Ave., Philadelphia, PA 19124. Representative: Donald J. Campanile (same as applicant). *Paper and paper products and things used by the manufacturers thereof,* between Phila., PA, and Decatur, IL, Ft. Wayne and Indianapolis, IN, Kansas City and St. Louis, MO, Kalamazoo, Lansing, Vicksburg, Grand Rapids, and Battle Creek, MI for 270 days. Applicant intends to tack with authority held under MC–2605. An underlying ETA seeks 120 days authority. Supporting shipper: Simpson Paper Co., Miquon, PA.

MC 151903 (Sub-II–1TA), filed October 1, 1980. Applicant: D. T. ENTERPRISES, INC., 4632 Grove Ave., Richmond, VA 23226. Representative: Robert R. Kaplan, P.O. Box 12085, Richmond, VA 23241. Contract, irregular: *Rock wool insulation, insulation materials and other general commodities which may be hauled in conventional trailers, except in tank vehicles,* between Woodbridge, VA and all pts. in the U.S. and Canada, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: United Rockwool, Inc., P.O. Box "R", Woodbridge, VA 22194.

MC 139242 (Sub-II–1TA), filed October 2, 1980. Applicant: D & T LIMOUSINE SERVICE, INC., 15753 Puritas Ave., Cleveland, OH 44135. Representative: Robert E. Lange (same as applicant). Contract, irregular: *Passengers who are employees of Consolidated Rail Corporation or The Baltimore & Ohio Railroad. Special operations are proposed.* Employees of the Consolidated Rail Corporation, between pts. along the railroad's right of way in IL, KY, MO (St. Louis County), NY (Erie and Niagara Counties), and WV; and employees of the Baltimore & Ohio Railroad Co., between pts. in OH and IN and pts. along the railroad's right of way in IL, KY, MI, and WV, for 270 days. An underlying ETA seeks 120 days authority. Applicant intends to tack. Supporting shippers: Consolidated Rail Corp., 1528 Walnut St., Phila., PA, Baltimore & Ohio Railroad, 34 S. Main St., Akron, OH 44308.

MC 149043 (Sub-II–4TA), filed October 1, 1980. Applicant: EASTERN TANK LINES, INC., 5536 Brentlinger Dr., Dayton, OH 45414. Representative: H. Neil Garson, 3251 Old Lee Hwy., Fairfax, VA 22030. *Liquid sugar and blends of liquid sugar,* between pts. in OH and pts. in AL, CT, DE, FL, GA, IL, IN, KY, ME, MD, MA, MI, MS, NH, NJ, NY, NC, PA, RI, SC, TN, VT, VA, WV, WI, and DC, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Cargill, Inc., Box 1400–A, 3201 Needmore Rd., Dayton, OH 45414.

MC 47336 (Sub-II–1TA), filed October 2, 1980. Applicant: ECLIPSE MOTOR LINES, INC., 605 S. First St., Martins Ferry, OH 43935. Representative: Joseph S. Zaccirey (same as applicant). *Iron and steel articles,* from Bridgeport, OH to Brooklyn, NY and returning, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Ohio Valley Metals, Inc., 925 National Rd., Bridgeport, OH.

MC 130938 (Sub-II–1TA), filed October 3, 1980. Applicant: C & H TRUCK BROKERS, INC., P.O. Box 236, Harrington, DE. 19952. Representative: John A. Guernsey, 2001 The Fidelity Bldg., Phila., PA 19109. *Foodstuffs,* between points in Caroline, Dorchester, Queen Annes, Talbot, Wicomico, Worcester, Baltimore and Somerset Counties, MD; Sussex, Kent and New Castle Counties, DE; Northampton and Accomack Counties, VA; Chester, Philadelphia, Lancaster and York Counties, PA; Camden County, NJ and Queens County, NY; on the one hand and points in AL, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY, for 270 days. Supporting shippers: American Original Clam Co., Seaford, DE 19973; KMC Foods, Inc., P.O. Box 298, Queen Anne, MD 21657.

MC 86690 (Sub-II–1TA), filed October 6, 1980. Applicant: BOND TRANSFER CO., INC., 1301 Towson St., Baltimore, MD 21230. Representative: Michael R. Werner, P.O. Box 1409, 167 Fairfield Rd., Fairfield, NJ 07006. *Contract; irregular: Garment hangers, and materials, supplies and equipment used in the manufacture, sale and distribution of garment hangers,* between pts. in MD, NY and NJ, under continuing contract(s) with The Cleaners Hanger Co., Baltimore, MD, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: The Cleaners Hangers Co., 8801 Wise Ave., Baltimore, MD 21222.

MC 86690 (Sub-II–2TA), filed October 6, 1980. Applicant: BOND TRANSFER CO., INC., 1301 Towson St., Baltimore, MD 21230. Representative: Michael R. Werner, P.O. Box 1409, 167 Fairfield Rd., Fairfield, NJ 07006. Contract, irregular: *Such commodities as are dealt in by wholesale, retail and chain grocery and food business houses, and materials, supplies and equipment used in the conduct of such business,* between all pts. in MD, VA, NY, NJ, PA, DE, CT, MA, and DC for 270 days. Under continuing contracts with B. Green & Co.; Giant Foods, Inc.; Doxsee Food Corp.; Specialty Candy Co., Inc.; and The Great Atlantic and Pacific Tea Co. An underlying ETA seeks 120 days authority. Supporting shippers: There are 5 supporting shippers. Their statements may be viewed at the ICC Regional Office, Phila., PA.

MC 94265 (Sub-II–22TA), filed October 6, 1980. Applicant: BONNEY MOTOR

EXPRESS, INC., P.O. Box 305—Rt. 460 W., Windsor, VA. 23487. Representative: Olin C. Cooper, Jr. (same as applicant). *Meats, meat products and meat by-products, and articles distributed by meat packing houses as described in Sections A and C of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766 (Except hides);* from Bartholomew County, IN to pts. in VA for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: R.M. Felts Packing Co., Box 199, Ivor, VA 23866.

MC 94265 (Sub-II–23TA), filed October 7, 1980. Applicant: BONNEY MOTOR EXPRESS, INC., P.O. Box 305—Rt. 460 W., Windsor, VA. 23487. Representative: Olin C. Cooper, Jr. (same as applicant). *Foodstuffs, (except in bulk);* from Hall County, GA, to points in AL, DC, MD, TN, KY, OH, MI, IN, IL, FL, NC, SC, VA, WV, PA for 270 days. Supporting shipper: Lazy Acres Farms, Division of Almark, Inc., 3434 Keith Bridge Rd., Gainesville, GA 30501.

MC 138438 (Sub-II–21TA), filed October 6, 1980. Applicant: D. M. BOWMAN, INC., Rt. 2, Box 43A1, Williamsport, MD 21795. Representative: Edward N. Button, 580 Northern Ave., Hagerstown, MD 21740. *General commodities, in truck load lots, and materials and supplies and accessories used in the manufacture and distribution thereof,* between all pts. in the US (except AK and HI), for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Atlantic Cabinet Corp, P.O. Box 100, Williamsport, MD 21795.

MC 152103 (Sub-II–1TA), filed October 6, 1980. Applicant: CLYDE HOSTUTLER, t/a CLYDE'S TRANSFER, 604 Aquarius Dr., Mechanicsville, VA 23111. Representative: Calvin F. Major, 200 W. Grace St., Richmond, VA 23220. *Precast and prestressed concrete and raw materials of steel, i.e., coils, wire mesh, rebar, flat bars and shapes used in the manufacture of the precast and prestressed concrete,* from the states of VA and MD to pts. in DC, NC, DE, PA, VA and MD and from the states of DC, NC, DE, PA, VA and MD to VA and MD, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Concrete Structures, Inc., P.O. Box 27192, Richmond, VA 23261.

MC 119793 (Sub-II–2TA), filed October 6, 1980. Applicant: DEWEY L. WILFONG, d.b.a. D & W TRUCK LINES, 209 1st St., Parsons, WV 26287. Representative: Michael D. Bromley, 805 McLachlen Bank Bldg., 666 11th St., NW, Washington, DC 20001. Contract, irregular: *Material, equipment and supplies used in the manufacture, distribution, or sale of charcoal briquettes, fireplace logs, and wood chips, in bulk,* from points in the U.S. (except AK and HI), to Dothan, AL; Burnside, KY; Belle, MO; Fairless Hills, PA; and Parsons, WV; restricted to transportation of traffic under a continuing contract(s) with the Kingsford Co., Louisville, KY, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: The Kingsford Co., 1700 Commonwealth Bldg., P.O. Box 1033, Louisville, KY 40201.

MC 123255 (Sub-II–4TA), filed October 9, 1980. Applicant: B & L MOTOR FREIGHT, INC., 1984 Coffman Rd., Newark, OH 43055. Representative: C. F. Schnee, Jr., 1984 Coffman Rd., Newark, OH 43055. *Mineral Wool Insulation, mineral wool products, fiberglass insulation and fiberglass products, material and supplies useful in the production of above* between the facilities of Guardian Insulation Div. of Guardian Industries at or near Huntington, IN to points in and east of the States of ND, SD, NE, KS, OK, and TX. An underlying ETA seeks 120 days authority. Supporting shipper: Guardian Insulation, Div. of Guardian Industries, 701 N. Broadway, Huntington, IN 46750.

MC 150735 (Sub-II–1TA), filed October 9, 1980. Applicant: BESTWAY TRANSPORT CO., Rt. No. 2; Willard, OH 44890. Representative: L. S. Witherspoon, 88 E. Broad St., Columbus, OH 43215. *Meats, meat products, meat by-products, and articles distributed by meat packing houses,* as described in Sections A & C of Appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766 between points in Erie County, OH, on the one hand, and, on the other, points in the US., for 270 days. Supporting shipper: J. H. Routh Packing Co., 4413 W. Bogart Rd., Sandusky, OH 44870.

MC 150511 (Sub-II–4TA), filed October 9, 1980. Applicant: BETTER HOME DELIVERIES, INC., 3700 Park East Dr., Cleveland, OH 44122. Representative: J. A. Kundtz, 1100 National City Bank Bldg., Cleveland, OH 44114. *Contract,* irregular: *Such merchandise as is dealt in by retail department stores, restricted to residential deliveries,* for 270 days, between Farmingdale, NY, on the one hand, and, on the other, points in NJ on and north of Rte. 33, under continuing contract(s) with J. C. Penney Company, Inc. Supporting shipper: J. C. Penney Company, Inc., 1122 Route 22, Mountainside, NJ 07091.

MC 142559 (Sub-II–19TA), filed October 9, 1980. Applicant: BROOKS TRANSPORTATION, INC., 3830 Kelley Ave., Cleveland, OH 44114. Representative: David A. Turano, 100 E. Broad St., Columbus, OH 43215. *(1) Such commodities as are dealt in by the manufacturers and distributors of audio and electronic systems and (2) materials, equipment and supplies used in the manufacture and distribution of the commodities in (1) above (except commodities in bulk)* between Los Angeles, CA and West Carrollton, OH, including points in their respective Commercial Zones, on the one hand, and, on the other, points in and east of MN, IA, KS, MO, OK and TX for 270 days. Supporting shipper: Superscope, Inc., 20525 Nordhoff St., Chatsworth, CA 91311.

MC 144982 (Sub-II–5TA), filed October 6, 1980. Applicant: OHIO PACIFIC EXPRESS, INC., 683 East Broad St., Columbus, OH 43215. Representative: Harry F. Horak, Suite 115, 5001 Brentwood Stair Rd., Fort Worth, TX 76112. *Bucket and dipper teeth, and garden shears,* from Corona, CA to Niles, OH for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Corona Clipper Co., 14200 E. Sixth St., Corona, CA 91720.

MC 152085 (Sub-II–2TA), filed October 6, 1980. Applicant: MITCHELL TRANSPORT, INC., 6500 Pearl Rd., P.O. Box 30248, Cleveland, OH 44130. Representative: J. A. Kundtz, 1100 National City Bank Bldg., Cleveland, OH 44114. *Contract; irregular: Coal, limestone and sand,* from points in PA, VA and WV to the facilities of Alpha Portland Cement Co. at Lime Kiln, MD, under continuing contract(s) with Alpha Portland Cement Co. for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Alpha Portland Cement Co., 4120 Buckeytown Pike, Frederick, MD 21701.

MC 107403 (Sub-II–32TA), filed October 7, 1980. Applicant: MATLACK, INC., 10 W. Baltimore Avenue, Lansdowne, PA 19050. Representative: Martin C. Hynes, Jr. (same as applicant). *Monoisopropyl Biphenol, in bulk, in tank vehicles,* from Wellford, SC to Vancouver, WA for 270 days. Supporting shipper(s): Boise Cascade Corp., P.O. Box 2885, Portland, OR 97208.

MC 107012 (Sub-II–91TA), filed October 7, 1980. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy. 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: Bruce W. Boyarko (same as applicant). *Mattresses,* from Richmond, VA to points in NJ and NY for 270 days. An underlying ETA seeks authority for 120 days. Supporting shipper: T.E.U. Inc., 1309 Exchange Alley, Richmond, VA 23219.

Note.—Common control may be involved.

MC 107012 (Sub-II–89TA), filed October 8, 1980. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy. 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same as applicant). *Duct work, pipe, and fittings for pipe and air ducts* from the facilities of Western Engineering and Supply Co. at or near Kansas City, MO to points in the United States (except AK and HI) for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Western Engineering and Supply Co., 2007 East 19th, Kansas City, MO 64127.

Note.—Common control may be involved.

MC 107012 (Sub-II–90TA), filed October 7, 1980. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy. 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: Bruce W. Boyarko (same as applicant). *Respiratory therapy equipment, and supplies, parts and accessories for respiratory therapy equipment,* from Temecula, CA to Wadsworth, OH for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Hudson Oxygen Therapy Sales Co., 27711 Diaz Road, Temecula, CA 92390.

Note.—Common control may be involved.

MC 107012 (Sub-II–93TA), filed October 9, 1980. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy. 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same as applicant). *Parts, materials and supplies used in the manufacture, maintenance, and distribution of air conditioners, humidifiers, and dehumidifiers,* from Cullman, AL; Fort Wayne, IN; Somerset, KY; Tecumseh, MI; Tupelo, MS; Cleveland, Lima, Marion and Upper Sandusky, OH; Pittsburgh, PA; and Richmond, VA to Edison, NJ for 270 days. Supporting shipper: Edison Products Co. NJ, Division White Consolidated Industries, Route 27 at Vineyard Road, Edison, NJ 08817.

Note.—Common control may be involved.

MC 124111 (Sub-II–9TA), filed October 9, 1980. Applicant: OHIO EASTERN EXPRESS, INC., 300 W. Perkins Ave., Sandusky, OH 44870. Representative: David A. Turano, 100 E. Broad St., Columbus, OH 43215. *Meats, meat products and meat by-products as described in Section A of Appendix I to the Report in Descriptions in Motor Carrier Certificate 61 MCC 209 and 766* from Pt. Newark, NJ; New York, NY; Philadelphia, PA; Norfolk, VA; and new Haven, CT, including pts. in their respective Commercial Zones, to pts. in and east of MN, IA, MO, AR and TX for 270 days. An underlying ETA seeks 120 days authority. Supporting Shippers: Mastan Trading Co., 201 Penn Ctr. Blvd., Pittsburgh, PA 15235. Thomas Brothwick, Inc., 2 Penn Plaza, New York City, NY 10170. Tupman Thurlo, Inc., 420 Lexington Ave., New York City, NY 10170. A. J. Cunningham Packing Corp., 1776 Heritage Dr. Quincy, MA 02171.

MC 151892 (Sub-II–1TA), filed October 1, 1980. Applicant: FOX DISTRIBUTION CO., INC., 8660 Cherry Lane, Laurel, MD 20810. Representative: Walter T. Evans, 7961 Eastern Ave., Silver Spring, MD 20910. Contract carrier, irregular routes, *such commodities as are dealt in by wholesale, retail and/or chain, grocery, food business houses and drug houses,* between Laurel, MD, on the one hand, and, on the other, points in DE, DC, MD, NJ, PA and VA for 270 days under continuing contracts with Alberto-Culver Company, American Cyanamid Company, Clairol, Inc., and Proctor and Gamble Distributing Company. An underlying ETA seeks 120 days authority. Supporting shippers: Alberto-Culver Company, 2525 Armitage Ave., Melrose Park, IL 60160. American Cyanamid Company, Berden Ave., Wayne, NJ 07470. Clairol, Inc., 1 Blachley Road, Stamford, CT 06902. Proctor and Gamble Distributing Co., P.O. Box 599, Cincinnati, OH 45201.

MC 152032 (Sub-II–1TA), filed September 30, 1980. Applicant: JOHN P. SNYDER, SR., dba FLYER LIMOUSINE SERVICE, Box 2348, R.D. No. 1, Jonestown, PA 17038. Representative: Thomas A. Behney, Farmer's Trust Company Bldg., 815 Cumberland St., Lebanon, PA 17042. *Passengers and their baggage in the same vehicle, in special and charter operations,* between Lebanon County, PA and Derry Township, Dauphin County, PA, on the one hand, and, on the other, Atlantic City, NJ, for 270 days. Supporting shipper(s): Irwin M. Gensler, Jr., 119 N. College St., Myerstown, PA. John W. Feeser, 725 Cumberland St., Lebanon, PA 17042.

MC 150432 (Sub-II–5TA), filed September 30, 1980. Applicant: H & M TRANSPORTATION, INC., U.S. 42 & 70, London, OH 43140. Representative: Owen B. Katzman, 1828 L Street, N.W., Suite 1111, Washington, DC 20036. Contract-irregular: *Iron and steel articles* from North East, PA, to points in the USA (except AK and HI), under a continuing contract with Ridg-U-Rak, Inc., for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Ridg-U-Rak, Inc., P.O. Box 150, North East, PA 16428.

MC 150939 (Sub-II–6TA), filed October 2, 1980. Applicant: GEMINI TRUCKING, INC., 1533 Broad St., Greensburg, PA 15601. Representative: William A. Gray, 2310 Grant Bldg., Pittsburgh, PA 15219. *Toys and games, electronic games, home entertainment games, skateboards and related accessories, and materials, equipment and supplies used in the manufacture, sale and distribution thereof,* between the facilities of Mattel Toys, Division of Mattel, Inc. at or near City of Industry, CA and Edison, NJ on the one hand, and, on the other, points in the US, under continuing contract(s) with Mattel Toys, Division of Mattel, Inc. An underlying ETA seeks 120 days. Supporting shipper: Mattel Toys, Division of Mattel, Inc., 5150 Rosecrans Avenue, Hawthorne, CA 90250.

MC 150939 (Sub-II–7TA), filed October 2, 1980. Applicant: GEMINI TRUCKING, INC., 1533 Broad St., Greensburg, PA 15601. Representative: William A. Gray, Esq., 2310 Grant Bldg., Pittsburgh, PA 15219. *Automobile accessories and materials, equipment and supplies used in the manufacture and distribution of automobile accessories,* between the facilities of Mark Fore Vatco, Division of Beatrice Foods Co., in MA and MN on the one hand, and, on the other, points in the US under a continuing contract(s) with Mark Fore Vatco, Division of Beatrice Foods Co. of Chelsea, MA. An underlying ETA seeks 90 days authority. Supporting shipper: Mark Fore Vatco, Division of Beatrice Foods Co., Forbes Industrial Park, Chelsea, MA 02150.

The following applications were filed in Region 3. Send protests to ICC, Regional Authority Center, P.O. Box 7600, Atlanta, GA 30357.

MC 145461 (Sub-3–1TA), filed September 29, 1980. Applicant: TENNESSEE-TEXAS EXPRESS, INC., P.O. Box 888, Gallatin, TN 37066. Representative: Thomas A. Stroud, 2008 Clark Tower, 5100 Poplar Avenue, Memphis, TN 38137. *Common* carrier: regular: *General Commodities,* (with the usual exceptions), (1) between Nashville, TN and Beaumont, TX: from Nashville over Interstate Hwy 40 to Little Rock, AR, then over Interstate Hwy 30 to Dallas, TX, then over Interstate Hwy 45 to Houston, TX, then over Interstate Hwy 10 to Beaumont, TX, and return over the same route, serving the intermediate point of Memphis, TN for purposes of interchange only, Dallas and Houston, TX, without restriction, Ft. Worth as an off-route point, and the junction of Interstate Hyw 30 and U.S. Hwy 259, at or near Bassett, TX, for purposes of joinder only; (2) between Houston, TX and the junction of U.S. Hwy 259 and Interstate Hwy 30, at or near Bassett, TX: from Houston, TX over U.S. Hwy 59 to Henderson, TX, then over U.S. Hwy 259 to its junction with

Interstate Hwy 30, and return over the same route, serving Lufkin, TX and Longview, TX, as intermediate points, and serving the junction of U.S. Hwy 259 and Interstate Hwy 30 for purposes of joinder only; and (3) between Beaumont, TX and the junction of U.S. Hwy 259 and Interstate Hwy 30, at or near Bassett, TX, and return over the same route serving the intermediate points of Lufkin, TX and Longview, TX: from Beaumont, TX over U.S. Hwy 69 to Lufkin, TX, then over U.S. Hwy 59 to Henderson, TX then over U.S. Hwy 259 to its junction with Interstate Hwy 30. Restriction: Service at Memphis, TN and points in its commercial zone is restricted against the handling of traffic which originates at, is destined to, or interlined at Nashville, TN and points in its commercial zone. Restriction: Restricted against providing local service between authorized points in Texas. Applicant intends to interline at Nashville, TN; Memphis, TN; Dallas, TX; Houston, TX; Ft. Worth, TX; and Beaumont, TX. There are 27 statements in support of this application which may be examined at the ICC Regional office in Atlanta, GA.

MC 136123 (Sub-3–10TA), filed October 3, 1980. Applicant: MEAT DISPATCH, INC., P.O. Box 1058, Palmetto, FL 33561. Representative: William L. Beasley (same as above). *Bread making compounds, materials, parts, equipment and supplies used in the bakery industry,* between the facilities of Lewis Brothers Bakery, Inc., located at or near Evansville, IN, Kokomo, IN, Ft. Wayne, IN, Anna, IL, Cape Girardeau, MO, Murfreesboro, TN, and points in FL, GA, KS, MO, PA, IA, IL, TN, and KY. Supporting shipper: Lewis Brothers Bakery, Inc., 500 N. Fulton Ave., Evansville, IN 47710.

MC 56679 (Sub-3–22TA), filed October 2, 1980. Applicant: BROWN TRANSPORT CORP., 352 University Ave., SW., Atlanta, GA 30310. Representative: Leonard S. Cassell (same address as applicant). *Bottles, glass,* between AL, AR, LA, TX, TN, KY, MS, MO, GA, FL, NC, SC, VA, IL, ND, SD, ID, IN, MI, OH, WV, ME, MA, NH, VT, NY, NJ, RI, PA, DC, IA, KS, NE, WI, MN, UT, CO, AZ, and NM. Restricted to traffic originating at or destined to the facilities of Chattanooga Glass Co. Supporting shipper: Chattanooga Glass Co., Inc., Chattanooga, TN.

MC 144011 (Sub-3–2TA), filed October 2, 1980. Applicant: HALL SYSTEMS, INC., 214 So. 10th St., Birmingham, AL 35233. Representative: George M. Boles, 727 Frank Nelson Bldg., Birmingham, AL 35203. *Common* carrier: regular: *General Commodities,* (1) between Atlanta, GA, and Birmingham, AL, from Atlanta over U.S. Hwys 78 and Interstate 20 to Birmingham; (2) between Atlanta, GA, and New Orleans, LA, from Atlanta over U.S. Hwys 29 and Interstate 85 to Montgomery, AL, then over U.S. Hwys 31 and Interstate 65 to Mobile, AL, then over U.S. Hwys 90 and Interstate 10 to New Orleans; (3) between all points in the commercial zones of New Orleans, LA, Atlanta, GA, and Birmingham, Montgomery and Mobile, AL. Applicant intends to interline at Birmingham, Montgomery and Mobile, AL, Atlanta, GA, and New Orleans, LA, and to tack with its existing authority at New Orleans, LA, and Birmingham, AL. There are 44 statements in support attached to this application which may be examined at the I.C.C. Regional Office in Atlanta, GA.

MC 134064 (Sub-3–7TA), filed October 3, 1980. Applicant: INTERSTATE TRANSPORT, INC., 1600 Highway 129 South, Gainesville, GA 30505. Representative: Charles M. Williams, 350 Capitol Life Center, 1600 Sherman St., Denver, CO 80203. (1) *Malt beverages (except in bulk), and (2) Materials, equipment and supplies used in the manufacture, sale, and distribution of the commodities named in (1) above (except in bulk),* from the facilities of The Stroh Brewery Company at or near Detroit, MI and Perrysburg, OH to points in the U.S. in and east of WI, IL, KY, TN, MS and LA. Supporting shipper: The Stroh Brewery Company, 1 Stroh Drive, Detroit, MI 48226.

MC 106074 (Sub-3–13TA), filed October 3, 1980. Applicant: B AND P MOTOR LINES, INC., Shiloh Rd. and U.S. Hwy. 221, S., P.O. Box 727, Forest City, NC 28043. Representative: Clyde W. Carver, P.O. Box 720434, Atlanta, GA 30328. *Kitchen cabinets,* from Nashville, TN, to points in CA, NV, AZ, UT, NM, CO, TX, OK, KS, NE, SD, ND, MN, IA, MO, IL, WI, MI, IN, OH and FL. Supporting shipper: Kabinart Corp., P.O. Box 110774, Nashville, TN 37211.

MC 144225 (Sub-3–1TA), filed October 2, 1980. Applicant: JADEEL TRUCKING, INC., 8333 W. McNab Road, Tamarac, FL 33321. Representative: Raymond P. Keigher, Esquire, 401 E. Jefferson St., Suite 102, Rockville, MD 20850. *Contract: Irregular: new furniture,* from points in AR, CA, FL, GA, IN, KY, LA, MS, NC, OH, SC, TN, TX, VA, and WV, to Elizabeth, NJ, under continuing contract(s) with Seaman Furniture, Inc., of Carle Place, NY. Supporting shipper: Seaman Furniture, Inc., 393 Old County Road, Carle Place, NY 11514.

MC 140025, (Sub-3–2TA), filed October 3, 1980. Applicant: L & T, INC., 2650 West Beaver St., Jacksonville, FL 32205. Representative: Sol H. Proctor, 1101 Blackstone Bldg., Jacksonville, FL 32202. (1) *Bakery Goods* from Jacksonville, FL to points in MD, NH, NY and PA, and (2) *General Commodities (except household goods as defined by the Commission, commodities in bulk, and Classes A and B explosives),* between Jacksonville, FL, on the one hand, and, on the other, points in AL, DE, FL, GA, MD, MS, NJ, NC, SC, TN and VA. Supporting shippers: Eastern Distribution, Inc., 555 Heckscher Dr., Jacksonville, FL 32226; Duval Bakery Products, 1733 Evergreen Ave., Jacksonville, FL 32206.

MC 151646 (Sub-3–1TA), filed October 2, 1980. Applicant: MISS-ALA DISTRIBUTORS, INC., Highway 45 South, P.O. Box 1728, Columbus, MS 39701. Representative: Peter A. Greene, 900 17th Street, N.W., Washington, DC 20006. (1) *Paper, paper products and wood pulp;* (2) *Lumber and wood products;* and (3) *Equipment, materials and supplies used in the manufacture and distribution of the commodities named in (1) and (2) above,* between facilities of Weyerhaeuser Co., Inc., in NC, on the one hand, and, on the other, points in AL, CT, DE, FL, GA, ME, MA, MD, MS, NH, NJ, NY, PA, RI, SC, TN, VT, VA, and WV. Supporting shipper: Weyerhaeuser Co., Inc., P.O. Box 787, Plymouth, NC 27962.

MC 115793 (Sub-3–1TA), filed October 2, 1980. Applicant: LENOIR TRANSFER COMPANY, INC., P.O. Box 696, Lenior, NC 28645. Representative: C. Douglas Woods (same as applicant). *New furniture, parts, and materials and supplies, used in the manufacturing of furniture and furniture parts (except commodities in bulk),* from points in NC to Caldwell & Catawba Counties, NC, for subsequent movement in interstate commerce. Supporting shippers: Cook's Transfer & Storage Co., Inc., Lenoir, NC; Terminal Freight Cooperative Asso., 1430 Branding Lane, Lane-Downers Grove, IL 60515; and Singer Furniture Co., P.O. Box 5337, Roanoke, VA 24012.

MC 111302 (Sub-3–7TA), filed October 2, 1980. Applicant: HIGHWAY TRANSPORT, INC., P.O. Box 10108, Knoxville, TN 37919. Representative: David A. Petersen (same address as applicant). *Liquid chemicals, in bulk, in tank vehicles,* from Houston, Texas City and Freeport, TX, and Baton Rouge and Lake Charles, LA to points in AL, FL, GA, LA, MS, NC, SC, and TN. Supporting shippers: Westvaco Corporation, P.O. Box 643, Winder, GA 30680 and Calloway Chemicals, P.O. Box 2335, Columbus, GA 39102.

MC 127478 (Sub-3–1TA), filed October 2, 1980. Applicant: WILLIAM M. HAYES

d.b.a., HAYES TRUCKING CO., Box 31, Winterville, GA 30683. Representative: Virgil H. Smith, Suite 12, 1587 Phoenix Boulevard, Atlanta, GA 30349. *Frozen food stuff,* From the facilities of the Kitchens of Sara Lee at New Hampton, IA and Deerfield, IL to points in NC and SC. Supporting shipper: Kitchens of Sara Lee, 500 Waukegan Road, Deerfield, IL 60015.

MC 151895 (Sub-3–1TA), filed October 2, 1980. Applicant: SISKEY HAULING CO., INC., 1490 Bankhead Highway, Mableton, GA. Representative: John W. Greer, 803 Healey Building, Atlanta, GA. *Coke, in dump trucks* from Decatur, Florence, Guntersville and Sheffield, AL, and Chattanooga and Knoxville, TN, to the states of AL, GA, MS, and TN, with prior movement via water transportation. Supporting shipper: Koch Carbon, Inc., 888 Worcester Street, Wellesley, MA 02181.

MC 2934 (Sub-3–13TA), filed October 2, 1980. Applicant: AERO MAYFLOWER TRANSIT CO., INC., 9998 North Michigan Road, Carmel, IN 46032. Representative: James L. Beattey, 300 E. Fall Creek Pkwy., Suite 403, Indianapolis, IN 46205. *Stereos and component parts,* between Santa Claus, IN, and points and places in the States of AL, AR, CT, DE, DC, FL, GA, IL, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, NH, NJ, NY, NC, OH, OK, PA, RI, SC, TN, TX, VT, VA, WV and WI. Supporting shipper: Sound Design, Inc., P.O. Box 61, Santa Claus, IN 47579.

MC 138882 (Sub-3–26TA), filed October 2, 1980. Applicant: WILEY SANDERS TRUCK LINES, INC., P.O. Drawer 707, Troy, AL 36081. Representative: John J. Dykema (same as applicant). (1) *Insulation, insulation materials, tile, wallboard, and construction and building materials (except in bulk),* and (2) *materials, equipment and supplies used in the manufacture, sale, and distribution of commodities named in (1) above,* between the facilities of Goodsons' Manufacturing Corp. located at or near Bloutstown, FL, on the one hand, and, on the other, points in the US (except AK and HI). Supporting shipper: Goodsons' Manufacturing Corp., P.O. Box 504, Bloutstown, FL 32424.

MC 1380 (Sub-3–2TA), filed October 2, 1980. Applicant: COLONIAL MOTOR FREIGHT LINE, INC., P.O. Box 7027, High Point, NC 27264. Representative: Max H. Towery (same address as above). *General commodities with usual exceptions* between NC, SC, VA and MD. There are 88 statements in support of this application which may be examined at the ICC Regional office in Atlanta, GA. Applicant intends to tack with existing authority and to interline with other carriers at Baltimore, MD, Richmond, VA, High Point, NC, Greensboro, NC, Charlotte, NC, and Greenville, SC.

MC 111548 (Sub-3–3TA), filed October 2, 1980. Applicant: SHARPE MOTOR LINES, INC., P.O. Box 517, Hildebran, NC 28637. Representative: Edward G. Villalon, 1032 Pennsylvania Bldg., Pennsylvania Ave. & 13th St. NW., Washington, D.C. 20004. *Furniture or fixtures and materials and supplies used in the manufacture thereof* (1) Between Alamance, Rowan, Montgomery, Stanley, Chatham, Ashe, Randolph, Davidson, Guilford, Orange, and Forsyth counties, NC, on the one hand, on the other points in IL, IN, CT, MA, RI, and WI. (2) Between Burke, Caldwell, Lincoln, Catawba, Alexander, Wilkes, McDowell, Cleveland, Davie, and Iredell counties, NC, on the one hand, and, on the other points in WI. Supporting shippers: There are forty-one statements in support attached to this application which may be examined at the ICC Regional Office in Atlanta, GA.

MC 124887 (Sub-3–8TA), filed October 2, 1980. Applicant: SHELTON TRUCKING SERVICE, INC., Route 1, Box 230, Altha, FL 32421. Representative: Sol H. Proctor, 1101 Blackstone Building, Jacksonville, FL 32202. *Primary Metal Articles,* between Harris County, TX, on the one hand, and, on the other, points in AL, AR, FL, GA, LA, MS, MO and OK. Supporting shipper: Texas Pipe & Supply Company, 2330 Holmes Road, Houston, TX 77051.

MC 129291 (Sub-3–2TA), filed October 2, 1980. Applicant: McDANIEL MOTOR EXPRESS, INC., 1115 Winchester Road, Lexington, KY 40505. Representative: William L. Willis, Attorney-at-Law, 708 McClure Building, Frankfort, KY 40601. *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),* between Lexington, KY, and Atlanta, GA: From Lexington, KY, over Interstate Hwy 75 to Atlanta, GA, and return over the same route, serving no intermediate points.

Note.—Applicant intends to tack the authority sought to its existing authority in MC 129291, and to interline with other carriers at Louisville, Maysville, Lexington and Danville, KY, and Aberdeen, OH. There are 6 statements in support which may be examined at the I.C.C. Regional Office in Atlanta, GA.

MC 146646 (Sub-3–31TA), filed October 2, 1980. Applicant: BRISTOW TRUCKING CO., INC., P.O. Box 6355 A, Birmingham, AL 35217. Representative: James W. Segrest (same address as applicant). *Plastic articles equipment and supplies used in the manufacture and distribution of plastic articles.* Between the facilities of Mobil Chemical Co., Plastics Division, and points in the U.S. (except AK and HI). Supporting shipper: Mobil Chemical Co., Plastic Division, Macedone, NY 14502.

MC 146402 (Sub-3–9TA), filed October 2, 1980. Applicant: CONALCO CONTRACT CARRIERS, INC., P.O. Box 968, Jackson, TN 38301. Representative: Charles W. Teske (address same as applicant). (1) *Water closets, lavatories, urinals and hand portable toilets and* (2) *parts and accessories used in the installation and maintenance of the commodities in (1) above* from the facilities of Mansfield Sanitary Inc. at Perrysville, OH and Ripley Township (Holmes County), OH to points in AL, AR, CO, CT, DE, FL, GA, IA, IL, IN, KS, KY, LA, MA, ME, MD, MI, MN, MO, MS, NC, ND, NE, NH, NJ, NY, OK, PA, RI, SC, SD, TN, TX, VA, VT, WV, WI, and DC. Supporting shipper: Mansfield Sanitary Inc., 150 First Street, Perrysville, OH 44864.

MC 138177 (Sub-3–1TA), filed October 2, 1980. Applicant: BROWN TRUCKING, INC, 7622 Apple Valley Rd., Germantown, TN 38138. Representative: John Paul Jones, P.O. Box 3140, Memphis, TN 38103. *General commodities, (with the usual exceptions),* between AR, AL, FL, GA, IL, KY, LA, MS, MO, NC, SC, OK, TN and TX. Supporting shipper: Mid-South Terminals Corp., 1145 Channel Ave., Memphis, TN 38113.

MC 115841 (Sub-3–27TA), filed September 29, 1980. Applicant: COLONIAL REFRIGERATED TRANSPORTATION, INC., McBride Lane, P.O. Box 22168, Knoxville, TN 37922. Representative: Michelene Good (same as above). *Foodstuffs (except commodities in bulk),* from Bogart, GA to points in CA, IL, IN, KS, MI, NC, NJ, NY, OH, OK, OR, PA, SC, TN, TX, WI, FL, MN, VA, WV, MD, LA, and MS. Supporting shipper: Benson's Old Home Kitchens, P.O. Box 428, Bogart, GA 30622.

MC 126899 (Sub-3–1TA), filed September 29, 1980. Applicant: USHER TRANSPORT, INC., 3925 Old Benton Road, P.O. Box 3156, Paducah, KY 42001. Representative: George M. Catlett, 708 McClure Building, Frankfort, KY 40601. *Asphalt in bulk in tank vehicles,* from Kuttawa, KY, to points in IL on and South of Hwy. 36 and North of U.S. Hwy. 50. Supporting shipper: Ashland Petroleum Company, Division of

Ashland Oil, Inc., P.O. Box 391, Ashland, KY 41101.

MC 25798 (Sub-3–6TA), filed September 30, 1980. Applicant: CLAY HYDER TRUCKING LINES, INC., P.O. Box 1186, Auburndale, FL 33823. Representative: Tony G. Russell (same address as applicant). *Building materials* from Auburndale, FL to points in the U.S. (except AK and HI). Supporting shipper: Raylor Building Products, P.O. Box 1307, Auburndale, FL 33823.

MC 146281 (Sub-3–15TA), filed September 29, 1980. Applicant: SILVER FLEET EXPRESS, INC., 4521 Rutledge Pike, P.O. Box 6110, Knoxville, TN 37914. Representative: Henry E. Seaton, 929 Pennsylvania Bldg., 425 13th St., N.W., Washington, DC 20004. *Contract* Carrier: Irregular Routes: *Foodstuffs*, between points in LA, on the one hand, and, points in that part of TN, on and east of U.S. Hwy 27. Restricted to traffic moving under continuing contract with Lloyd and Sheffer Co. Supporting shipper(s): Lloyd and Sheffer, P.O. Box 1471, Knoxville, TN 37901.

MC 144913 (Sub-3–1TA), filed September 29, 1980. Applicant: COMPTON TRUCKING, INC., 5300 Kennedy Rd., Forest Park, GA 30050. Representative: Richard M. Tettelbaum, Fifth Floor, Lenox Towers, S, 3390 Peachtree Rd., N.E., Atlanta, GA 30326. *Contract* Carrier; Irregular Route; *Textile chemicals and materials, equipment and supplies used in the manufacture thereof (except in bulk)*, from Decatur, IL; Indianapolis, IN and Houston, TX to Fulton County, GA, under continuing contract(s) with Seydel International, Inc. Supporting shipper: Seydel International, Inc., 80 Broad St., N.W., Atlanta, GA 30303.

MC 136123 (Sub-3–8TA), filed September 29, 1980. Applicant: MEAT DISPATCH, INC., P.O. Box 1058, Palmetto, FL 33561. Representative: William L. Beasley (same as above). *Commodities as are dealt in by bonded warehouses*, between points in and east of ND, SD, NB, KA, OK, and TX for the account of Southeastern Bonded Warehouses of Atlanta, GA. Supporting shipper: Southeastern Bonded Warehouses, Inc., 5180 Phillip Lee Dr., S.W., Atlanta, GA 30336.

MC 146516 (Sub-3–1TA), filed September 30, 1980. Applicant: ALEXANDER TRUCKING CO., INC., P.O. Box 6243, Dothan, AL 36301. Representative: Daniel O. Hands, Suite 200, 205 West Touhy Av., Park Ridge, IL 60068. *Bananas, in shipper owned containers*, from the facilities of Chiquita Brands, Inc., at Gulfport, MS to Houston, TX. Supporting shipper: Chiquita Brands, Inc., 15 Mercedes Drive, Montvale, NJ 07645.

MC 145213 (Sub-3–3TA), filed September 30, 1980. Applicant: DEEP SOUTH TRUCKING, INC., Hwy 11 North, Post Office Box 304, Purvis, MS 39475. Representative: Kent F. Hudson, 202 Main Street, Post Office Box 696, Purvis, MS 39475. *Contract carrier*, irregular routes, *welding wire and electodes*, between Harrison County, MS, on the one hand and on the other, points in York County, PA, and White County, IN. Supporting shipper: Dealers Wholesale Welding Supply, Inc., P.O. Box 470072, Dallas, TX 75247.

MC 147148 (Sub-3–1TA), filed September 29, 1980. Applicant: GOLDEN TRIANGLE TRANSPORTATION, INC., Highway 82 East, P.O. Box 2043, Columbus, MS 39701. Representative: John A. Crawford, P.O. Box 22567, Jackson, MS 39205. *Contract;* regular; *Steel pails and paint raw materials* between points in TX and LA, on the one hand, and, on the other, points in IL and OH, under continuing contract or contracts with Ribelin Sales, Inc. Supporting shipper: Ribelin Sales, Inc., 7786 Blankenship Dr., Houston, TX 77055.

MC 143956 (Sub-3–13TA), filed September 30, 1980. Applicant: GARDNER TRUCKING CO., INC., P.O. Drawer 493, Walterboro, SC 29488. Representative: Steven W. Gardner, 3574 Piedmont Road, Atlanta, Georgia 30305. *Such commodities as are dealt in or used by automotive supply dealers* between points in MS, TN, and TX on the one hand, and SC on the other hand. Supporting shipper: Stroble Oil and Tire Co., 1101 N. Main Street, Summerville, SC 29483.

MC 115093 (Sub-3–2TA), filed September 29, 1980. Applicant: MERCURY MOTOR EXPRESS, INC., 2511 North Grady Ave. (P.O. Box 23406), Tampa, FL 33607 (33623). Representative: Joseph W. Watson (same as above). *General Commodities (except household goods as defined by the Commission and Classes A and B explosives);* (1) Between points in AL, CT, DC, DE, FL, GA, MA, MD, NC, NJ, NY, PA, RI, SC, TN, VA and WV, restricted to traffic having a prior or subsequent movement by water. Supporting shipper: There are approximately 43 statements of support which may be examined at the ICC Regional Office, Atlanta, GA.

Note.—Applicant intends to interline with other carriers at Atlanta, GA, Charlotte, NC, Harrisburg, PA, Pittsburgh, PA, Scranton, PA, Birmingham, AL, Philadelphia, PA and New Haven, CT.

MC 146646 (Sub-3–30TA), filed September 29, 1980. Applicant: Bristow Trucking Co., Inc., P.O. Box 6355 A, Birmingham, AL 35217. Representative: James W. Segrest (same address as applicant). *Kitchen cabinets, vanities, shelf units and materials, equipment and supplies used in the production of described commodities* Between points in the U.S. (except AK and HI) restricted to the transportation of traffic originating at or destined to the facilities of Triangle Pacific Corp. Supporting shipper: Triangle Pacific Corp., 16803 Dallas Parkway, Dallas, TX 75248.

MC 151803 (Sub-3–1TA), filed September 29, 1980. Applicant: SOUTHERN EXPRESS, INC., 860 W. Main Street, Spartanburg, SC 29301. Representative: Joseph M. Epting, Attorney at Law, P.O. Box 11414, Columbia, SC 29211. *Wearing apparel and material, supplies and equipment used in the manufacturing of wearing apparel* between GA and SC, and New York, NY and its Commercial Zone. There are 6 statements in support attached to this application which may be examined at the I.C.C. Regional Office in Atlanta, GA.

MC 118831 (Sub-3–7TA), filed September 29, 1980. Applicant: CENTRAL TRANSPORT, INCORPORATED, P.O. Box 7007, High Point, North Carolina 27264. Representative: Ben H. Keller, III (same address as applicant). *Dimethyl Terephthalate, in bulk, in tank vehicles*, from Old Hickory, TN to points in NY. Supporting shipper: E. I. DuPont de Nemours & Company, 1007 Market Street, Wilmington, DE 19898.

MC 31675 (Sub-3–17TA), filed October 2, 1980. Applicant: NORTHERN FREIGHT LINES, INC., P.O. Box 34303, Charlotte, N.C. 28234. Representative: Garland V. Moore (same as above). *Plastic Flakes, Granules, Lumps, Pellets, Powder or Solid Mass* from the facilities of Arco Polymers, Inc. at Monaca, PA, Beaumont, Houston, Orange, LaPorte and Pt. Arthur, TX to points in the U.S. except points in AK and HI. Supporting shippers: Arco Polymers, Inc., 1500 Market Street, Philadelphia, PA 19101.

MC 31675 (Sub-3–18TA), filed October 18, 1980. Applicant: NORTHERN FREIGHT LINES, INC., P.O. Box 34303, Charlotte, N.C. 28234. Representative: Garland V. Moore (same as above). *Concrete products* from facilities of Florence Concrete Products, Inc., Florence, SC and Sumter, SC to points in NC and GA. Supporting shipper(s): Florence Concrete Products, Inc., P.O. Box 5506, Florence, SC 29502.

MC 31675 (Sub-3–19TA), filed September 29, 1980. Applicant:

NORTHERN FREIGHT LINES, INC., P.O. Box 34303, Charlotte, N.C. 28234. Representative: Garland V. Moore (same as above). *Brass, bronze or copper rod, wire, castings, tube or any other brass, bronze or copper articles* from Ansonia and Waterbury, CT, to points in AL, FL, GA, NC, SC, TN and VA. Supporting shipper(s): The Anaconda Company, 414 Meadow Street, Waterbury, CT. 06702.

MC 128720 (Sub-3–11TA), filed October 2, 1980. Applicant: MERCHANTS FREIGHT LINE, INC., 1185 Omobundro Dr., Nashville, TN 37210. Representative: Henry E. Seaton, 929 Pennsylvania Bldg., 425 13th St., NW., Washington, DC 20004. *General Commodities (except commodities of unusual value, classes A&B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment),* between points in TN, on the one hand, and, on the other, points in KY. *Note:* Applicant intends to interline at Nashville, Knoxville, Memphis, Chattanooga, and Louisville. Supporting shipper(s): There are 126 shippers supporting this application.

MC 139323 (Sub-3–1TA), filed August 26, 1980. Republication—Originally published in **Federal Register** of September 10, 1980, page 59658, volume 45, No. 177. Applicant: KARS TRANSPORT, INC., 3333 NW 116th St., Miami, FL 33167. Representative: Gerard J. Donovan, 4791 SW 82nd Ave., Davie, FL 33328. *General Commodities (except cement, commodities of unusual value, Classes A and B explosives, household goods as defined by the Commission, and commodities in bulk)* between all points in FL. Applicant intends to interline at Miami, Tampa, Orlando, and Jacksonville, FL. Supporting shippers: There are 11 statements in support attached to this application which may be examined at the ICC Regional Office in Atlanta, GA.

Note.—Applicant intends to tack with existing authority MC 139323 (Sub-5).

MC 121598 (Sub-3–1TA), filed August 26, 1980. Republication—originally published in **Federal Register** of September 10, 1980, page 59658, volume 45, No. 177. Applicant: SHELBYVILLE EXPRESS, INC., P.O. Box 187, Shelbyville, TN 37160. Representative: James G. Caldwell, P.O. Box 100906, Nashville, TN 37210. *General commodities, Regular Routes, (except those of unusual value, classes A & B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment),* (1) between Nashville, TN and Lewisburg, TN, serving all intermediate points from Nashville over US Highway 31A–41A to Kirkland, TN thence over US Highway 31A to Lewisburg, TN and return; (2) Between Nashville, TN and Lewisburg, TN serving all intermediate points from Nashville, TN over Interstate 65 to its junction with TN Highway 50 thence over TN Highway 50 to Lewisburg, TN and return; (3) Between Shelbyville, TN and Lewisburg, TN serving all intermediate points from Shelbyville over TN Highway 64 to its junction with US Highway 31A thence over US Highway 31A to Lewisburg, TN and return; (4) Between Lewisburg, TN and Ardmore, TN serving all intermediate points from Lewisburg over US Highway 31A to its junction with Interstate 65 thence over Interstate 65 to its junction with US Highway 31, thence over US Highway 31 to Ardmore, TN and return. Applicant intends to tack with MC 121598 and interline at Nashville, TN and Memphis, TN. Supporting shippers: There are 14 statements of support which may be examined at the I.C.C. Regional Office, Atlanta, GA.

MC 121654 (Sub-3–11TA), filed September 29, 1980. Applicant: COASTAL TRANSPORT & TRADING CO., P.O. Box 7438, Savannah, GA 31408. Representative: Alan E. Serby, Esq., 3390 Peachtree Rd., NE., 5th Floor, Lenox Towers South, Atlanta, GA 30326. *Textiles and Textile Products* from Opp, AL to Leominster, MA. Supporting shipper: Vertipile, Inc., Mohawk Drive, Leominister, MA 01453.

MC 116254 (Sub-3–19TA), filed September 29, 1980. Applicant: CHEM-HAULERS, INC., P.O. Box 339, Florence, AL 35631. Representative: Mr. M. D. Miller (same address as above). *Wood Burning Stoves or Ranges, Iron or Steel, and Accessories thereof,* from Chattanooga, TN, to AL, AR, CT, DE, DC, FL, GA, IL, IN, IA, KY, LA, ME, MD, MA, MI, MN, MS, MO, NH, NJ, NY, NC, OH, PA, RI, SC, VT, VA, WV, WI. Supporting shipper: Tennessee Machine Works, 1103 Latta Street, Chattanooga, TN 37411.

MC 25798 (Sub-3–5TA), filed September 30, 1980. Applicant: CLAY HYDER TRUCKING LINES, INC., P.O. Box 1186, Auburndale, FL 33823. Representative: Tony G. Russell (same address as applicant). *Foodstuffs* from Memphis, TN to points in the U.S. (except AK and HI). Supporting shipper: Adams Packing Associates, Inc., P.O. Box 37, Auburndale, FL 33823.

MC 152059 (Sub-3–1TA), filed September 29, 1980. Applicant: RAPID TRANSFER & STORAGE, INC., 4725 NW 72d St., Miami, FL 33166. Representative: Richard B. Austin, 320 Rochester Building, 8390 53d St., Miami, FL 33166. *New and used furniture, crated, crated household goods and automotive, industrial, tractor and engine parts, crated and uncrated,* from New York, NY, and Elizabeth and Newark, NJ, *restricted* to traffic having a continuing movement in foreign commerce at Miami, FL. Supporting shipper: Sleepworld Industries, Inc., 16725 NW 20th Ave., Miami, FL; Andes Express Packing & Shipping Corp., 89–01 Roosevelt Ave., Jackson Heights, NY; Swiss-American Forwarders, Inc., 7807 NW 72d Ave., Miami, FL; Embarques Mundo Packing & Shipping, Inc., 37–63 90th St., Jackson Heights, NY.

MC 151784 (Sub-3–1TA) filed, September 29, 1980. Applicant: O. D. WATSON, d.b.a., O. D. WATSON TRUCKING, Route 2, Box 330, Lucama, NC, 27851. Representative: O. D. Watson (same address as applicant). *Contract,* irregular routes, *electrical switchgear and circuit breakers and materials and supplies used in the manufacture and distribution of electrical switchgear and circuit breakers* between points in Wake County, NC, on the one hand, and, on the other, points in the U.S. except Alaska and Hawaii under a continuing contract or contracts with Siemens-Allis, Inc., 801 South 60 St., West Allis, WI 53214. Shipper: Siemens-Allis, Inc., 801 South 60 St., West Allis, WI 53214.

MC 126305 (Sub-3–8) filed, September 29, 1980. Applicant: BOYD BROTHERS TRANSPORTATION CO., INC., R.D. 1, Box 18, Clayton, AL 36016. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. *(1) Highway marking spheres and strip glass, ballotini, broken glass, and plastic and metal articles (except commodities in bulk in tank vehicles); and (2) Materials, equipment, and supplies used in the manufacture and sale of the commodities named in (1) above (except commodities in bulk in tank vehicles),* between points in the U.S. (except AK and HI). Restricted to shipments originating at or destined to the facilities of Potters Industries, Inc. and its subsidiaries. Supporting shipper(s): Potters Industries, Inc., 377 Route 17, Hasbrouck Heights, NJ 07604.

MC 141837 (Sub-3–1TA) filed, September 30, 1980. Applicant: ELLIS AG SERVICE, INC., 206 Fairway Circle, Andalusia, AL 36420. Representative: Selwyn H. Ellis, president (same address as applicant). *Lumber, treated and untreated, and poles, treated and untreated,* from the facilities of TMA Forest Products, Lockhart, AL, to the Alabama State Docks, Mobile County, AL, for subsequent movement by water,

and points in FL. Supporting shipper: TMA Forest Products Group, P.O. Box 1487, Ansalusia, AL 36420.

Note.—Applicant intends to tack this authority with its existing authority in MC 141837.

MC 146226 (Sub-3–3TA) filed, September 29, 1980. Applicant: J & P TRUCKING CO., INC., P.O. Box 457, Lincolnton, NC 28092. Representative: Dwight L. Koerber, Jr., P.O. Box 1320, 110 N. 2nd St., Clearfiel, PA 16830. *Corrugated boxes, liners, and dividers,* from Gastonia, NC to Memphis, TN, and Conway, AR. Supporting shipper: Westvaco Corp., P.O. Box 728, Gastonia, NC 28052.

MC 126139 (Sub-3–1TA) filed, September 30, 1980. Applicant: AARON SMITH TRUCKING COMPANY, INC., P.O. Box 208, Dudley, NC 28333. Representative: John N. Fountain, Attorney at Law, P.O. Box 2246, Raleigh, NC 27602. *Materials, supplies and equipment used in the handling, marketing, packaging, prizing, redrying, shipping or storing of tobacco leaves or stems, loose or in packages,* between points and places in FL, GA, SC, NC, VA, MD, PA, KY, TN, WV, MO, OH, and IN. Supporting shippers: There are six supporting shipper statements attached to this application, which may be examined at the Atlanta, GA Authority Center.

MC 145508 (Sub-3–1TA) filed, September 29, 1980. Applicant: A M & M, INCORPORATED, P.O. Box 1627, Jackson, TN 38301. Representative: R. Connor Wiggins, Jr., Suite 909, 100 N. Main Bldg., Memphis, TN 38103. *Contract* carrier: Irregular: *General Commodities (except those of unusual value, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment)* between the facilities of ITT Grinnell Corporation or its subsidiaries at points in the U.S. (except AK and HI) on the one hand, and, on the other, points in the U.S. (except AK and HI), under a continuing contract or contracts with ITT Grinnell Corporation or its subsidiaries. Supporting shipper: ITT Grinnell Corporation, 260 West Exchange St., Providence, RI 02901.

MC 151793 (Sub-3–1TA), filed October 1, 1980. Applicant: MUSIC CITY TRUCKING, INC., 620 N. Dickerson Road, Goodlettsville, TN. Representative: Henry E. Seaton, 929 Pennsylvania Bldg., 425 13th St., NW., Washington, DC 20004. *Printed matter and materials, supplies and equipment used in the manufacture thereof,* between Nashville, TN, on the one hand, and, on the other, points in WA, OR, ID, CA, NV, AZ, UT, CO, KS, TX, OK, LA, AR, MS, IL, IN, OH, St. Paul, MN, Detroit, MI, and Milwaukee, WI. Supporting shipper(s): Baird Ward Printing Co., P.O. Box 539, Nashville, TN 37202.

MC 115917 (Sub-3–1TA), filed October 1, 1980. Applicant: UNDERWOOD & WELD COMPANY, INC., P.O. Box 247, Crossnore, NC 28616. Representative: Wilmer B. Hill, Suite 805, 666 Eleventh Street NW., Washington, DC 20001. *Olivine,* from points in Jackson and Clay Counties, NC to points in the U.S., except AK and HI. Supporting shipper: National Olivine Company, P.O. Box 180, Dillsboro, NC 28725.

MC 111045 (Sub-3–4TA), filed October 1, 1980. Applicant: REDWING CARRIERS, INC., P.O. Box 426, Tampa, FL 33601. Representative: L. W. Fincher (same address as applicant). *Lime,* between Duval County, FL and points in GA. Supporting shipper: Martin Marietta Cement—Southern Division, 1800 Daniel Bldg., Birmingham, AL 35233.

MC 129712 (Sub-3–6TA), filed October 1, 1980. Applicant: GEORGE BENNETT MOTOR EXPRESS, INC., P.O. Box 569, McDonough, GA 30253. Representative: Frank D. Hall, Postell & Hall, P.C., Suite 713, 3384 Peachtree Rd. NE., Atlanta, GA 30326. Contract, irregular, *(1) New furniture; (2) furniture parts; and (3) materials, equipment and supplies used in the manufacture and distribution of furniture,* between the facilities of S. K. Products Corp., located at or near Atlanta, GA; Chicago, IL; Clifton, NJ; and, Houston, TX, on the one hand, and, on the other, all points in the U.S. (except AK and HI). Supporting shipper: S. K. Products Corp., 5355 Bucknell Dr., Atlanta, GA, 30378.

MC 2900 (Sub-3–20TA), filed October 1, 1980. Applicant: RYDER TRUCK LINES, INC., 2050 Kings Road, P.O. Box 2408–R, Jacksonville, FL 32203. Representative: S. E. Somers, Jr. (same address as applicant). *Electric motors, starters and rotors, and material used in the manufacture thereof,* between Gibson County, TN, on the one hand, and, on the other, points in the U.S. Supporting shipper: Copeland Electric Corporation, 957 W. Mullins, Humboldt, TN 38343.

MC 129291 (Sub-3–1TA), filed October 1, 1980. Applicant: McDANIEL MOTOR EXPRESS, INC., 1115 Winchester Road, Lexington, KY 40505. Representative: William L. Willis, 708 McClure Building, Frankfort, KY 40601. *Common carrier, regular routes,* transporting *general commodities (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requring special equipment),* between Lexington, KY and Berea, KY serving all intermediate points (1) from Lexington, KY over U.S. Hwy 25 to Berea, KY and return over the same route, and (2) from Lexington, KY over I–75 to Berea, KY and return over the same route. Supporting shippers: Stewart Truck Line, Inc., P.O. Box 109, Dry Ridge, KY 41035; Bowling Green Express, Inc., Plum Springs Road, P.O. Box 66, Bowling Green, KY 42101; Crawford Gas and Appliances, Inc., Big Hill Avenue, Richmond, KY; Richmond Paint Center, #1 Southern Hills Plaza, Richmond, KY; and Madison Grocery Company, Inc., U.S. 25 South, P.O. Box 580, Richmond, KY.

Note.—Applicant intends to tack the authority sought with its existing authority in MC 129291 and subs thereunder, and to interline with other carriers at Louisville, Lexington and Maysville, KY, and Aberdeen, OH.

MC 109708 (Sub-3–10TA), filed September 4, 1980. Republication—Originally published in **Federal Register** of September 17, 1980, page 61813, volume 45, No. 182. Applicant: INDIAN RIVER TRANSPORT COMPANY, INC., P.O. Box AG, Dundee, FL 33838. Representative: John J. Harned (same address as above). *Liquid foodstuffs and liquid edible food by products, in bulk in tank vehicles* between Cowety County, GA on the one hand, and points in the U.S. in and east of ND, SD, NE, KS, and TX on the other. Supporting shipper: Nature's Best Food Products, Inc., 50 Amlajack Blvd., Shenandoah, GA 30265.

MC 119777 (Sub-3–18TA), filed October 9, 1980. Applicant: LIGON SPECIALIZED HAULER, INC., Highway 85 East, Madisonville, KY 42431. Representative: Carl U. Hurst, P.O. Drawer "L", Madisonville, KY 42431. *Metal articles,* from the facilities of Southwest Tube Manfuacturing Co., Inc. at or near Sand Springs, OK to points in the U.S. Supporting shipper: Southwest Tube Manufacturing Co., Inc., P.O. Box 100, 1800 S. 83rd W. Avenue, Sand Springs, OK 74063.

MC 31675 (Sub-3–21TA), filed October 9, 1980. Applicant: NORTHERN FREIGHT LINES, INC., P.O. Box 34303, Charlotte, NC 28234. Representative: Garland V. Moore (same as above). *Steel, sheet or coils,* from the facilities of Baldwin Steel Co., at or near Jersey City, NJ to points in and east of LA, MS, TN, KY, IL, WI, and MI. Supporting shipper(s): Baldwin Steel Co., 500 State Hwy. No. 440, Jersey City, NJ 07305.

MC 128095 (Sub-3–6TA), filed October 9, 1980. Applicant: IBCO TRUCK LINE, INC., P.O. Box 1402, Tupelo, MS 38801. Representative: Robert L. McArty, P.O. Box 22628, Jackson, MS 39205. (1) *New*

furniture and furniture parts from Neosho, MO to points in and east of WI, IL, MO, AR, and LA (except FL); and (2) *materials, equipment and supplies* used in the manufacture, distribution and sale of the commodities in (1) above (except commodities in bulk), in the reverse direction. Supporting shipper: La-Z-Boy Midwest, Howard Bush Drive, Neosho, MO 64850.

MC 31389 (Sub-3–7TA), filed October 9, 1980. Applicant: McLEAN TRUCKING COMPANY, 1920 West First Street, Winston-Salem, NC 27104. Representative: Daniel R. Simmons, P.O. Box 213, Winston-Salem, NC 27102. *Common* carrier: Regular: *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 the facilities of Candle-Lite, Inc., a subsidiary of Lancaster Colony Corp., located at or near Leesburg, OH, as an off-route point in conjunction with applicant's presently authorized regular route operations. Supporting shipper: Lancaster Colony Corporation, 37 West Broad Street, Columbus, OH 43215.

Note.—Applicant intends to tack with existing authority and to interline at its 204 terminals now in existence throughout its system. The listing of the interline points may be examined at the Regional Center, Atlanta, GA.

MC 145072 (Sub-3–10TA), filed October 7, 1980. Applicant: M. S. CARRIERS, INC., 1797 Florida Street, Memphis, TN 38109. Representative: Michael S. Starnes (same address as applicant). *(1) Such merchandise as is dealt in by wholesale, retail, and chain discount stores and wholesale food houses and, (2) materials, ingredients, equipment, and supplies used in the development, manufacture, distribution, and sale of items named above, (except commodities in bulk);* between points in AL, AR, CA, CT, DE, FL, GA, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, NJ, NC, OH, OK, PA, SC, TN, TX, VA, WVA, WI. Supporting shippers: There are 12 statements in support attached to this application which may be examined at the I.C.C. Regional Office in Atlanta, GA.

MC 151989 (Sub-3–1TA), filed October 7, 1980. Applicant: TODD TRANSPORTATION COMPANY, 421 Garrard Street, Covington, KY 41011. Representative: Stephen D. Strauss, 2613 Carew Tower, Cincinnati, OH 45202. Contract carrier; irregular; *General commodities, except Class A & B explosives, household goods, commodities in bulk* (1) between points in IN, KY and OH, on the one hand, and, on the other, the facilities of H. J. Hosea and Sons Company at Wilder, KY and (2) between the facilities of H. J. Hosea and Sons Company at Wilder, KY, on the one hand, and, on the other, New York, NY; Baltimore, MD; and Savannah, GA. Both (1) and (2) restricted to movements in intermodal containers having a prior or subsequent movement by water in foreign commerce. Supporting shipper; H. J. Hosea and Sons Company, P.O. Box 298, Newport, KY 41072.

MC 143059 (Sub-3–19TA), filed October 9, 1980. Applicant: MERCER TRANSPORTATION CO., P.O. Box 35610, Louisville, KY 40232. Representative: Janice K. Taylor (same address as applicant). *Lumber or wood products and forest products,* between Los Angeles County, CA, on the one hand, and, on the other, points in the U.S. (except AK and HI). Supporting shipper: National Plywood Inc., P.O. Box 9340, Long Beach, CA 90810.

MC 19537 (Sub-3–1TA), filed October 3, 1980. Applicant: CLARK TRUCK LINE, INC., 628 Carnation Street, Tupelo, MS 38801. Representative: A. Doyle Cloud, Jr., 2008 Clark Tower, 5100 Poplar Avenue, Memphis, TN 38137. Common, regular; *General commodities, (with the usual exceptions),* (1) between Tupelo, MS and New Albany, MS, serving all intermediate points and their commercial zones. From Tupelo, MS over U.S. Hwy 78 to New Albany, MS and return over the same route, (2) between Pontotoc, MS and Sherman, MS and its commercial zones. From Pontotoc, MS over Hwy 9 to Sherman, MS. Applicant requests to tack this authority to authority held by him and to interline at Tupelo, MS, Pontotoc, MS and Memphis, TN. Supporting shipper: There are 11 statements of support attached to this application which may be examined at the I.C.C. Regional Office in Atlanta, GA.

MC 152142 (Sub-3–1TA), filed October 3, 1980. Applicant: DALLAS M. CRONRATH d/b/a, D & A TRANSPORT, P.O. Box 974, Ft. Pierce, FL 33450. Representative: Dallas M. Cronrath (same as above). *PVC (plastic) fitting for plumbing and/or irrigation use and/or PVC granules, except in tank or bulk,* from Ft. Pierce, FL to CA, CO, OK, TX, IL, IN, MI, GA, SC, PA, NY and from Kalamazoo, MI; Baton Rouge, LA; Tiptonville, TN; New Castle and Delaware City, DE to Ft. Pierce, FL. Supporting shipper: Colonial Engineering, Inc., 4000 Metzger Road, P.O. Box 699, Ft. Pierce, FL 33450.

MC 150700, (Sub-3–2TA), filed October 6, 1980. Applicant: OLIN WOOTEN TRANSPORT CO., INC., P.O. Box 731, Hazlehurst, GA 31539. Representative: Sol H. Proctor, 1101 Blackstone Building, Jacksonville, FL 32202. *Paper and Paper Products,* from the facilities of Gilman Paper Company at St. Marys, GA, to all points in the U.S. in and east of ND, SD, NE, KS, OK and TX. Supporting shipper: Gilman Paper Company, P.O. Box 520, St. Marys, GA 31558.

MC 119777 (Sub-3–19TA), filed October 9, 1980. Applicant: LIGON SPECIALIZED HAULER, INC., Highway 85—East, Madisonville, KY 42431. Representative: Carl U. Hurst, P.O. Drawer "L", Madisonville, KY 42431. *(1) Electric motors, transformers, form material, structural steel, and (2) Materials, equipment and supplies (except in bulk) used in the manufacture or distribution of (1) above,* between points in the United States (except AK and HI). Restricted to shipments originating at or destined to the facilities of A & H Electric, Inc. or its suppliers or customers. Supporting shipper: A & H Electric, Inc., 13759 E. Apache, Tulsa, OK 74116.

MC 149012 (Sub-3–1TA), filed October 7, 1980. Applicant: GROVER F. BOYD, d/b/a, GROVER F. BOYD TRUCKING COMPANY, P.O. Box 67, Emelle, AL 35459. Representative: David A. Reid, P.O. Box 149, Livingston, AL 35470. *Hazardous and non-hazardous wastes* from points in and East of MN, IA, KS and NM to Emelle, AL, excluding authority to transport said commodities having an immediately prior or subsequent movement by rail or water from points in LA, MS, TN and points in FL West of the Apalachicola River. Supporting shipper: Chemical Waste Management, Inc., P.O. Box 55, Emelle, AL 35459.

MC 152140 (Sub-3–1TA), filed October 3, 1980. Applicant: GRIMES TRUCKING COMPANY, 600 N. Ellis Road, P.O. Box 37587, Jacksonville, FL 32205. Representative: William E. Scheu, 1600 Atlantic Bank Building, P.O. Box 479, Jacksonville, FL 32201. *Foodstuffs, canned, prepared, preserved, dry or refrigerated; cooking or edible oils, matches, oleomargarine, shortening* (except commodities in bulk), all having an immediate prior or subsequent movement by water, rail or truck: between all points in the bounds of Duval, Nassau, Baker, Union, Bradford, Alachua, Marion, Lake, Orange, Seminole, Osceola, Brevard, Volusia, Flagler, Putnam, St. Johns, Clay, Palm Beach, Broward, Dade, Pinellas, Hillsborough, Polk and Columbia Counties, FL. Supporting shipper: Hunt-Wesson Foods, Inc., P.O. Box 61770, New Orleans, LA 70161.

MC 144069 (Sub-3–10TA), filed October 7, 1980. Applicant: FREIGHTWAYS, INC., P.O. Box 5204, Charlotte, NC 28225. Representative: W. T. Trowbridge (same address as applicant). *Building materials* between Horry County, SC; on the one hand, and on the other, points in and east of WI, IL, KY, TN, and MS. Supporting shippers: Grayco Steel Corporation, P.O. Box 1346, Myrtle Beach, SC 29577 and New South Forest Industries, P.O. Box 1505, Conway, SC 29526.

MC 146646 (Sub-3–33TA), filed October 7, 1980. Applicant: BRISTOW TRUCKING CO., INC., P.O. Box 6355 A, Birmingham, AL 35217. Representative: James W. Segrest (same address as applicant). *(1) Washing, cleaning, scouring compounds, dispensers, and (2) materials, equipment and supplies used in the manufacture, sales and distribution of commodities in (1) above.* Between the facilities, warehouses, and distribution centers of the Calgon Corporation and points in the U.S. (except AK and HI). Supporting shipper: Calgon Corporation, P.O. Box 14584, St. Louis, MO 63178.

MC 56679 (Sub-3–23TA), filed October 7, 1980. Applicant: BROWN TRANSPORT CORP., 352 University Ave., SW, Atlanta, GA 30310. Representative: David L. Capps, P.O. Box 6985, Atlanta, GA 30315. *Fertilizers (except in bulk),* between Norfolk, VA and points in its commercial zone and Paris and Lexington, KY. Supporting shipper: Schenkers International Forwarders, Inc., 300 East Main St., Suite 920, Norfolk, VA 23510.

MC 144503 (Sub-3–4TA), filed October 3, 1980. Applicant: ADAMS REFRIGERATED EXPRESS, INC., P.O. Box F, Forest Park, GA 30050. Representative: Virgil H. Smith, Suite 12, 1587 Phoenix Boulevard, Atlanta, GA 30349. (1) *Fiberboard corrugated KD boxes, fiberboard boxes, bottles carrying boxes other than corrugated KD boxes flat, plastic articles, steel drums, fiber drums, pulpboard, not corrugated, fiberboard cans, and containers* from the plantsite and facilities of Container Corp. of America at Stone Mountain, GA, Atlanta Southwest Industrial Park at or near Atlanta, and Lithonia, GA, Fernandina Beach, FL, Greensboro, NC, Nashville, Chattanooga, and Knoxville, TN and Caroll Stream, IL to points in the U.S., except AK and HI. (2) *Material, supplies and equipment used in the manufacture and distribution of commodities in one (1) above (except in bulk)* between points in the U.S., except AK and HI, to the plantsite and facilities of Container Corp. of America named in one (1) above. Supporting shipper: Container Corp. of America, P.O. Box 1225, Stone Mountain, GA 30086.

MC 148075 (Sub-3–3TA), filed October 3, 1980. Applicant: CECIL E. KING, JR. d/b/a CECIL KING TRUCKING, Route 2, Seagrove, NC 27341. Representative: Francis J. Ortman, 7107 Wisconsin Ave., Suite 605, Washington, DC 20014. Contract, irregular; *Flour, in cartons,* from Knoxville, TN to points in NC, SC, GA, FL, AL, MS, LA, TX, MO, KY, WV, IA, PA, VA, NV, KS, and CA. Supporting shipper: The White Lily Foods Company, 108 Depot Avenue, NE, Knoxville, TN 37901.

MC 118831 (Sub-3–10TA), filed October 6, 1980. Applicant: CENTRAL TRANSPORT, INCORPORATED, P.O. Box 7007, High Point, NC 27264. Representative: Ben H. Keller, III (same address as applicant). *Petroleum Products, in bulk, in tank vehicles,* from Lima, OH to Charlotte, NC. Supporting shipper: Standard Oil Company, 1510 Rockefeller Building, 614 Superior Avenue, Cleveland, OH 44113.

MC 115093 (Sub-3–3TA), filed October 9, 1980. Applicant: MERCURY MOTOR EXPRESS, INC., 2511 N. Grady Ave., Tampa, FL 33607. Representative: Joseph W. Watson (same as above). *General Commodities (except household goods as defined by the Commission and Classes A and B explosives);* between points in NC, on the one hand, and, on the other, points in CT, DC, DE, MA, MD, NC, NJ, NY, PA, RI, TN, VA and WV. Supporting shipper: There are approximately 64 statements of support which may be examined at the ICC Regional Office, Atlanta, GA.

Note.—Applicant intends to interline with other carriers at Charlotte and Raleigh, NC and Philadelphia and Pittsburgh, PA.

MC 135895 (Sub-3–16TA), filed October, 6, 1980. Applicant: B & R DRAYAGE, INC., P.O. Box 8534, Battlefield Station, Jackson, MS 39204. Representative: Douglas C. Wynn, Wynn, Bogen & Mitchell, P.O. Box 1295, Greenville, MS 38701. (1) *Paper and paper articles, and plastic and plastic articles and (2) equipment, materials and supplies used in the manufacture, sale and distribution of commodities described in (1) above (except commodities in bulk and those requiring special equipment)* between points in the U.S. in and East of ND, SD, NE, CO & NM. Restricted to transportation of traffic originating at or destined to the facilities or subsidiaries of Stone Container Corporation. Supporting shipper(s): Stone Container Corporation, 360 North Michigan Avenue, Chicago, IL 60601.

MC 144827 (Sub-3–16TA), filed October, 8, 1980. Applicant: DELTA MOTOR FREIGHT, INC., P.O. Box 18423, Memphis, TN 38118. Representative: R. Connor Wiggins, Jr., Suite 909, 100 N. Main Bldg., Memphis, TN 38103. *Disposable surgical products, material and packs* from facilities of Searle Medical Products USA, Inc., at or near Douglas, AZ, to Columbus, MS. Supporting shipper: Will Ross Division of Searle Medical Products USA, Inc., P.O. Box 47370, Dallas, TX, 75247.

MC 126736 (Sub-3–3TA), filed October, 2, 1980. Applicant: FLORIDA ROCK & TANK LINES, INC., 155 East 21st Street, Jacksonville, FL 32201. Representative: L.H. Blow (same as above). *Petroleum and petroleum products,* in bulk, in tank vehicles from points in Bay County, FL, to points in GA and AL. Supporting shipper: Bainbridge Supply Company, Inc., P.O. Box 1239, Bainbridge, GA 31717, and Southern Supply Company, Inc., 2609 Westgate Parkway, Dothan, AL 36302.

MC 109708 (Sub-3–11TA), filed October, 7, 1980. Applicant: INDIAN RIVER TRANSPORT CO., d.b.a. INDIAN RIVER TRANSPORT, INC., P.O. Box AG, Dundee, FL 33838. Representative: Greg A. Dickinson, Suite 610, 7171 Mercy Road, Omoha, NE 68106. *Apple juice,* from MD, NY, PA and WV to Flemington, NJ. Supporting shipper: Johanna Farms, Inc. P.O. Box 272, Flemington, NJ 08822.

MC 147127 (Sub-3–9TA), filed October, 7, 1980. Applicant: McLAURIN TRUCKING COMPANY, P.O. Box 26506, Charlotte, NC 28213. Representative: Donald J. Balsley, 2310 Grant Building, Pittsburg, PA 15219. *Paper products,* from points in Mecklenburg County, NC to points in SC. Supporting shipper: Scott Paper Company, Scott Plaza II, Philadelphia, PA 19113.

MC 147547 (Sub-3–3TA), filed October, 6, 1980. Applicant: R & D TRUCKING COMPANY, INC., Church Road, Lauderdale Industrial Park, Florence, AL 35630. Representative: Roland M. Lowell, 618 United American Bank Building, Nashville, TN 37219. *Paper and paper products,* from the facilities of Champion International Corporation at or near Courtland, AL to points in AZ, CA, CO, NM, OR and UT. Restricted against transportation of commodities in bulk. Supporting shipper: Champion International Corporation, Knightsbridge Drive, Hamilton, OH 45020.

MC 126305 (Sub-3–9TA), filed October 7, 1980. Applicant: BOYD BROTHERS TRANSPORTATION COMPANY, INC., RFD 1, Box 18, Clayton, AL 36016. Representative: George A. Olsen, P.O.

Box 357, Gladstone, NJ 07934. *Metal Cans, Metal Cans with Closures, and Closures,* between points in AL, GA, FL, TN, MS, LA, NC, SC, TX, and AR. Supporting shipper: Continental Can Company, 22 Executive Park West, N.E., Atlanta, GA 30329.

MC 138635 (Sub-3–11TA), filed October 7, 1980. Applicant: CAROLINA WESTERN EXPRESS, INC., P.O. Box 3995, Gastonia, NC 28052. Representative: W. C. Sutton (address same as applicant). (1) *Automobile parts and (2) materials, equipment and supplies used in the manufacture, sale and distribution of the commodities named in (1) above,* between points in the U.S. Supporting shipper: Nissan Motor Corporation in U.S.A., 745 Compton Blvd., Compton, CA 90220.

MC 31389 (Sub-3–6TA), filed October 8, 1980. Applicant: McLEAN TRUCKING COMPANY, 1920 West First Street, Winston-Salem, NC 27104. Representative: Daniel R. Simmons, P.O. Box 213, Winston-Salem, NC 27102. *Common carrier:* Regular: *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 the facilities of Halstead Industrial Products, at or near Colt, AR, as an off-route point in connection with applicant's regular route operations. Supporting shipper: Halstead Industrial Products, Division of Halstead Industries, P.O. Box 309, Wynne, AR 72396.

Note.—Applicant intends to tack with existing authority and to interline at its 204 terminals now in existence throughout its system. The listing of the interline points may be examined at the Regional Authority Center, Atlanta, GA.

MC 123812 (Sub-3–1TA), filed October 6, 1980. Applicant: SULLIVAN FREIGHT LINES, INC., C–4 Congress Parkway, Athens, TN 37303. Representative: Blaine Buchanan, 1024 James Building, Chattanooga, TN 37402. *Rough iron and steel castings, forgings, and iron and steel articles* from Waupaca and Marinette, WI, St. Joseph and Jackson, MI, Carrollton, KY, and Charles City, IA to the facilities of the Budd Company at or near Johnson City, TN. Supporting shipper: The Budd Company, 506 Milligan Highway, Johnson City, TN 37601.

MC 121699 (Sub-3–4TA), filed October 6, 1980. Applicant: VOLUNTEER EXPRESS, INC., 404 Arlington Ave., P.O. Box 100886, Nashville, TN 37210. Representative: Walter Harwood, P.O. Box 15214, Nashville, TN 37215. *General commodities, except classes A and B explosives, household goods, commodities in bulk, and articles requiring special equipment,* between points in the contiguous United States which originate at or are destined to the facilities of CBS, Inc., and/or its suppliers. Supporting shipper: CBS, Inc., 1515 Broadway, New York, NY 10036.

MC 121654 (Sub-3–13TA), filed October 6, 1980. Applicant: COASTAL TRANSPORT & TRADING CO., P.O. Box 7438, Savannah, GA 31408. Representative: Alan E. Serby, Esq., 3390 Peachtree Rd., NE., 5th Floor-Lenox Towers South, Atlanta, GA 30326. *Malt Beverages (except in bulk)* from facilities of Joseph Schlitz Brewing Company at or near Winston Salem, NC to points in VA, PA, DC, MD, NJ, DE, NY, RI, CT, ME, VT, MA, and NH. Supporting shipper: Joseph Schlitz Brewing Company, P.O. Box 614, Milwaukee, WI 53201.

MC 121654 (Sub-3–12TA), filed October 6, 1980. Applicant: COASTAL TRANSPORT & TRADING CO., P.O. Box 7438, Savanna, GA 31408. Representative: Alan E. Serby, Esq., 3390 Peachtree Rd., NE., 5th Floor-Lenox Towers South, Atlanta, GA 30326. *General Commodities (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, and commodities in bulk, in tank vehicles)* between points in the states of AL, AR, CT, DE, FL, GA, MD, MA, MS, NJ, NY, NC, OH, PA, RI, SC, TN, TX, VT, VA, WV and DC restricted to transportation of shipments originating at or destined to facilities of Owens-Corning Fiberglas Corporation. Supporting shipper: Owens-Corning Fiberglas Corp., Fiberglas Tower, Toledo, OH 43659.

MC 145857 (Sub-3–1TA), filed October 6, 1980. Applicant: K & R TRUCKING CO., P.O. Box 63, Dacus Road, Preston, GA 31824. Representative: John C. Bach, 1400 Candler Building, Altanta, GA 30303. *Lumber, pallets, wooden boxes, and railroad ties,* (1) from points in Stewart County, GA to points in AL, FL, KY, NC, SC and TN; and (2) from points in Webster and Sumter Counties, GA to points in FL. Supporting shippers: Greentree Manufacturing Company, P.O. Box 205, Lumpkin, GA 31815; Kustom Kut, Inc., P.O. Box 1502, Americus, GA 31709; St. Regis Allied Operations, P.O. Box 36A, Lumpkin, GA 31815; Sullivan Lumber, Inc., P.O. Box 31, Preston, GA 31824.

MC 107478 (Sub-3TA), filed October 8, 1980. Applicant: OLD DOMINION FREIGHT LINE, INC., Post Office Box 2006, High Point, NC 27261. Representative: C. T. Harris, 506 Mayo Street, Wilson, NC 27893. *Plastic articles and materials, equipment, and supplies used in the manufacture, distribution, and sale of plastic articles* (1) between points in Richmond County, GA and Aikens and Spartanburg Counties, SC, and (2) between the points in (1) above, on the one hand, and, on the other, points in the U.S., except AK and HI. Supporting shipper: Amoco Foam Products, 2111 Powers Ferry Road, Atlanta, GA 30339.

MC 152043 (Sub-3–1TA), filed October 3, 1980. Applicant: CLYDE SAULS, d.b.a., CLYDE SAULS TRUCKING, 2702 Wyndham Lane, Orlando, FL 32808. Representative: James E. Wharton, Suite 811, Metcalf Building, 100 South Orange Avenue, Orlando, FL 32801. *Floor tile, vinly and asbestos, flood strips, and adhesives used in the installation of same* from Harris County, TX to points in FL. Supporting shipper: Florida Flooring Distributors, Inc., 7570 Currency Drive, Orlando, FL 32809.

MC 120981 (Sub-3–2TA), filed October 3, 1980. Applicant: BESTWAY EXPRESS, INC., 905 Visco Drive, Nashville, TN 37210. Representative: George M. Catlett, Suite 708, McClure Building, Frankfort, KY 40601. *General commodities (except commodities in bulk, classes A and B explosives, household goods as defined by the Commission, commodities of unusual value, and those requiring special equipment),* between points in Boyle County, ky, on the one hand, and, on the other, points in Macon County, TN. Supporting shipper: American Greetings Corp., 10500 American Rd., Cleveland, OH 44144.

MC 150235 (Sub-3–7TA), filed October 3, 1980. Applicant: POWELL TRUCKING COMPANY, INC., Route 3, Box 13, Sumrall, MS 39482. Representative: John A. Crawford, 17th Floor Deposit Guaranty Plaza, P.O. Box 22567, Jackson, MS 39205. *Iron, steel and iron and steel articles* between points in Cook County, IL and Liberty County, TX, on the one hand, and, on the other, points in LA, MS, AL and TX. Supporting shippers: Klemp Corporation, P.O. Box 818, Dayton, TX 77535; A. Finkl & Son Co., 2011 N. Southport Avenue, Chicago, IL 60614.

MC 150420 (Sub-3–1TA), filed October 3, 1980. Applicant: WES-FLO CO., INC., P.O. Box 17401, Tampa, FL 33682. Representative: James E. Wharton, Suite 811, Metcalf Building, 100 South Orange Avenue, Orlando, FL 32801. *General commodities (except of articles of unusual value, household goods as defined by the Commission, commodities in bulk, Classes A and B explosives, and articles which, by reason of size or weight, require*

specialized handling and equipment) between Jacksonville, FL, on the one hand, and, on the other, all points in FL restricted to traffic having a prior or subsequent movement by rail in interstate commerce. Supporting shipper: Southern Railway, 920 15th Street NW., Washington, DC 20005.

MC 128095 (Sub-3–5TA), filed October 8, 1980. Applicant: IBCO TRUCK LINE, INC., P.O. Box 1402, Tupelo, MS 38801. Representative: Donald B. Morrison, P.O. Box 22628, Jackson, MS 39205. *Plastic cartons and containers* between Temple, TX and Kissimmee, FL on the one hand, and, on the other, AL, AR, GA, LA, MS, NC, SC, and TN. Supporting shipper: Belleview, Inc., P.O. Box 615, Hollis, NH 03049.

MC 152131 (Sub-3–1TA), filed October 8, 1980. Applicant: BRAVE TRANSPORT, INC., 3181 Bankhead Highway, Atlanta, GA 30326. Representative: John C. Bach, 1400 Candler Building, Atlanta, GA 30303. (1) *Steel coil and sheet;* (2) *aluminum coil and sheet;* and (3) *steel and aluminum articles,* between the facilities of All Metals Service & Warehousing, Inc. at or near Marietta, GA, on the one hand, and points in the U.S. in and east of ND, SD, NE, KS, OK and TX, on the other. Supporting shipper: All Metals Service & Warehousing, Inc., 880 Industrial Park Blvd., Marietta, GA 30062.

MC 138157 (Sub-3–30TA), filed October 7, 1980. Applicant: SOUTHWEST EQUIPMENT RENTAL, INC., d.b.a. SOUTHWEST MOTOR FREIGHT, 2931 South Market Street, Chattanooga, TN 37410. Representative: Patrick E. Quinn, P.O. Box 9596, Chattanooga, TN 37412. *Stovepipe, chimneys, ducts, flashings, metal articles, stoves, and materials, equipment, and supplies used in the manufacture and distribution of these commodities* between Redwood City, CA and Vicksburg, MS on the one hand, and, on the other, points in the United States (except AK and HI). Restricted to traffic originating at or destined to the facilities of Dura-Vent Corporation and further restricted against the transportation of commodities in bulk. Supporting shipper: Dura-Vent Corporation, 2525 El Camino Real, Redwood City, CA 94064.

MC 138157 (Sub-3–3TA), filed October 7, 1980. Applicant: SOUTHWEST EQUIPMENT RENTAL, INC., d.b.a. SOUTHWEST MOTOR FREIGHT, 2931 South Market Street, Chattanooga, TN 37410. Representative: Patrick E. Quinn, P.O. Box 9596, Chattanooga, TN 37412. *Floor covering materials and materials, equipment, and supplies used in the installation of floor covering materials* between Conyers, GA on the one hand, and, on the other, points in and east of MT, WY, CO and NM. Restricted to traffic originating at or destined to the facilities of Roberts Consolidated Industries, Inc. Supporting shipper: Roberts Consolidated Industries, Inc., 600 North Baldwin Park Boulevard, City of Industry, CA 91749.

MC 146451 (Sub-3–23TA), filed October 3, 1980. Applicant: WHATLEY-WHITE, INC., 230 Ross Clark Circle, NE., Dothan, AL 36302. Representative: William K. Martin, P.O. Box 2069, Montgomery, AL 36197. *Tires, tubes, tread rubber, and accessories,* from points in and east of ND, SD, NE, KS, OK and TX to points in AL, FL and GA. There are four supporting statements which may be examined at the ICC Regional Office, Atlanta, GA.

MC 118831 (Sub-3–8TA), filed October 6, 1980. Applicant: CENTRAL TRANSPORT, INCORPORATED, P.O. Box 7007, High, NC 27264. Representative: Ben H. Keller III (same address as applicant). *Salt cake, in bulk, in hopper type vehicles,* from Baltimore, MD to West Point, VA. Supporting shipper: Ashland Chemical Company, P.O. Box 2218, Columbus, OH 43218.

MC 143059 (Sub-3–18TA), filed October 6, 1980. Applicant: MERCER TRANSPORTATION CO., P.O. Box 35610, Louisville, KY 40232. Representative: Janice K. Taylor, Manager of Commerce (same address as applicant). *General commodities (except household goods as defined by the Commission and Classes A and B explosives)* between points in Sullivan County, PA, on the one hand, and, on the other, points in the U.S. Supporting shipper: Nuclear Fallout Bomb Shelter & Supply Const. Co.

MC 125368 (Sub-3–12TA), filed October 8, 1980. Applicant: CONTINENTAL COAST TRUCKING CO., INC., P.O. Box 26, Holly Ridge, NC 28445. Representative: Roland M. Lowell, 618 United American Bank Bldg., Nashville, TN 37219. To transport *Plastic Products* between the facilities of Package Development Corp., Shawnee Mission, KS, on the one hand, and, on the other, points in the U.S., except AK and HI. Supporting shipper: Package Development Corp., 5420 W. 61st. Place, Shawnee Mission, KS 66205.

MC 138308 (Sub-3–16TA), filed October 8, 1980. Applicant: KLM, INC., P.O. Box 6098, Jackson, MS 39208. Representative: Robert L. McArty, P.O. Box 22628, Jackson, MS 39205. *Pneumatic tires and tubes* from Findlay and Perrysburg, OH to points in AZ, CA, CO, ID, MT, NV, NM, OR, UT, WA and WY. Supporting shipper: Cooper Tire & Rubber Company, P.O. Box 550, Findlay, OH 45850.

MC 145072 (Sub-3–8TA), filed October 6, 1980. Applicant: M. S. CARRIERS, INC., 1797 Florida Street, Memphis, TN 38109. Representative: Michael S. Starnes (same address as applicant). *Electronic equipment, and materials, equipment and supplies used in the manufacture, sale, and distribution thereof;* between the facilities of Consumer Electronics (i.e. Electronic Components Group and Entertainment Products Group), GTE Products Corporation, located at or near Ottawa, OH, Seneca Falls, NY, Smithfield, NC, Batavia, NY, Williamsport, PA, Emporium, PA, Altoona, PA, Muncie, PA, Laredo, TX, El Paso, TX, on the one hand, and, on the other, points in and east of TX, OK, KS, IA, MO, and MN. Supporting shipper: Consumer Electronics (i.e. Electronic Components Group and Entertainment Products Group), GTE Products Corp., Johnston Street, Seneca Falls, NY 13148.

MC 142592 (Sub-3–1TA), filed October 6, 1980. Applicant: H. L. STANSELL, INC., 1221 U.S. Alternate Highway 19, Palm Harbor, FL 33563. Representative: David C. Venable, Suite 805, 666 Eleventh Street, NW., Washington, DC 20001. *Foodstuffs, paper and paper products, metal articles, plastic articles and materials, supplies and equipment* dealt in and used by bakers and bakeries, from points in the U.S. (except AK and HI) to points in FL. Supporting shipper: Rainbow Products Company, 12995 Automobile Blvd., Clearwater, FL 33520.

MC 146646 (Sub-3–32TA), filed October 6, 1980. Applicant: BRISTOW TRUCKING CO., INC., P.O. Box 6355 A, Birmingham, AL 35217. Representative: James W. Segrest (same address as applicant). *(1) Plastic film (2) materials, equipment and supplies used in the manufacture sales, and distribution of commodities named in (1) above.* Between the facilities of St. Regis Paper Company, Birmingham, AL and points in and East of WI, IL, MO, and TX also between Birmingham, AL and CA and WA. Supporting shipper: St. Regis Paper Company, 2700 Seventh Ave., Birmingham, AL 35203.

MC 126305 (Sub-3–10TA), filed October 8, 1980. Applicant: BOYD BROTHERS TRANSPORTATION COMPANY, INC., RFD 1, Box 18, Clayton, AL 36016. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. *Paper, paper products, parts and supplies used in connection therewith,* between facilities of Alabama Kraft Company, Division of Georgia Kraft located at or near

Cottonton, AL, and points in the U.S. in and east of ND, SD, NE, KS, OK, and TX. Supporting shipper: Alabama Kraft Company, P.O. Box 940, Phenix City, AL, 36867.

MC 143434 (Sub-3–1TA), filed October 8, 1980. Applicant: CHARLES McALPIN d.b.a. CHARLES McALPIN TRUCKING, 1420 Danville Rd., SW., Decatur, AL 35601. Representative: D. H. Markstein, Jr., 512 Massey Building, Birmingham, AL 35203. *Paper and paper products* between Lawrence County, AL on the one hand, and, on the other, points in the 48 contiguous United States. Supporting shipper: Champion International Corporation, Knightsbridge Drive, Hamilton, OH 45020.

The following protests were filed in Region 4. Send protests to: Consumer Assistance Center, Interstate Commerce Commission, 219 South Dearborn Street, Room 1304, Chicago, IL 60604.

MC 152082 (Sub-4–1TA), filed October 6, 1980. Applicant: R. C. SERVICE, INC., P.O. Box 823, Bensenville, IL 60106. Representative: Elaine M. Conway, 10 S. LaSalle St., Chicago, IL 60603. *Contract, irregular: General commodities,* between points in the United States, moving under continuing contracts with Always Air Freight, Inc. An underlying ETA seeks 120 days authority. Supporting shipper: Al-ways Air Freight, Inc., 802 E. Irving Park Rd., Bensenville, IL, 60106.

MC 146753 (Sub-4–5TA), filed October 7, 1980. Applicant: SAM YOUNG, INC., P.O. Box 337, Wolcott, IN 47995. Representative: E. Stephen Heisley, 805 McLachlen Bank Building, 666 Eleventh Street, NW., Washington, DC 20001. *Such commodities as are used or dealt in by manufacturers or distributors of sound recordings* from points in FL to Santa Maria, CA; Carrollton, GA; Danbury and West Haven, CT; Terre Haute, IN and Pitman, NJ. Restricted to traffic originating at or terminating at the facilities of CBS Record, Division, U.S. CBS, Inc. Supporting shipper: CBS Records Division, U.S., CBS, Inc., 51 West 52nd Street, New York, NY 10019.

MC 148751 (Sub-4–5TA), filed October 7, 1980. Applicant: LINCOLN FREIGHT LINES, INC., P.O. Box 427, Lapel, IN 46051. Representative: Norman R. Garvin, 1301 Merchants Plaza, East Tower, Indianapolis, IN 46204. *Containers,* from Franklin, IN and Columbus, OH, to points in IN, IL, IA, KY, MI, MN, MO, NY, NC, OH, OK, PA, SC, TN, VA, and WI; and *materials, equipment and supplies* used in the manufacture, sale and distribution of containers, in the reverse direction. Supporting shipper: Hoover Universal, Inc., R. R. #2, Tri-Port Road, Georgetown, KY 40324.

MC 70557 (Sub-4–7TA), filed October 7, 1980. Applicant: NIELSEN BROS. CARTAGE CO., INC., 4619 West Homer St., Chicago, IL 60639. Representative: Carl L. Steiner, 39 South LaSalle St., Chicago, IL 60603. *Clay and Clay Products (Except in Bulk)* From Olmsted, IL, and Paris, TN, to points in FL. Supporting shipper: Lowe's, Inc., 348 South Columbia St., South Bend, IN 46601.

MC 145394 (Sub-4–10TA), filed October 8, 1980. Applicant: A & B FREIGHT LINE, INC., 4805 Sandy Hollow Road, Rockford, IL 61109. Representative: James A. Spiegel, Esq., Olde Towne Office Park, 6425 Odana Road, Madison, WI 53719. *Contract;* irregular; *Automobile parts and supplies* used in the manufacture of automobiles, to Belvidere, IL, from points in IN. Restricted to transportation performed under a continuing contract(s) with Chrysler Corporation. An underlying ETA seeks 120 days authority. Supporting shipper: Chrysler Corporation, Belvidere Assembly Plant, Belvidere, IL 61008.

MC 120364 (Sub-4–11TA), filed October 8, 1980. Applicant: A & B FREIGHT LINE, INC., 4805 Sandy Hollow Road, Rockford, IL 61109. Representative: James A. Spiegel, Esq., Olde Towne Office Park, 6425 Odana Road, Madison, WI 53719. Common, Regular; *General commodities* (except those of unusual value, dangerous articles, commodities requiring special equipment, frozen foods, motor vehicles, and farm equipment and supplies) between Dodge, Green, Jefferson, Rock and Walworth Counties, WI, on the one hand, and on the other hand, the Commercial Zone of Chicago, IL, (as defined by the Commission) and points within IL bounded by a line beginning at the IL-WI state line and extending southerly on IL Hwy. 78, then to junction with IL Hwy. 88, then on IL Hwy. 88 to junction with IL Hwy. 92, then easterly on IL Hwy. 92 to junction with U.S. Hwy. 34, then easterly on U.S. Hwy. 34 to junction with IL Hwy. 59, then northerly on IL Hwy. 59 to junction with IL Hwy. 83 to the IL-WI state line, then west on the state line to the place of beginning, including the IL points outside said geographic area of Des Plains, Mt. Prospect, Palatine, Arlington Heights, Elizabeth, Savanna, Mundelein, Round Lake, Woodbine, Apple River, Waukegan, Hanover, North Chicago, Galena, and Scales Mounds, IL. An underlying ETA seeks 120 days authority. There are 11 supporting shippers.

MC 147825 (Sub-4–2TA), filed October 8, 1980. Applicant: VERNE'S AUTO SALES, INC., 2804 Neva Road, Antigo, WI 54409. Representative: Michael J. Wyngaard, 150 East Gilman Street, Madison, WI 53703. *Pallets, pallet parts, lumber, lumber products, skids, ties, timbers and posts,* between points in WI and the Upper Peninsula of MI, on the one hand, and, on the other, points in AR, CO, IA, IL, IN, KS, KY, MI, MN, MO, NC, NM, OH, OK, SC, TN, TX and WI, for 270 days. Underlying ETA seeks 120 days authority. Supporting shipper: Great Lakes Hardwood Lumber Co., Inc., 2234 Neva Road, Antigo, WI 54409.

MC 124054 (Sub-4–1TA), filed October 8, 1980. Applicant: MERLIN HERRMANN, 510 E. Dodge, Luverne, MN 56156. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. *Contract,* irregular: *Livestock keeping and feeding systems and materials, supplies and equipment used in the manufacture of such commodities (except commodities in bulk),* between points in the U.S., under continuing contracts with A.R. Wood Manufacturing Company of Luverne, MN. An underlying ETA seeks 120 days authority. Supporting shipper: A.R. Wood Manufacturing Company, P.O. Box 218, Luverne, MN 56156.

MC 118696 (Sub-4–28TA), filed October 8, 1980. Applicant: FERREE FURNITURE EXPRESS, INC., 252 Wildwood Road, Hammond, IN 46324. Representative: John F. Wickes, Jr., 1301 Merchants Plaza, Indianapolis, IN 46204. *New furniture and materials, equipment, and supplies used in the manufacture, distribution and sale thereof,* between Dubois County, IN, on the one hand, and, on the other, points in and east of ND, SD, NE, KS, OK, and TX. An underlying ETA seeks 120 days authority. Supporting shippers: Office Furniture, Division of Kimball International, Inc., 1549 Royal Streeet, P.O. Box 460, Jasper, Indiana 47546; and Jasper Stylemasters, Division of Kimball International, Inc., P.O. Box 520, Jasper, IN 47546.

MC 124078 (Sub-4–37TA), filed October 7, 1980. Applicant: SCHWERMAN TRUCKING CO., 611 South 28th Street, Milwaukee, WI 53215. Representative: Richard H. Prevette, P.O. Box 1601, Milwaukee, WI 53201. *Fluorspar,* from Hardin County, IL to Atlanta, GA. An underlying ETA seeks 120 days authority. Supporting shipper: Armstrong Glass Co., 1320 Ellsworth Industrial Dr., Atlanta, GA 30318.

MC 76266 (Sub-4–11TA), filed October 7, 1980. Applicant: ADMIRAL-MERCHANTS MOTOR FREIGHT, INC., 2625 Territorial Road, St. Paul, MN

55114. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. *Sodium chloride (common salt)* from the plantsite of Cutler-Magner Company at Duluth, MN to points in IL, IA, MI, ND, SD, and WI. An underlying ETA seeks 120 days authority. Supporting shipper: Cutler-Magner Company, 12th Avenue West & Waterfront, Duluth, MN 55806.

MC 116328 (Sub-4–1). Applicant: CROSS & MURRAY, INC., 710 Third Avenue North, Minneapolis, MN 55403. Representative: Timothy H. Butler and Lindquist & Vennum, 4200 IDS Center, 80 South 8th Street, Minneapolis, MN 55402. *Edible corn syrup, liquid sugar and blends thereof,* in bulk, in tank vehicles from Minneapolis, MN to all points and places in the States of IA, SD, and NE. Supporting shipper: Archer Daniels Midland Company, Foxhill Office Building, Suite 218, 4550 West 109th Street, Overland Park, KS 66211.

MC 76266 (Sub-4–10TA), filed October 7, 1980. Applicant: ADMIRAL-MERCHANTS MOTOR FREIGHT, INC., 2625 Territorial Road, St. Paul, MN 55114. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. *Furnaces, house heating, hot air* from the facilities of Mammoth Division-Lear Seigler, Inc. at Plymouth, MN to all points in the U.S. An underlying ETA seeks 120 days authority. Supporting shipper: Mammoth Division-Lear Seigler, Inc., 13120–B County Road 6, Minneapolis, MN 55441.

MC 139276 (Sub-4–4TA), filed October 7, 1980. Applicant: ALOHA FREIGHTWAYS, INC., 1069 Bryn Mawr Avenue, Bensenville, IL 60106. Representative: Grace Kasallis (same address as applicant). *Contract,* irregular; *iron and steel articles* between Chicago, IL to all points in the U.S. (except AK and HI). An underlying ETA seeks 120 days authority. Supporting shipper: Harrington & King Perforating Co., Inc., 5655 W. Fillmore Street, Chicago, IL 60644.

MC 145894 (Sub-4–1TA), filed October 8, 1980. Applicant: EQUIPMENT SUPPLIES, INC., 7736 W. 62nd Place, Summit, IL 60501. Representative: Stephen H. Loeb, Suite 2027, 33 North LaSalle Street, Chicago, IL 60602. *General commodities* (except Classes A and B explosives, household goods and commodities in bulk), between Chicago, IL, and points in its commercial zone, on the one hand, and, on the other, points in KY, MO, MN, OH, New York, NY, Newark, NJ, and Baltimore, MD, restricted to the transportation of shipments having a prior or subsequent movement by rail or water. Supporting shipper: There are 6 statements of support.

MC 126555 (Sub-4–22), filed October, 8, 1980. Applicant: UNIVERSAL TRANSPORT, INC., P.O. Box 3000, Rapid City, SD 57709. Representative: Stockton and Lewis, The 1650 Grant Street Building, Denver, CO 80203. *Steel and steel articles:* Between SD, MN, ND, MT, WY, IA, NE, CO, UT, IL, IN, NV, KS, WI, OH, PA, MI, MO, OK, TX, LA, AR, NM, AZ, ID, WA, OR. Supporting shipper: Egger's Steel, 909 S. Seventh Avenue, Sioux Falls, S.D. 57101.

MC 105407 (Sub-4–1TA), filed October, 2, 1980. Applicant: HANNIBAL QUINCY TRUCK LINES, INC., 3820 Wisman Lane, Quincy, Ill 62301. Representative: L. F. Blackstun (same address as applicant). *General commodities (except Class A and B explosives, commodities in bulk, used household goods, articles of unusual value and commodities which because of size and weight require the use of special equipment)* to serve the plant site of the Associated Electric Cooperative, Inc., at Thomas Hill, MO, as an off route point in connection with applicant's authorized regular route operation to and from Moberly, MO. Supporting shippers: Associated Electric Cooperative, Inc., P.O. Box 158, Moberly MO. 65270; B. W. Construction Co., P.O. Box 130, Huntsville, MO. 65259; Roberts & Schaefer, P.O. Box 80, Huntsville, MO. 65259.

MC 145204 (Sub-4–1), filed October, 7, 1980. Applicant: TVF SECURITY CO., INC., P.O. Box 815, Warsaw, IN 46580. Representative: Woodrow A. Everly (same as applicant). *Printed Matter, Paper and Plastic Articles, Food Stuffs not frozen, materials, equipment, and supplies therefore;* from and to points in and east of ND, SD, NE, KS, OK, and TX. An underlying ETA seeks 120 days authority. Supporting shippers: Maryland Cup Corporation-Sweetheart Cup Corporation, 7575 S. Kostner Ave., Chicago, IL 60652; Little Crow Milling Co., Inc., d.b.a. Little Crow Foods, Detroit and Market Streets, Warsaw, IN 46580; Bertsch Vending Co., Inc., 220 N. Parker Street, Warsaw, IN 46580.

MC 119704 (Sub-4–7), filed October, 7, 1980. Applicant: R.A. HARRIS & SONS, INC., 3501—22nd Street, Menominee, MI 49858. Representative: Dennis R. Harris, 3423—22nd Street, Menominee, MI 49858. *Polyethylene Liners* (except commodities in bulk), from Oconto, WI to points in ND, SD, NE, KS, MN, IA, MO, MI, IL, IN, OH, KY & PA under continuing contract(s) with WI Film & Bag, Inc., of Oconto, WI. Supporting shipper: Wisconsin Film & Bag, Inc., Oconto, WI.

MC 119654 (Sub-4–5TA), filed October, 7, 1980. Applicant: HI-WAY DISPATCH, INC., P.O. Box 509, Marion, IN 46952. Representative: Norman R. Garvin, 1301 Merchants Plaza, East Tower, Indianapolis, IN 46204. (1) *Chemicals,* (except in bulk), and (2) *Materials, equipment and supplies* used in the manufacture, sale and distribution thereof (except commodities in bulk), between points in IL, IN, KY, MI, MO, OH, WI, and those points in PA on and west of a line beginning at the NY–PA State line, and extending along U.S. Hwy. 219 to junction U.S. Hwy. 119, and then along U.S. Hwy 119 to the PA–MD State line. An underlying ETA seeks 120 days authority. Supporting shipper: Mays Chemical Company, Inc., 7202 North Shadeland Avenue, Suite 111, Indianapolis, IN 46250.

MC 107295 (Sub-21TA), filed October 7, 1980. Applicant: PRE-FAB TRANSIT CO., P.O. Box 146, Farmer City, IL 61842. Representative: Duane Zehr (same address as applicant). *Aerospace ground equipment and accessories thereto, and airport ground support equipment* between all points in the United States (except Alaska and Hawaii). Supporting shipper: Cavco of Florida, Inc., 2001 Ninth Avenue, Vero Beach, FL 32960.

MC 108449 (Sub-4–4TA), filed October 7, 1980. Applicant: INDIANHEAD TRUCK LINE, INC., 1947 West County Road C, St. Paul, MN 55113. Representative: W. A. Myllenbeck, P.O. Box 43355, St. Paul, MN 55164. *General Commodities,* except those of unusual value, Class A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment (except those requiring temperature control) and those injurious or contaminating to other lading, serving points in St. Joseph County, MI and points in IN in the area east and north of a line beginning at the IN-MI border and extending along U.S. Highway 31 south to its junction with IN State Highway 26, thence easterly along IN State Highway 26 to the IN-OH State Line; thence northerly along the IN-OH State Line to the junction of the IN-MI State Line; thence westerly along the IN-MI State Line to the point of beginning, including points on the indicated portions of the highways specified, as off-route points in connection with carriers' present authorized regular routes. There are 32 supporting shippers.

MC 120737 (Sub-4–8TA), filed October 6, 1980. Applicant: STAR DELIVERY & TRANSFER, INC., P.O. Box 39, Canton, IL 61520. Representative: James C. Hardman, 33 N. LaSalle St., Chicago, IL 60602. *Cast iron products, and materials, equipment and supplies used in the manufacture and distribution of cast*

iron products (except commodities in bulk), between Florence, NJ, on the one hand, and, on the other, points in AL, GA, IL, IN, IA, KS, KY, MI, MN, MO, NC, NE, OH, SC, TN, VA, WI and WV, restricted to the transportation of shipments originating at or destined to the facilities of Griffin Pipe Products Co. An underlying ETA seeks 120 days authority. Supporting shipper: Griffin Pipe Products Co., 2000 Spring Rd., Oak Brook, IL 60521.

MC 43421 (Sub-4–1TA), filed October 6, 1980. Applicant: DOHRN TRANSFER COMPANY, 4016 Ninth St., P.O. Box 1237, Rock Island, IL 61201. Representative: Leonard R. Kofkin, 39 South LaSalle St., Chicago, IL 60603. *Common, Regular, 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), serving Decatur, IL as an off-route point in connection with applicant's present regular route authority. Applicant also seeks an underlying ETA for 120 days. Supporting shipper: Caterpillar Tractor Co., 100 N.E. Adams Street, Peroia, IL 61629.

MC 441 (Sub-4–1TA), filed October 7, 1980. Applicant: HINTON MOTOR SERVICE, INC., 1410 Gardner Expressway, Quincy, IL 62301. Representative: Michael W. O'Hara, 300 Reisch Building, Springfield, IL 62701. *Contract* irregular: *Beer* from St. Louis, MO to Quincy and Macomb, IL. Restricted to traffic moving under continuing contract with The Rinella Company. An underlying E/T/A seeks 120 days authority. Supporting shipper: The Rinella Company, 2001 Seminary Road, Quincy, IL 62301.

MC 148153 (Sub-4–1TA), filed October 6, 1980. Applicant: WALBON AND COMPANY, INC., 3242 Old Highway 8, Minneapolis, MN 55418. Representative: Stanley C. Olsen, Jr., 7400 Metro Boulevard, Suite 411, Edina, MN 55435. *Contract;* irregular: *Dairy products, fruit drinks, and materials, equipment and supplies used in the manufacture and distribution thereof,* between Hennepin County, MN, on the one hand, and, on the other, points in IA, ND, SD, and WI, under continuing contract(s) with Superior Dairies/Superior Dairy Fresh Milk Co. Supporting shipper: Superior Dairies/Superior Dairy Fresh Milk Co., 2112 Northeast Broadway, Minneapolis, MN 55413.

MC 152093 (Sub-4–1TA), filed October 6, 1980. Applicant: DALLAS MOSER, d.b.a. DALLAS MOSER TRANSPORTERS, 1526 West Lancaster Street, Bluffton, IN 46714. Representative: James bouril, 120 West Madison—Suite 1308, Chicago, IL 60602. *Motor homes and automobiles in driveaway service and travel trailers in truckaway service,* between points in Adams County, IN; Elkhart County, IN; Cass County, MI; Williams County, OH and Northumberland County, PA, on the one hand, and, on the other, points in the U.S., including AK, but excluding HI. An underlying ETA seeks 120 days authority. There are 17 supporting shippers.

MC 52657 (Sub-4–3TA), filed October 6, 1980. Applicant: ARCO AUTO CARRIERS, INC., 16 West 151 Shore Court, Burr Ridge, IL 60521. Representative: Anthony E. Young, 29 S. LaSalle St., Chicago, IL 60603. *New automobiles, in secondary movements, in truckaway service* between points in AR, CT, DE, KS, KY, LA, ME, MD, MA, MN, MS, MO, MT, NE, NH, NJ, NY, NC, ND, OH, PA, RI, SD, TN, UT, VT, VA, WV, WI. WY and DC. An underlying ETA seeks 120 days authority. Supporting shipper: American Motors Corporation, 14250 Plymouth Rd., Detroit, MI 48232.

MC 139276 (Sub-4–3TA), filed October 6, 1980. Applicant: ALOHA FREIGHTWAYS, INC., 1069 Bryn Mawr Avenue, Bensenville, IL 60106. Representative: Grace Kasallis (same address as applicant). *Contract,* Irregular; *Steel sheets or coils coated or uncoated* between Walbridge, OH to all points in the U.S. except AK and HI. Supporting shipper: Pre Finish Metals, Inc., 30610 E. Broadway, Walbridge, OH 43465.

MC 143776 (Sub-4–8TA), filed October 3, 1980. Applicant: C.D.B., INCORPORATED, 155 Spaulding, S.E., Grand Rapids, MI 49506. Representative: Karl L. Gotting, 1200 Bank of Lansing Building, Lansing, MI 48933. *Chemicals and plastic products other than expanded (except in bulk, tank vehicles) and miscellaneous equipment and supplies* from the facilities of Dow Chemical U.S.A. of Midland, MI to Kansas City, MO. Supporting shipper: Dow Chemical U.S.A., 690 Building, Midland, MI 48640.

MC 146976 (Sub-4–5TA), filed October 6, 1980. Applicant: FOREWAY TRANSPORTATION, INC., 6633 Lake Michigan Drive, Allendale, MI 49401. Representative: D. Richard Black, Jr., 7610 Cottonwood Drive, Jenison, MI 49428. *Printing paper, other than newsprint, pulpboard and materials used in the manufacture and distribution thereof,* from Muskegon, MI, facilities of S. D. Warren Paper Co., a division of Scott Paper Co., to and from WV, VA, DE, CT, RI, MA, VT, NH, ME. Supporting shipper: S. D. Warren Paper Co., 2400 Lakeshore Drive, Muskegon, MI 49443.

MC 145454 (Sub-4–1TA), filed October 6, 1980. Applicant: SOUTHERN REFRIGERATED TRANSPORTATION COMPANY, INC., 7336 West 15th Ave., Gary, IN 46406. Representative: Anthony E. Young, 29 S. LaSalle St., Suite 350, Chicago, IL 60603. *Frozen and unfrozen juice and concentrate products* from points in FL to points in IL, MI, IN, IA, MN, and WI. An underlying ETA seeks 120 days authority. Supporting shipper: Certified Grocers of Illinois, Inc. 4800 South Central Ave., Chicago, IL 60638.

MC 144889 (Sub-4–1TA), filed October 6, 1980. Applicant: RONWAL TRANSPORTATION, INC., 2600 Calumet Avenue, Hammond, IN 46320. Representative: Walter C. Rymarowicz (same address as applicant). *Iron and steel articles* between points in Putnam County, IL on the one hand, and on the other, points in MI. Supporting shipper: Jones & Laughlin Steel Corporation, P.O. Box 325, Hennepin, IL 61327.

MC 150513 (Sub-4–1TA), filed October 6, 1980. Applicant: ASHLEY TRAVEL, INC., 221 West State Street, Ashley, IN 46705. Representative: Robert D. Colestock, 323 West Berry Street, Fort Wayne, IN 46802. *Passengers and their baggage* from: Points in the State of IN to: The continental U.S., including AK, but excluding HI, and return. Supporting shipper(s): Bell Tours, Inc., 6433 East Washington Street, Indianapolis, IN 46219; Ashley Travel, Inc., 221 West State Street, Ashley, IN, 46705.

MC 152073 (Sub-4–1TA), filed October 3, 1980. Applicant: DENVER NETTLES TRUCKING, INC., 1148 Denver Dr., Carpentersville, IL 60110. Representative: Philip A. Lee, 120 W. Madison St., Chicago, IL 60602. Contract; Irregular *Wire Products; Bean bag chairs, plastic articles, steel-racks and expanded foam beads; tractor parts, wooden pallets and lumber.* Between, IL., MI., WI., IN., IA., OH. Supporting shipper: NOW PRODUCTS, INC., 619 Thomas Dr., Bensenville, IL 60106; Shaped Wire, Inc., 3655 E. Illinois Ave., St. Charles, IL 60174; Protopak Engineering Corp., 2650 American Lane, Elk Grove Village, IL 60007.

MC 4483 (Sub-4–3TA), filed October 6, 1980. Applicant: MONSON TRUCKING, INC., R.R. No. 1, Red Wing, MN 55066. Representative: James E. Ballenthin, 630 Osborn Building, St. Paul, MN 55102. *Beverages and empty beverage containers,* between Eau Claire, WI and Duluth, MN. A underlying E.T.A. seeks 120 day authority. Supporting shipper: Twin Port 7 Up Co., 212 N. 40th Ave., West, Duluth, MN. 55809.

The following applications were filed in Region 5. Send protests to: Consumer Assistance Center, Interstate Commerce Commission, Post Office Box 17150, Fort Worth, TX 76102.

MC 200 (Sub-5–56TA), filed October 6, 1980. Applicant: RISS INTERNATIONAL CORPORATION, P.O. Box 100, 215 W. Pershing Road, Kansas City, MO 64141. Representative: H. Lynn Davis (same address as applicant). Common; Regular. *(a) Catalogs, magazines, and printed matter, and (b) materials and supplies used in the manufacture and distribution of commodities named in (a) above (except commodities in bulk),* serving Sparta, IL as an off-route point in connection with carriers regular route authority. Applicant intends to tack. Supporting shipper: World Color Press, Inc., P.O. Box 1248, Effingham, IL 62401.

MC 11592 (Sub-5–4TA), filed October 6, 1980. Applicant: BEST REFRIGERATED EXPRESS, INC., P.O. Box 7365, 824 Livestock Exchange Bldg., Omaha, NE 68107. Representative: F. E. Myers, P.O. Box 7365, Omaha, NE 68107. *Meats, meat products, meat by-products and articles distributed by meat-packing houses, as defined in Sections A and C of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766 (except commodities and hides in bulk, in tank vehicles).* From: Sedwick County in KS to: Points in NH, MA, RI, CT, NY, PA, NJ, DE, MD, VA, WV, KY and DC. Supporting shipper: Dubuque Packing Company, P.O. Box 4225, Wichita, KS 67214.

MC 29910 (Sub-5–53TA), filed October 6, 1980. Applicant: ABF FREIGHT SYSTEM, INC., 301 South Eleventh Street, Fort Smith, AR 72901. Representative: Joseph K. Reber (address same as applicant). Common, Regular. *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),* (1) Between Atlanta, Ga and New Orleans, LA: From Atlanta over U.S. Hwy 29 to junction U.S. Hwy 80, then over U.S. 80 to Montgomery, AL, then over U.S. Hwy 31 to Mobile, AL, then over U.S. Hwy 90 to New Orleans, and return over the same route; (2) Between Atlanta, Ga and Dallas, TX: From Atlanta over U.S. Hwy 78 to Birmingham, AL, then over U.S. Hwy 11 to junction U.S. Hwy 80, then over U.S. Hwy 80 to Dallas, and return over the same route; (3) Between Mobile, AL and Houston, TX: From Mobile over Interstate Hwy 10 to junction Interstate Hwy 12, then over Interstate Hwy 12 to junction Interstate Hwy 10, then over Interstate Hwy 10 to Houston, and return over the same route. Applicant intends to tack and interline. Supporting shippers: 10.

MC 41432 (Sub-5–6TA), filed October 6, 1980. Applicant: EAST TEXAS MOTOR FREIGHT LINES, INC., 2355 Stemmons Freeway (P.O. Box 10125), Dallas, TX 75207 (214–638–2280). Representative: Wayland Little, Director of Commerce, Registered Practitioner (address same as applicant). Common; Regular. *General commodities, except those of unusual value, Classes A and B explosives, livestock, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment,* serving Santo, TX and the facilities of Heart of America, Inc., located at or near Santo, TX, as an off-route point in connection with carrier's authorized regular route operation between Fort Worth, TX, and El Paso, TX. Applicant intends to tack with existing authority and to interline. Supporting shipper: Heart of America, Inc., P.O. Box 55, Santo, TX 76472.

MC 78400 (Sub-5–15TA), filed October 6, 1980. Applicant: BEAUFORT TRANSFER COMPANY, P.O. Box 151, Gerald, MO 63037. Representative: Ernest A. Brooks II, 1301 Ambassador Bldg., St. Louis, MO 63101. *Such commodities as are dealt in by stationery and office supply stores,* from Parsippany, NJ and Garden City, NY, to Union, MO. Supporting shipper: Esselte Pendaflex Corporation, 71 Clinton Rd., Garden City, NY 11530.

MC 106398 (Sub-5–46TA), filed October 6, 1980. Applicant: NATIONAL TRAILER CONVOY, INC., 705 South Elgin, Tulsa, OK 74120. Representative: Gayle Gibson, National Trailer Convoy, Inc., 705 South Elgin, Tulsa, OK 74120. *Roofing, materials and supplies* from the facilities of National Tile Industries, Inc., at Shawnee, OK, to all points in the United States (except AK and HI). Supporting shipper: National Tile Industries, Inc., 706 West Independence, Shawnee, OK 74801.

MC 111231 (Sub-5–11TA), filed October 6, 1980. Applicant: JONES TRUCK LINES, INC., 610 East Emma Ave., Springdale, AR 72764. Representative: James H. Berry (same as applicant). *Clay and clay products and equipment, materials and supplies used in the manufacture, packaging and distribution of clay products; and materials used in the manufacture and composition of Urethane; equipment and items used in the manufacture and application of Urethane; jointing materials used in the installation of both clay and Urethane products* between Jefferson County, AL; Mantee County, FL; Fulton County, GA; Webster County, GA; Webster County, IA; Crawford County, KS; Lauderdale County, MS; Jackson County, MO; Bowie and Bexar Counties, TX on the one hand, and, on the other, points in the States of AL, AR, AZ, FL, GA, IL, IA, KS, KY, LA, IN, MN, MS, MO, NE, NM, NC, OK, SC, TN, TX, VA, WV and WI on the other hand. Supporting shipper: Dickey Co., Inc., P.O. Box 6, Pittsburg, KS 66762.

MC 111231 (Sub-5–12TA), filed October 6, 1980. Applicant: JONES TRUCK LINES, INC., 610 East Emma Ave., Springdale, AR 72764. Representative: Don A. Smith, P.O. Box 43, 510 North Greenwood Avenue, Fort Smith, AR 72902. *Roofing and roofing materials (except commodities in bulk)* between Phillips County, KS on the one hand, and, on the other, points in the States of CO, NE, ND, SD, IA, MN, WI, OK, MO, WY, NM, and IL. Supporting shipper: Tamko Asphalt Products, Inc., 220 West 4th Street, Joplin, MO 64801.

MC 114284 (Sub-5–7TA), filed October 6, 1980. Applicant: FOX-SMYTHE TRANSPORTATION CO., 1700 S. Portland, P.O. Box 82307, Oklahoma City, OK 73148. Representative: M. W. Thompson, P.O. Box 82307, Oklahoma City, OK 73148. *Meat, meat products, meat by-products, and articles distributed by meat packinghouses as described in Section A and C of appendix I, to the report in descriptions in motor carrier certificates 61 M.C.C. 209 and 766* from facilities utilized by Service Packing Company and Best Western Foods, Inc. at or near Tulsa, OK, to points in AZ, AR, CA, CO, IL, IA, KS, MN, MO, NE, NM, SD, TX, and WI. Supporting shippers: Service Packing Co. and Best Western Foods, Inc., 3920 East Pine, Tulsa, OK.

MC 120257 (Sub-5–1TA), filed October 6, 1980. Applicant: K. L. BREEDEN & SONS, INC., P.O. Box 4267, Lone Star, TX 75668. Representative: Bernard H. English, 6270 Firth Road, Fort Worth, TX 76116. *(1) Machinery, equipment, materials and supplies used in, or in connection with, the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum and their products and by-products, and machinery, materials, equipment and supplies used in, or in connection with the construction, operation, repair, servicing, maintenance and dismantling of pipe lines, including the stringing and picking up thereof, (2) earth drilling machinery and equipment, and machinery, equipment, materials, supplies and pipe incidental to, used in,*

or in connection with (a) the transportation, installation removal, operation, repair, servicing, maintenance, and dismantling of drilling machinery and equipment, (b) the completion of holes or wells drilled, (c) the production, storage, and transmission of commodities resulting from drilling operations at well or hole sites and (d) the injection or removal of commodities into or from holes or wells, between points in CO, KS, LA, MT, NM, OK, TX, UT and WY. Supporting shipper: 12.

MC 134906 (Sub-5–1TA), filed October 6, 1980. Applicant: CAPE AIR FREIGHT, INC., P.O. 161, Shawnee Mission, KS 66201. Representative: Kim G. Meyer, P.O. Box 872, Atlanta, GA 30301. *General commodities (except aritcles of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment),* between points In TX and New Orleans, LA. Note: Applicant intends to tack with existing authority in MC-134906 and Subs thereunder for movements beyond. Supporting shipper: Arch Air Freight, Inc., P.O. Box 20111 AMF, New Orleans, LA 70141; Air-Land, La Fon Airpark, New Orleans International Airport, New Orleans, LA 70141; Circle Airfreight Corporation, P.O. Box 20060, New Orleans International Airport, New Orleans, LA 70141.

MC 135419 (Sub-5–3TA), filed October 6, 1980. Applicant: CONTAINER CARRIER CORPORATION, 301 South Eleventh Street, Fort Smith, AR 72901. Representative: Mr. William D. Hendrix, P.O. Box 48, Fort Smith, AR 72902. *Charcoal briquetts, and material, equipment, and supplies used in the manufacture, sale, and distribution of charcoal briquetts,* between AR, on the one hand, and, on the other, points in the U.S. (except AK and HI). Supporting shipper: Cotter Charcoal Company, P.O. Box 100, Cotter, AR 72626.

MC 135797 (Sub-5–71TA), filed October 6, 1980. Applicant: J. B. HUNT TRANSPORT, INC., P.O. Box 130, Lowell, AR 72745. Representative: Paul R. Bergant, Esq. (address as applicant). *Hydrated alumina,* from points in the U.S. (except AK and HI) to Orange County, CA. Supporting shipper: TAVCO, 23312 Palawan Circle, Laguna Niguel, CA 92677.

MC 135797 (Sub-5–72TA), filed October 6, 1980. Applicant: J. B. HUNT TRANSPORT, INC., P.O. Box 130, Lowell, AR 72745. Representative: Paul R. Bergant, Esq. (address same as applicant). *Plastic articles,* between Sedgwick County, KS on the one hand, and, on the other points in the U.S. (except AK and HI). Supporting shipper: Ritricia Plastic, 816 East Funston, Wichita, KS 67211.

MC 136786 (Sub-5–34TA), filed October 6, 1980. Applicant: ROBCO TRANSPORTATION, INC., 4475 NE. 3rd Street, Des Moines, IA 50313. Representative: Stanley C. Olsen, Jr., Gustafson & Adams, P.A., 7400 Metro Boulevard, Suite 411, Edina, MN 55435. *Furniture and furniture parts, and materials and supplies used in the manufacture and distribution thereof,* between Atlanta, GA, Clifton, NJ, Alsip, IL, Houston, TX and Morristown, TN; 2) between Atlanta, GA, on the one hand, and, on the other, points, in AL, FL, KY, NC, SC, VA, and WV; and 3) between Alsip, IL, on the one hand, and, on the other, points in IN, IA, KS, MI, MN, MO, NE, ND, OH, SD and WI. Supporting shipper: S K Products Corp., 5355 Bucknell Drive SW, Atlanta, GA 30378.

MC 139495 (Sub-5–7TA), filed October 6, 1980. Applicant: NATIONAL CARRIERS, INC., P.O. Box 1358, Liberal, KS 67901. Representative: Herb Dubin, Baskin and Sears, 2nd Floor, 818 Connecticut NW., Washington, D.C. 20006. *Alcoholic beverages (except in bulk),* from Lynchburg, TN to Amarillo, Corpus Christi, Dallas, El Paso, Ft. Worth, Houston, Odessa and San Antonio, TX. Supporting shipper: Jack Daniels Distillery, 1010 W. Mockingbird, Suite 160, Dallas, TX 75247.

MC 139923 (Sub-5–3TA), filed October 6, 1980. Applicant: MILLER TRUCKING COMPANY, INC., P.O. Box Drawer D, Stroud, OK 74079. Representative: Daniel O. Hands, Suite 200, 205 West Touhey Avenue, Park Ridge, IL 60068. *Such commodities as are dealt in or used by bakery supply companies (except in bulk),* from Dolton, IL, and Kansas City, KS to points in AZ, CA, CO, ID, IL, IN, IA, KS, LA, MI, MN, MO, MT, NE, NV, NY, NM, ND, OH, OK, OR, PA, SD, TX, UT, WA, and WY. Supporting shipper: Breddo Food Products Corporation, 18th and Kansas City, KS 66105.

MC 140665 (Sub-5–38TA), filed October 6, 1980. Applicant: PRIME, INC., P.O. Box 4208, Springfield, MO 65804. Representative: Clayton Geer, P.O. Box 786, Ravenna, OH 44266. *Materials, equipment and supplies used in the manufacture of automotive care products (except in bulk),* from points in the U.S. (except AK and HI) to the facilities utilized by Union Carbide Corporation at or near Paulsboro, NJ, Milford, CT, Wyoming, NY, Middlebury, VT, North Warren, Logans Ferry, New Kensington and East Butler, PA, Hamilton, OH, Danville, IL, Holland, Owosso and Wixom, MI, Chicago, IL, Milwaukee and Edgerton, WI, Alsip, IL Freehold NJ, Texas City, TX, and Torrance, CA. Supporting shipper: Union Carbide Corporation, 270 Park Avenue, New York, NY 10017.

MC 142364 (Sub-5–8TA), filed October 6, 1980. Applicant: KENNETH SAGELY TRUCKING COMPANY, Post Office Box 368, Van Buren, AR 72956. Representative: Don Garrison, Esq., Post Office Box 1065, Fayetteville, AR 72701. *Furniture and Furniture Parts, Materials and Supplies* used in the manufacture and distribution thereof (except in bulk), between Atlanta, GA; Clifton, NJ; Chicago, IL; and Houston, TX, on the one hand, and, on the other points in the United States (except AK, HI, ID, MT, NV, OR, UT, WA and WY). Supporting shipper: SK Products Corporation, 5355 Bucknell Drive SW., Atlanta, GA 30378.

MC 144622 (Sub-5–52TA), filed October 6, 1980. Applicant: GLENN BROS. TRUCKING, INC., P.O. Box 9343, Little Rock, AR 72219. Representative: J. B. Stuart, P.O. Box 179, Bedford, TX 76021. *Foodstuffs (except in bulk),* from the facilities of Rudy's Farms at Little Rock, AR to Los Angeles, CA; Port Allen, LA; Kansas City, MO; and Grand Prairie, TX. Supporting shipper: Rudy's Farms, 2424 Music Valley Drive, Nashville, TN 37214.

MC 147196 (Sub-5–14TA) filed October 6, 1980. Applicant: ECONOMY TRANSPORT, INC., P.O. Box 50262, New Orleans, LA 70150. Representative: Donald A. Larousse, P.O. Box 50262, New Orleans, LA 70150. Contract: Irregular. *Iron and Steel Cable Chain, Fittings and Related Acessories,* between Harrison County, Texas, on the one hand, and, on the other, the 48 States, under a continuing contract or contracts with Gulf Coast Wire Rope, Inc., Pasadena, TX Supporting shipper: Gulf Coast Wire Rope, Inc., P.O. Box 1111, Pasadena, TX 77501.

MC 147536 (Sub-5–7TA), filed October 6, 1980. Applicant: D. L. SITTON MOTOR LINES, INC., P.O. Box 1567, Joplin, MO 64801. Representative: David L. Sitton, P.O. Box 1567, Joplin, MO 64801. *Beverages, food products, materials and supplies used in the manufacture and distribution of beverages and food products,* between points in Okmulgee County, OK, on the one hand, and, on the other, points in AR, KS, LA, MS, MO, and TX. Supporting shipper: King Cola Southwest, Inc., P.O. Box 1810, Nashville, AR 71852.

MC 150592 (Sub-5–3TA), filed October 6, 1980. Applicant: SUNFLOWER CARRIERS, INC., P. O. Box 561, York, NE 68467. Representative: David R.

Parker, P.O. Box 81228, Lincoln, NE 68501. *Such commodities as are dealt in by cold storage warehouses,* between York, NE, on the one hand, and, on the other, points in the United States (except AK and HI). Supporting shipper: York Cold Storage Co., Joe Waller, General Manager and President, 14th & Division, York, NE 68467.

MC 150783 (Sub-5–12TA), filed October 6, 1980. Applicant: SCHEDULED TRUCKWAYS, INC., Post Office Box 757, Rogers, AR 72756. Representative: Ronnie Sleeth, (same as applicant). *Foodstuffs (except commodities in bulk or in tank vehicles)* from the plantsite of Adams Packing Ass'n., Inc. at or near Memphis, TN to points in the U.S. (except AK and HI). Supporting shipper: Adams Packing Ass'n., Inc., P.O. Box 37, Auburndale, FL 33823.

MC 151485 (Sub-5–2TA), filed October 6, 1980. Applicant: DOUBLE-JAY Enterprises, INC., Route 1, Box 90, Kerney, MO 64060. Representative: Larry D. Knox, 600 Hubbell Building, Des Moines, IA 50309. *Foodstuffs, in packages,* from the facilities of R. B. Rice Sausage Company, at or near Kansas City, Joplin, and St. Louis, MO, to points in FL, AL, GA, KY, OH, SC, TN, OK, TX, KS, and CA. Supporting shipper: R. B. Rice Sausage, Inc., P.O. Box 238, Lees Summit, MO 64063.

MC 151637 (Sub-5–3TA), filed October 6, 1980. Applicant: LARRY BREEDEN TRUCKING, INC., 1301 Fayetteville Road, Van Buren, AR 72956. Representative: Don Garrison, Esq., Post Office Box 1065, Fayetteville, AR 72701. *Furniture Parts and Materials, Equipment and Supplies used in the manufacture thereof*-Between the facilities of Leggett-Platt Incorporated, at or near Aurora, Carthage and Springfield, MO, on the one hand, and, on the other, Phoenix, AZ; Denver, Co; Clearfield, UT; and, points in CA. Supporting shipper: Leggett-Platt Incorporated, Post Office Box 757, Carthage, MO 64836.

MC 151637 (Sub-5–4TA), filed October 6, 1980. Applicant: LARRY BREEDEN TRUCKING, INC., 1301 Fayetteville Road, Van Buren, AR 72956. Representative: Don Garrison, Esq., Post Office Box 1065, Fayetteville, AR 72701. *Innersprings, Filler Products and materials, equipment and supplies used in the manufacture of bedding;* between Denver, CO; Lakeland, FL; Carthage, MO; and, Brenham, TX, on the one hand, and, on the other, points in CO, FL, IL, IN, KY, MO, NC, NJ, NM, NY, OH, PA, SC, TN, TX, UT, VA, WA and WV. Supporting shipper: Steadley Company, Inc., 200 River Street, Carthage, MO 64836.

MC 151819 (Sub-5–2TA), filed October 6, 1980. Applicant: CARGO MASTER, INC., 917 S. Harwood St., Dallas, TX 75201. Representative: D. Paul Stafford, Suite 1125, Exchange Pk., P.O. Box 45538, Dallas, TX 75245. *Paper, in rolls or packages* between Dallas, TX, Lockport, LA and Calhoun, TN, and points in AL, AR, AZ, CA, CO, FL, GA, IA, KY, KS, LA, MO, MS, NE, NC, NM, NV, OK, SC, TN, TX and UT. Supporting shipper: Papertech, Inc., 4924 Woodall, Dallas, TX 75247.

MC 151996 (Sub-5–1TA), filed October 6, 1980. Applicant: M & S TRANSPORTATION, INC., Route 3, Box 8B, Lonoke, AR 72086. Representative: James M. Duckett, 411 Pyramid Life Building, Little Rock, AR 72201. *Beer (except in bulk),* from Golden, CO to the facilities of Coors of Central Arkansas, at Little Rock, AR. Supporting shipper: Coors of Central Arkansas, Little Rock, AR.

MC 152089 (Sub-5–2TA), filed October 6, 1980. Applicant: BEATRICE FREIGHT LINE, INC., 1935 Park Boulevard, Lincoln, NE 68502. Representative: Jack L. Shultz, P.O. Box 82028, Lincoln, NE 68501. (1) *Foodstuffs, printed material and books,* from Lancaster County, NE to points in CA, CO, GA, IL, IN, KS, LA, MN, MO, OH, OK, TN, TX, WI and WY; and (2) *Material, equipment and supplies utilized in the manufacture and sale of commodities* in (1) above, from points in CA, CO, GA, IL, IN, KS, LA, MN, MO, OH, OK, TN, TX, WI and WY to Lancaster County, NE. Supporting shippers: Gooch Milling & Elevator, P.O. Box 81308, Lincoln, NE 68501; Ovaltine Products, Inc., South Industrial Park, Lincoln, NE 68512; and Nebraska Book Company, Wholesale Division, 6400 Cornhusker Highway, Lincoln, NE 68507.

MC 152091 (Sub-5–1TA), filed October 6, 1980. Applicant: CHARLES STULTS, d.b.a. C.O.S. TRUCKING, Route 1, Verona, MO 65769. Representative: Bruce McCurry, Dickey, Allemann & McCurry, 910 Plaza Towers, Springfield, MO 65804. *Wood, lumber, wooden slabs, wood by-products* from Lawrence County, MO to Hill County, TX and Scott County, IA. Supporting shipper: Mid-West Hardwood, Inc., Route 1, Wentworth, MO.

The following applications were filed in Region 6. Send protests to: Interstate Commerce Commission, Region 6 Motor Carrier Board, P.O. Box 7413, San Francisco, CA 94120.

Republication

MC 52914 (Sub-6–3TA), filed September 12, 1980. Applicant: FITCHETT TRUCK LINES, INC., P.O. Box 10799, Portland, OR 97210. Representative: Lawrence V. Smart, Jr., 419 N.W. 23rd Av., Portland, OR 97210. *General commodities* (except Classes A and B explosives), *in containers and trailers* between Portland, OR on the one hand and points in OR on the other hand, restricted to shipments having prior or subsequent movement by water, air, freight forwarder or cooperative, for 270 days. An underlying ETA seeks 120 days authority. Supporting shippers: Sysco NW, 12970 S.W. Hall Blvd., Tigard, OR; Crowley Maritime Corporation, 6208 N. Ensign St., Portland, OR; Acme Fast Freight, Inc., 1617 S.E. Water, Portland, OR; ABC Trans National, Inc., 1613 S.E. Water, Portland, OR.

MC 116544 (Sub-6–18TA), filed October 2, 1980. Applicant: ALTRUK FREIGHT SYSTEMS INC., 1703 Embarcadero Road, Palo Alto, CA 94303. Representative: Richard G. Lougee, P.O. Box 10061, Palo Alto, CA 94303. *Foodstuffs; commodities as are dealt in by chain grocery and food business houses; equipment, materials, supplies, and machinery* used in the production and distribution of the commodities above between points in FL on the one hand, and, on the other, points in OR, WA, ID, and all points in and East of MI, IN, KY, TN, and AL, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Citrus Central, Inc., P.O. Box 17774, Orlando, FL 32860.

MC 148018 (Sub-6–1TA), filed October 3, 1980. Applicant: JAMES S. BATT d.b.a. BATT TRUCKING, INC., P.O. Box 921, Caldwell, ID 83605. Representative: Timothy R. Stivers, P.O. Box 162, Boise, ID 83701. *Contract carrier,* Irregular routes: (1) *Building materials* from points in ID, MT, WA, to points in CA; (2) *Lumber and lumber mill products,* from points in ID, and OR to points in CA, for 270 days. An underlying ETA seeks 120 days authority. Supporting shippers: American Wood Products, Inc., P.O. Box 1003, Caldwell, ID 83605 Northwest Forest Products, Inc., 1202 Power, Lewiston, ID 83501.

MC 152083 (Sub-6–1TA), filed October 2, 1980. Applicant: COLUMBIA TRANSPORTATION, INC., 6615 E. Marginal Way S., Seattle, WA 98108. Representative: George R. LaBissoniere, 15 S. Grady Way, Suite 233, Renton, WA 98055. *Contract carrier,* irregular routes: *steel pipe and tubing,* from the Los Angeles, CA, commercial zone to points

in OR and WA for the account of Rain Industries, Inc., for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Rain Industries, Inc., 10306 N.E. 10th, Bellevue, WA 98004.

MC 115826 (Sub-6–18TA), filed October 2, 1980. Applicant: W. J. DIGBY, INC., 6015 East 58th St., Commerce City, CO 80022. Representative: Charles M. Williams, 350 Capitol Life Center, 1600 Sherman St., Denver, CO 80203. *Meats, meat products, meat by-products and articles distributed by meat packinghouses as described in Sections A and C of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766 (except hides and commodities in bulk),* from Lubbock, TX and points within a 125 mile radius of Lubbock, TX to points in ID, MT, OR, UT and WA, for 270 days. Supporting shipper: Western Excel Distributors, P.O. Box 17378, Portland, OR 97217.

MC 149364 (Sub-6–4TA), filed September 30, 1980. Applicant: DOUDELL TRUCKING COMPANY, 555 E. Capital Ave., Milpitas, CA 95106. Representative: Ronald C. Chauvel, 100 Pine St. #2550, San Francisco, CA 94111. *Contract carrier,* Irregular routes: *Evaporative air coolers and components thereof* between Phoenix, AZ and AZ, CA, NV, UT, NM, under continuing contracts with Phoenix Manufacturing, Inc. for 270 days. Supporting shipper: Phoenix Manufacturing, Inc., 415 S. 7th St., Phoenix, AZ 85036.

MC 134484 (Sub-6–1TA), filed October, 2, 1980. Applicant: EDWARDS BROS., INC., P.O. Box 1684, Idaho Falls, ID 83401. Representative: Timothy R. Stivers, P.O. Box 162, Boise, ID 83701. *Meat meat products, meat by-products and articles distributed my meat packinghouses as described in Sections A & C of Appendix I to the report in Descriptions on Motor Carrier Certificates, 61 MCC 209 and 766 (except hides and commodities in bulk)* from the facilities of Iowa Beef Processors, Inc. In Walla Walla County, WA and Boise, ID to points in the U.S. in and west of ND, SD, NE, KS, OK, and TX (except HI and AK), for 270 days Supporting shipper: Iowa Beef Processors, Inc., Dakota City, NE 68731.

MC 125433 (Sub-6–37TA), filed October, 1, 1980. Applicant: F–B TRUCK LINE COMPANY, 1945 South Redwood Rd, Salt Lake City, UT 84104. Representative: John B. Anderson (same as applicant). *Building Materials and Building Products* between the facilities of Elk Corporation of Texas at or near Ennis, Texas on the one hand, and, on the other, points in the United States (except AK), for 270 days. Supporting shipper: Elk Corporation of Texas, P.O. Box 500 Ennis, TX 75119.

MC 125433 (Sub-6–38TA), filed October, 1, 1980. Applicant: F–B TRUCK LINE COMPANY, 1945 South Redwood Rd, Salt Lake City, UT 84104. Representative: John B. Anderson (same as applicant). *Furniture, plastic and metal combination, meterials and supplies used in the manufacture thereof* between the facilities of Artco-Bell Corporation at or near Temple, Texas, on the one hand, and, on the other, all points in the United States (except AK), for 270 days. Supporting shipper: Artco-Bell Corporation, P.O. Box 608, Temple, Texas 76501.

MC 152084 (Sub-6–1TA), filed October, 3, 1980. Applicant: KNUTSON CARPET HUT, INC., 1900 Virginia Ave., North Bend, OR 97459. Representative: Lawrence V. Smart, Jr., 419 N. W. 23rd Ave., Portland, OR 97210. *Carpeting,* from Rome and Dalton, GA, and points in their commercial zones, to points in OR and WA, for 270 days. Supporting shippers: Coronet Carpet Industries, Route 1, Box 394–51, Amity, OR 97101. Trend Carpet Mills, 7250 S. W. 140th Ave., Beaverton, OR 97005.

MC 43685 (Sub-6–3TA), filed October 2, 1980. Applicant: MERCER TRUCKING COMPANY, INC., P.O. Box 11585, Spokane, WA 99211. Representative: Marshall Hanning (same as above). *Lumber, veneer, forest products, and building materials,* between points in Adams, Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman, and Yakima counties, WA; Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, and Shoshone counties, ID; and the international boundary with British Columbia, on the one hand; And points in CA, and in Clark and Washoe counties, NV, on the other hand, for 270 days. Supporting shippers: There are 10 shippers. Their statements may be examined at the Regional Office listed.

MC 117589 (Sub-6–3TA), filed October 3, 1980. Applicant: PROVISIONERS FROZEN EXPRESS, INC., 3801 7th Ave. S., Seattle, WA 98108. Representative: Michael D. Duppenthaler, 211 South Washington St., Seattle, WA 98104. *Meat, meat products, meat by-products and articles distributed by meat packinghouses as described in Section A of Appendix I to the Report in Descriptions in Motor Carrier Certificates, 61 MCC 209 and 766 (except commodities in bulk),* between Seattle, WA and points in CO on the one hand, and, on the other, points in WA, OR, ID and MT, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Sound Meat Distributors Co., 7936 Occidental Ave South, Seattle, WA 98108.

MC 124692 (Sub-6–21TA), filed October 1, 1980. Applicant: SAMMONS TRUCKING, P.O. Box 4347, Missoula, MT 59806. Representative: James B. Hovland, Suite M–20, 400 Marquette Ave., Minneapolis, MN 55401. *Industrial chemicals (except in bulk),* from Peoria, IL and the respective commercial zones of Chicago, IL and Minneapolis, MN to Aberdeen and Sioux Falls, SD, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Dakota Chemical Company, Box 918, Aberdeen, SD 57401.

MC 141867 (Sub-6–7TA), filed October 2, 1980. Applicant: SPECIALIZED TRUCKING SERVICE, INC., 2301 Milwaukee Way, Tacoma, WA 98421. Representative: Jack R. Davis, 1100 IBM Building, Seattle, WA 98101. *Commodities that are dealt in or used by manufacturers of doors and other building materials* between Chelan County, WA and points, in AZ, CA, NV, NM, OR, UT, WA, CO, KS, TX, MO, OK, and ID for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Columbia Steel Door, 1028 S. Columbia St., Wenatchee, WA 98801.

MC 139857 (Sub-6–1TA), filed October 2, 1980. Applicant: T.W. TRANSPORT, INC., P.O. Box 3347 Terminal Annex, Spokane, WA 99220. Representative: George H. Hart, 1100 IBM Bldg., Seattle, WA 98101. *Such commodities or such merchandise as are dealt in or used by wholesale, retail and chain grocery and food business houses;* and *such materials, supplies and equipment used in connection with or incidental to the operation of wholesale, retail and chain grocery and food business houses* between points in CA, OR and WA for 270 days. Supporting shippers: S.E. Rykoff & Co., Inc., 421 N. Freya St., Spokane, WA 99202; Equinox Food Exchange, Inc., Hunters Star Rte., Springdale, WA 99173; Commercial Creamery Co., 159 S. Cedar, Spokane, WA 99204; Olympic Foods, Inc., P.O. Box 3627, Spokane, WA 99220.

MC 151611 (Sub-6–3TA), filed September 30, 1980. Applicant: WAYFARE TRUCKING, INC., 725 Industrial Way, Port Hueneme, CA 93041. Representative: Ronald C. Chauvel, 100 Pine St., No. 2550, San Francisco, CA 94111. *Contract Carrier,* Irregular routes: *Metal products, nickel powder, castings and welding rod* from Isleta, NM to the Los Angeles, CA

Commercial Zone under continuing contract(s) with Wall Colmonoy Corporation, for 270 days. An underlying ETA seeks 120 day authority. Supporting shipper: Wall Colmonoy Corporation, P.O. Box 311, Isleta, NM 87022.

MC 141804 (Sub-6–802TA), filed October 2, 1980. Applicant: WESTERN EXPRESS, Division of Interstate Rental, Inc., P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman (same as applicant). *Plastic articles and materials, equipment and supplies used in the manufacture, distribution, and sale thereof,* Restricted to Amoco Foam Products traffic between Aiken County, SC, Spartanburg County, SC, Frederick County, VA, Chippewa County, WI, and Eau Claire County, WI on the one hand, and, on the other, points in the U.S. (except AK and HI), for 270 days. Supporting shipper: Amoco Foam Products Co., 2111 Powers Ferry Road, N.W., Suite 200, Atlanta, GA 30099.

MC 148526 (Sub-6–2TA), filed October 3, 1980. Applicant: WORLD WIDE JOYE TOURS, INC., 4576 N. Bendel, Fresno, CA 93711. Representative: William R. Daly, P.O. Box 20521, San Diego, CA 92120. *Passengers and their baggage in the same vehicle* on escorted, lectured, sightseeing chartered tours and/or special operations tours, beginning and ending in Fresno and Madera Counties, CA and extending to all points in the U.S., including AK, but excluding HI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shippers: There are 652 supports. Their statements may be examined at the Regional office listed.

MC 143775 (Sub-6–29TA), filed October 1, 1980. Applicant: PAUL YATES, INC., P.O. Box 1059, Glendale, AZ 85301. Representative: Michael R. Burke (same address as applicant). *Such commodities as are dealt in by retail department stores, including garments on hangers,* from points in the U.S. (except AK and HI), to the facilities of Fashion Bar, Inc., at Denver, CO, and points in its commercial zone for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Fashion Bar, 695 S. Broadway, Denver, CO 80209.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-32569 Filed 10-20-80; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special rule 247 was published in the **Federal Register** of July 3, 1980, at 45 FR 45539.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.gs., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests in the form of verified statements filed on or before December 5, 1980 (or, if the application later becomes unopposed) appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notice that the decision-notice is effective. Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Volume No. OPI–049

Decided: Oct. 10, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce, and Jones.

MC 200 (Sub-500F), filed October 2, 1980. Applicant: RISS INTERNATIONAL CORPORATION, P.O. Box 100, 215 W. Pershing Rd., Kansas City, MO 64141. Representative: H. Lynn Davis (same address as applicant). Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities of Rival Mfg. Co., its affiliates, subsidiaries, or vendors.

MC 200 (Sub-501F), filed October 2, 1980. Applicant: RISS INTERNATIONAL CORPORATION, P.O. Box 100, 215 W. Pershing Rd., Kansas City, MO 64141. Representative: H. Lynn Davis (same address as applicant). Transporting *medical supplies* (except commodities in bulk), between Cincinnati, OH and Carlsbad, CA, restricted to traffic originating at or destined to the facilities used by Dyna-Med, Inc., its suppliers, or vendors.

MC 2900 (Sub-437F), filed September 29, 1980. Applicant: RYDER TRUCK LINES, INC., 2050 Kings Rd., P.O. Box 2408, Jacksonville, FL 32203. Representative: John C. Bradley, Suite 1301, 1600 Wilson Blvd., Arlington, VA 22209. *Over regular routes,* transporting *general commodities* (except classes A and B explosives and household goods as defined by the Commission), (1) between Sault Ste. Marie, MI, and Everett, WA, over U.S. Hwy 2, (2) between E. Dubuque, IL, and Boise, ID, over U.S. Hwy 20, (3) between Manitowoc, WI, and Seattle, WA, over U.S. Hwy 10, (4) between Owatonna, MN, and Greybull, WY, over U.S. Hwy 14, (5) between E. Clinton, IL, and Portland, OR, over U.S. Hwy 30, (6) between Eastport and Payette, ID, over U.S. Hwy 95, (7) between Williston, ND, and Denver, CO, over U.S. Hwy 85, (8) between Sweetgrass, MT, and Pocatello, ID, over U.S. Hwy 91, (9) between Minot, ND, and North Platte, NE, over U.S. Hwy 83, (10) between Great Falls, MT, and Cheyenne, WY, over U.S. Hwy 87, (11) between Pembina, ND, and Columbus, NE, over U.S. Hwy 81, (12) between Albert Lea, MN, and Worland, WY, over U.S. Hwy 16, (13) between Minneapolis, MN, and Billings, MT, over U.S. Hwy 12, (14) between St. Ignace and South Haven, MI, over U.S. Hwy 31, (15) between Mackinaw City and Detroit, MI, from Mackinaw City over U.S. Hwy 23 to Flint, then over MI Hwy 21 to Port Huron, then over U.S. Hwy 25 to Detroit,

and return over the same route, (16) between International Falls, MN, and Lacrosse, WI, over U.S. Hwy 53, (17) between Hurley and Stevens Point, WI, over U.S. Hwy 51, (18) between Marquette, MI, and Manitowoc, WI, from Marquette over U.S. Hwy 41 to Green Bay, WI, then over U.S. Hwy 141 to Manitowoc, and return over the same route, (19) between Mackinaw City and Clare, MI, over U.S. Hwy 27, and (20) between Belt, MT, and Montpelier, ID, over U.S. Hwy 89, serving all intermediate points and points in ID, MI, MN, MT, ND, SD, WI, and WY, as off-route points in routes (1) through (20) above.

Note.—Applicant intends to tack this authority with its existing regular and irregular route authority.

MC 15511 (Sub-31F), filed October 2, 1980. Applicant: CARSTENSEN FREIGHT LINES, INC., P.O. Box 878, Hwy. 30, West, Clinton, IA 52732. Representative: Paul J. Maton, 10 S. LaSalle St., Chicago, IL 60603. *Over regular routes,* transporting *general commodities* (except those of unusual value, classes A and B explosives, commodities in bulk, household goods as defined by the Commission, and those requiring special equipment), (1) between Davenport and Muscatine, IA, over U.S. Hwy 61, serving all intermediate points, (2) between Muscatine, IA, and junction U.S. Hwy 30 and IA Hwy 38, over IA Hwy 38, serving all intermediate points, (3) between Rock Island, IL, and Muscatine, IA, over IL Hwy 92, serving all intermediate points, (4) between Davenport and Coralville, IA, over U.S. Hwy 6, serving the intermediate points of Iowa City, Durant, and Wilton, (5) between Cedar Rapids and Iowa City, IA, from Cedar Rapids over Interstate Hwy 380 to its junction with U.S. Hwy 6, then over U.S. Hwy 6 to Iowa City, as an alternate route for operating convenience only, and (6) between Cedar Rapids and Iowa City, IA, from Cedar Rapids over IA Hwy 149 to Amana, then over IA Hwy 220 to its junction with U.S. Hwy 218, then over U.S. Hwy 218 to Iowa City, and return over the same route, serving all intermediate points.

MC 29910 (Sub-293F), filed October 3, 1980. Applicant: ABF FREIGHT SYSTEM, INC., 301 South Eleventh Street, Fort Smith, AR 72910. Representative: Joseph K. Reber (same address as applicant). Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Santa Cruz, CA, Charleston, SC, Cape Canaveral, FL, Simsbury, CT, and Crane, IN.

MC 29910 (Sub-294F), filed October 6, 1980. Applicant: ABF FREIGHT SYSTEM, INC., 301 South Eleventh Street, Fort Smith, AR 72901. Representative: Joseph K. Reber (same address as applicant). Transporting (1) *Clay products,* and (2) *materials, equipment and supplies* used in the manufacture and distribution of clay products, between points in Lonoke County, AR, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 44801 (Sub-18F), filed October 6, 1980 Applicant: DICK HARRIS AND SON TRUCKING CO., INC., P.O. Box 10277, 4000 Harris Lane, Lynchburg, VA 24506. Representative: Morton E. Kiel, Suite 1832, 2 World Trade Center, New York, NY 10048. Transporting *general commodites* (except household goods as defined by the Commission, classes A and B explosives, and commodities in bulk), between points in VA, on the one hand, and, on the other, points in DE, GA, IL, IN, KY, MD, MI, NJ, NY, NC, OH, PA, SC, TN, VA, WV, and DC.

MC 48221 (Sub-29F), filed September 26, 1980. Applicant: W.N. MOREHOUSE TRUCK LINE, INC., 4010 Dahlman Avenue, Omaha, NE 68107. Representative: Paul D. Kratz, Suite 610, 7171 Mercy Road, Omaha, NE 68106. Transporting *such commodities* as are dealt in or used by manufacturers, distributors, and retailers of automobile supplies and livestock care products, between points in CO, IL, IN, IA, KS, MI, MO, NE, NM, ND, OK, OH, SD, TX, WI, WY, and UT, on the one hand, and, on the other, points in Douglas County, NE, and Pottawattamie County, IA.

MC 60251 (Sub-14F), filed October 2, 1980. Applicant: P & D TRANSPORTATION, INC., Connell Highway, Newport, RI 02840. Representative: Frederick T. O'Sullivan, P.O. Box 2184, Peabody, MA 01960. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the United States Government, between points in the U.S.

MC 61440 (Sub-200F), filed October 1, 1980. Applicant: LEE WAY MOTOR FREIGHT, INC., 3401 N.W. 63rd Street, Oklahoma City, OK 63116. Representative: Richard H. Champlin, P.O. Box 12750, Oklahoma City, OK 73157. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in the U.S. (except AK and HI).

MC 65491 (Sub-11F), filed October 3, 1980. Applicant: GEORGE W. BROWN, INC., 1475 East 222nd Street, Bronx, NY 10469. Representative: William Biederman, 371 Seventh Avenue, New York, NY 10001. Transporting (1) *paper and paper products* and (2) *materials, equipment, and supplies* used in the manufacture of paper and paper products (except commodities in bulk, and those requiring special equipment), between Lockhaven, PA, on the one hand, and, on the other, points in NY, NJ, MD, VA, ME, NH, VT, OH, and MI.

MC 85530 (Sub-9F), filed October 2, 1980. Applicant: BLALOCK TRUCK LINE, INC., P.O. Box 734, Charleston, SC 29402. Representative: Wilmer B. Hill, 805 McLachlen Bank Bldg., 666 Eleventh Street NW., Washington, DC 20001. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Savannah, GA, and points in Charleston County, SC, on the one hand, and, on the other, points in GA, and those points in NC on and east of a line beginning at the NC–SC state line and extending along U.S. Hwy 21 to Charlotte, NC, then along U.S. Hwy 29 to Greensboro, NC, then south of a line extending along U.S. Hwy 70 to Morehead City, NC.

MC 95920 (Sub-67F), filed September 30, 1980. Applicant: SANTRY TRUCKING CO., a corporation, 10505 N.E. 2nd Ave., Portland, OR 97211. Representative: George R. LaBissoniere, 15 S. Grady Way, Suite 233, Renton, WA 98055. Transporting *chemicals and plastics* (except commodities in tank or hopper-type vehicles), between points in the U.S., under continuing contract(s) with Union Carbide Corporation, of San Francisco, CA.

MC 110380 (Sub-21F), filed September 30, 1980. Applicant: BERSCHENS OF MADISON, INC., P.O. Box 187, Verona, WI 53593. Representative: James A. Spiegel, Olde Towne Office Park, 6425 Odana Road, Madison, WI 53719. Transporting *automotive parts, automotive equipment, and automotive supplies,* between points in WI, and those in the Upper Peninsula of MI, restricted to traffic originating at or destined to the facilities of General Automotive Parts Corporation, dba NAPA Distribution Center.

MC 117730 (Sub-80F), filed October 2, 1980. Applicant: KOUBENEC MOTOR SERVICE, INC., Route 47, Huntley, IL 60142. Representative: Stephen H. Loeb, Suite 2027, 33 N. LaSalle St., Chicago, IL

60602. Transporting *general commodities* (except classes A and B explosives and household goods as defined by the Commission), between points in the U.S., restricted to traffic originating at or destined to the facilities of Abbott Laboratories and its subsidiaries. Condition: Issuance of a certificate in this proceeding is subject to coincidental cancellation at applicant's written request of Certificate No. MC 117730 (Sub-29F).

MC 117851 (Sub-34F), filed October 2, 1980. Applicant: JOHN CHEESEMAN TRUCKING, INC., 501 N. First St., Fort Recovery, OH 45846. Representative: Earl N. Merwin, 85 E. Gay St., Columbus, OH 43215. Transporting *General commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in the U.S., under continuing contract(s) with Ingersoll-Rand Company and its subsidiaries, of New York, NY.

MC 131050F filed September 29, 1980. Applicant: MICHAUD TRAILWAYS TOURS, INC., 63 Jefferson Ave., Salem, MA 01970. Representative: Robert G. Parks, 20 Walnut St., Suite 101, Wellesley Hills, MA 02181. As a *broker*, at Salem, MA, in arranging for the transportation of *passengers and their baggage*, in special or charter operations, between points in the U.S.

MC 135441 (Sub-1F), filed September 26, 1980. Applicant: M.C. TRUCKING CO., INC., 500 Mohican Road, Pennsauken, NJ 08110. Representative: Alan Kahn, 1430 Land Title Bldg., Philadelphia, PA 19110. Transporting (1) *copper and copper products* and (2) *materials, equipment and supplies* used in the manufacture and distribution of copper and copper products (except commodities in bulk), between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities utilized by Hatfield Wire and Cable, Division of Continental Copper and Steel Industries, Inc.

MC 144061 (Sub-16F), filed October 3, 1980. Applicant: SICOMAC CARRIERS, INC., 1107 Goffle Road, Hawthorne, NJ 07506. Representative: Jack L. Schiller, 345 Webster Avenue, Brooklyn, NY 11230. Transporting (1) *stabilizers and chemicals*, and (2) *materials* used in the manufacture of the commodities in (1) above, between points in the U.S., under continuing contract(s) with Argus Chemical Corporation, of Brooklyn, NY.

MC 145950 (Sub-85F), filed October 2, 1980. Applicant: BAYWOOD TRANSPORT, INC., 2611 University Parks Drive, Waco, TX 76706. Representative: E. Stephen Heisley, 805 McLachlen Bank Bldg., 666 Eleventh St. NW., Washington, DC 20001. Transporting (1) *plastic laminated panel particleboard*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of (1) above, between Temple, TX, on the one hand, and, on the other, points in the U.S.

MC 150790 (Sub-2F), filed October 2, 1980. Applicant: ALLIANCE MOVING AND STORAGE, INC., 13150 Pavilion Lane, Fairfax, VA 22310. Representative: Jacob P. Billig, 2033 K Street NW., Washington, DC 20006. Transporting *household goods*, as defined by the Commission, (1) between points in MD, VA, and DC, on the one hand, and, on the other, points in the U.S. and (2) between points in VA, MD, and DC.

MC 150951 (Sub-1F), filed October 6, 1980. Applicant: CRANSTON TRUCKING COMPANY, a corporation, 1381 Cranston Street, Cranston, RI 02920. Representative: A. Joseph Mega, 11 Newark Street, Providence, RI 02908. Transporting *such commodities* as are dealt in by retail department stores, between points in the U.S., under continuing contract(s) with the Charlotte Freight Association, of Charlotte, NC.

MC 152001 (Sub-1F), filed September 30, 1980. Applicant: HALL'S SPECIALTIES, INC., R.R. 1, Laotto, IN 46763. Representative: Berton W. O'Bryan, Suite 800 Circle Tower, Five East Market St., Indianapolis, IN 46204. Transporting *anhydrous ammonia* (except fertilizer) and *fertilizer* between points in OH, those in IN, on and north of U.S. Hwy 50, and those in MI, on and south of Interstate Hwy 94.

MC 152060F filed October 1, 1980. Applicant: JACK FROST DBA JACK FROST TRUCKING, 6501 Fiesta Street, P.O. Box 12765, El Paso, TX 79912. Representative: William J. Monheim, P.O. Box 1756, Whittier, CA 90609. Transporting (1) *foodstuffs*, (2) *meats, meat products, meat byproducts and articles disturbed by meat packing houses*, as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, and (3) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) and (2) above, between points in El Paso County, TX, on the one hand, and, on the other, points in AZ, CA, CO, ID, NV, NM, OR, UT and WA.

Volume No. OP1–051

Decided: Oct. 14, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce, and Jones.

MC 2860 (Sub-209F), filed October 8, 1980. Applicant: NATIONAL FREIGHT, INC., 71 West Park Avenue, Vineland, NJ 08360. Representative: Gerald S. Duzinski (same address as applicant). Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in the U.S., restricted to traffic originating at or destined to the facilities of PPG Industries, Inc.

MC 11220 (Sub-221F), filed October 8, 1980. Applicant: GORDONS TRANSPORTS, INC., 185 West McLemore Avenue, Memphis, TN 38101. Representative: James J. Emigh, P.O. Box 59, Memphis, TN 38101. Transporting (1) *carbon black*, and (2) *materials, equipment and supplies* used in the manufacture and distribution of carbon black (except commodities in bulk), between points in St. Mary Parish, LA, on the one hand, and on the other, points in AL, AR, GA, IL, IN, IA, KS, KY, MI, MN, MS, MO, OH, OK, TN, WV, and WI.

MC 35320 (Sub-614F), filed October 8, 1980. Applicant: T.I.M.E.–DC, INC., 2598 74th Street, P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). Transporting *general commodities* (except classes A and B explosives, and household goods as defined by the Commission), serving Birmingham, AL, as an off-route point in connection with carrier's otherwise authorized regular-route operations.

MC 53841 (Sub-45F), filed October 6, 1980. Applicant: W. H. CHRISTIE & SONS, INC., Box 517, East State Street, Knox, PA 16232. Representative: John A. Pillar, 1500 Bank Tower, 307 Fourth Avenue, Pittsburgh, PA 15222. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between Knox, PA, on the one hand, and, on the other, points in the U.S.

MC 115841 (Sub-774F), filed October 7, 1980. Applicant: COLONIAL REFRIGERATED TRANSPORTATION, INC., McBride Lane, P.O. Box 22168, Knoxville, TN 37922. Representative: Richard L. Hollow (same address as applicant). Transporting *paper bags, pulpboard, and wrapping paper*, between points in Chatham County, GA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 120021 (Sub-4F), filed October 6, 1980. Applicant: THE COTTER MOVING & STORAGE CO., a corporation, 265–273 West Bowery Street, Akron, OH 44308. Representative: Thomas R. Kingsley,

10614 Amherst Avenue, Silver Spring, MD 20902. Transporting *household goods,* as defined by the Commission, (1) between those points in the U.S. on and east of U.S. Hwy 85, and (2) between those points in the U.S. on and east of U.S. Hwy 85, on the one hand, and, on the other, those points in the U.S. west of U.S. Hwy 85.

Note.—The person or persons who appear to be engaged in common control of applicant and another regulated carrier must either file an application for approval of common control under 49 U.S.C. 11343, or submit an affidavit indicating why such approval is unnecessary.

MC 127580 (Sub-8F), filed October 7, 1980. Applicant: HALE TRUCKING, INC., P.O. Box 177, Roswell, NM 88201. Representative: Michael T. Worley, P.O. Box 550, Roswell, NM 88201. Transporting *construction materials,* between points in the U.S., under continuing contract(s) with Georgia-Pacific Corporation of Portland, OR.

MC 129950 (Sub-4F), filed October 7, 1980. Applicant: CONSOLIDATED TRUCK SERVICE, INC., One Scout Avenue, South Kearny, NJ 07032. Representative: Janis Pulton (same address as applicant). Transporting (1) *electrical appliances,* and (2) *materials and equipment* used in the manufacture of electrical appliances, between points in the U.S., under continuing contract(s) with Van Wyck International, Inc., of Minneola, NY.

MC 135971 (Sub-3F), filed October 3, 1980. Applicant: SOLIVRAC SERVICES, INC., 90 du Souis-Bois, Beauport, Quebec, Canada G1E 5Z6. Representative: Frank J. Weiner, 15 Court Square, Boston, MA 02108. In foreign commerce only, transporting *cement,* in bulk, from ports of entry on the international boundary line between the U.S. and Canada in ME, NH, VT and NY, to points in NH, VT, and NY.

MC 141641 (Sub-12F), filed October 6, 1980. Applicant: WILSON CERTIFIED EXPRESS, INC., P.O. Box 3326, Des Moines, IA 50316. Representative: Greg A. Dickinson, Suite 610, 7171 Mercy Road, Omaha, NE 68106. Transporting (1) *retail store fixtures,* and (2) *materials, equipment, and supplies* used in the manufacture of retail store fixtures, between points in Douglas County, NE, Jackson County, AL, Snyder County, PA, and San Bernardino County, CA, on the one hand, and, on the other, points in the U.S.

MC 144061 (Sub-17F), filed October 3, 1980. Applicant: SICOMAC CARRIERS, INC., 1107 Goffle Road, Hawthorne, NJ 07506. Representative: Jack L. Schiller, 345 Webster Avenue, Brooklyn, NY 11230. Transporting (1) *liquid chemicals,* in bulk, and (2) *materials* used in the manufacture of liquid chemicals, in bulk, between points in the U.S., under continuing contract(s) with Whittaker Corporation—Heico Division, of Delaware Water Gap, PA.

MC 145130 (Sub-2F), filed October 6, 1980. Applicant: ATICO TRANSPORT, INC., 6700 S. LeClaire Avenue, Chicago, IL 60638. Representative: James C. Hardman, 33 N. LaSalle Street, Chicago, IL 60602. Transporting *chemicals* (except in bulk), from the facilities of Emery Industries, Inc., at or near St. Bernard and Cincinnati, OH, to points in NJ, Baltimore, Harford, Cecil, Frederick, and Howard Counties, MD, Bucks, Philadelphia, Lehigh, Berks, Lancaster, and Chester Counties, PA, Lake, Cook, DuPage, Kane, Kendall, and Will Counties, IL, and Lake, Porter, LaPorte, and St. Joseph Counties, IN.

MC 145750 (Sub-3F), filed October 8, 1980. Applicant: CHARLES SIZEMORE d.b.a. C. S. TRUCK SERVICE, 930 Caroline Street, O'Fallon, IL 62269. Representative: Charles Sizemore (same address as applicant). Transporting (1) *dairy products, sherberts, and ice cream novelties,* and (2) *materials, equipment and supplies* used in the manufacture and distribution of the commodities in (1) above, between points in the U.S., under continuing contract(s) with Prairie Farm Dairy, Inc., of O'Fallon, IL.

MC 147400 (Sub-4F), filed October 6, 1980. Applicant: RAEMARC, INC., 1903 Chickory Road, P.O. Box 1203, Racine, WI 53403. Representative: Rolfe E. Hanson, 121 West Doty Street, Madison, WI 53703. Transporting (1) *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), and (2) *empty containers,* between points in Cook County, IL, and Milwaukee, Racine, and Kenosha Counties, WI, on the one hand, and, on the other, points in IA, IL, IN, KS, MI, MO, OH, and WI, restricted in (1) above to traffic having an immediately prior or subsequent movement by rail or water.

MC 147421 (Sub-1F), filed October 3, 1980. Applicant: J. N. L'HEUREUX INC., 95 College Avenue, Waterville, ME 04901. Representative: Daniel J. L Heureux (Same address as applicant). Transporting (1) *malt beverages,* (2) *wine* and (3) *carbonated bevereges,* between points in the U.S., under continuing contract(s) with Colonial Distributors, Inc., of Waterville, ME.

MC 149400 (Sub-1F), filed October 3, 1980. Applicant: BICENTENNIAL TRANSPORT, INC., 317 North Point Boulevard, Baltimore, MD 21224. Representative: Leonard A. Jaskiewicz, 1730 M Street, N.W., Washington, DC 20036. Transporting *general commodities* (except classes A and B explosives and household goods as defined by the Commission), between points in MD, on the one hand, and, on the other, points in CT, DE, FL, GA, IL, IN, MA, NC, NJ, NY, OH, PA, SC, VA, WV, and DC.

MC 151710 (Sub-1F), filed September 30, 1980. Applicant: SCOT TRUCKING & CONSOLIDATING CORP., 20036 South 71st Street, Philadelphia, PA 19142. Representative: Robert L. Cope, Suite 501, 1730 M Street, NW., Washington, DC 2000. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in the U.S., under continuing contract(s) with East-West Shippers Association, Inc., of Chicago, IL.

MC 151710 (Sub-2F), filed September 30, 1980. Applicant: SCOT TRUCKING & CONSOLIDATING CORP., 2000 South 71st Street, Philadelphia, PA 19142. Representative: Robert L. Cope, Suite 501, 1730 M Street, N.W., Washington, DC 20036. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in the U.S., under continuing contract(s) with West Coast Shippers Association, Inc., of Philadelphia, PA.

MC 150700 (Sub-3F), filed October 6, 1980. Applicant: OLIN WOOTEN TRANSPORT CO., INC., P.O. Box 731, Hazlehurst, GA 31539. Representative: Sol H. Proctor, 1101 Blackstone Building, Jacksonville, FL 32202. Transporting *paper and paper products,* between St. Marys, GA, on the one hand, and, on the other, those points in the U.S. in and east of TX, OK, KS, NE, SD, and ND.

Volume No. OP1–053

Decided: October 15, 1980.

By the Commission, Review Board Number 2, Members Chandler, Eaton, and Liberman.

W–81 (Sub-4F), filed August 22, 1980, and previously noticed in **Federal Register** issue of September 16, 1980. Applicant: McALLISTER LIGHTERAGE LINE, INC., 17 Battery Place, New York, NY 10004. Representative: Peter A. Greene, 900 17th Street, N.W., Washington, DC 20006. To operate as a *common carrier,* by water, by non-self-propelled vessels with the use of separate towing vessels in the transportation of *general commodities,* and by towing vessels in the performance of *general towage,* between ports and points along the Atlantic Coast and inland waterways from MA to NC, on the one hand, and, on the

other, ports and points in SC. Condition: This is a major regulatory action and requires preparation of a statement of energy impact under the provisions of 49 CFR 1106.5(a)(8). Accordingly, applicant must submit the information required by 49 CFR 1106.7(a). Upon submission of such information, an appropriate statement of energy impact will be prepared.

Note.—This republication correctly reflects the full scope of the authority sought and imposes a condition required by 49 CFR 1106.5(a).

Volume No. OP3-043

Decided: October 9, 1980.

By the Commission, Review Board Number 3, Members Parker, Fortier, and Hill.

MC 14935 (Sub-8F), filed September 29, 1980. Applicant: MARTIN'S MOTOR FREIGHT, INC., 620-28 Christian St., Philadelphia, PA 19147. Representative: Alan Kahn, 1430 Land Title Bldg., Philadelphia, PA 19110. Transporting *iron and steel articles,* and *textile bi-products,* between Annapolis and Baltimore, MD, New York, NY, and Philadelphia, PA, on the one hand, and, on the other, New York, NY, points in DE, MD, NJ, DC, and those in PA in and east of Franklin, Perry, Juniata, Mifflin, Centre, Clinton, and Tioga Counties.

MC 32775 (Sub-20F), filed September 29, 1980. Applicant: HERMANN FORWARDING COMPANY, a corporation, P.O. Box 1, North Brunswick, NJ 08902. Representative: Maxwell A. Howell, 1100 Investment Bldg., 1511 K St., NW., Washington, DC 20005. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household good as defined by the Commission, commodities in bulk, and commodities requiring special equipment), between points in Berks, Carbon, Lehigh, Susquehanna, Luzerne, Lebanon, Lackawanna, Monroe, Northampton, York, Dauphin, Lancaster, and Wayne Counties, PA, Suffolk, Oneida, Broome, Oswego, Orange, Rockland, Sullivan, Montgomery, Schoharie, Erie, Herkimer, Putnam, Ulster, Dutchess, Greene, Columbia, Albany, Rensselaer, Schenectday, Monroe and Niagara Counties, NY, Cecil, Harford, Baltimore, Baltimore City, Howard, Montgomery, Anne Arundel and Prince George Counties, MD, those in NJ, DE, and DC.

Note.—Applicant intends to tack this authority with its existing authority.

MC 34564 (Sub-26F), filed September 29, 1980. Applicant: ADOLPH J. DAROSKA, 50 Concord Hill, Pittsfield, NH. Representative: (same as above). Transporting (1) *fertilizer* and (2) *supplies* used in the manufacture of fertilizer, between points in ME and VT, on the one hand, and, on the other, points in NH, MA, RI, CT, VT and ME.

MC 73165 (Sub-526F), filed September 29, 1980. Applicant: EAGLE MOTOR LINES, INC., 830 North 33rd St., Birmingham, AL 35222. Representative: R. Cameron Rollins, P.O. Box 11086, Birmingham, AL 35202. Transporting (1) *heat exchangers* and *heat equalizers,* (2) *air, gas and liquid moving and conditioning equipment,* and (3) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) and (2), between points in Fayette County, KY, on the one hand, and, on the other, points in the U.S. in and east of ND, SD, NE, KS, OK, and TX.

MC 73165 (Sub-527F), filed October 2, 1980. Applicant: EAGLE MOTOR LINES, INC., 830 North 33rd St., Birmingham, AL 35222. Representative: R. Cameron Rollins, P.O. Box 11086, Birmingham, AL 35202. Transporting (1) *commodities,* which because of size or weight require the use of special equipment and (2) *self-propelled articles,* between points in Crittenden County, AR and Shelby County, TN, on the one hand, and, on the other, points in AL, TX, GA, MS, SC, TN and WI.

MC 106074 (Sub-159F), filed September 29, 1980. Applicant: B AND P MOTOR LINES, INC., Shiloh Rd. and U.S. Hwy. 221 S., Forest City, NC 28043. Representative: Clyde W. Carver, P.O. Box 720434, Atlanta, GA 30328. Transporting *kitchen cabinets,* from Nashville, TN to points in CA, NV, AZ, UT, NM, CO, TX, OK, KS, NE, SD, ND, MN, IA, MO, IL, WI, MI, IN, OH, and FL.

MC 116544 (Sub-222F), filed October 1, 1980. Applicant: ALTRUCK FREIGHT SYSTEMS INC., 1703 Embarcadero Rd., Palo Alto, CA 94303. Representative: Richard G. Lougee, P.O. Box 10061, Palo Alto, CA 94303. Transporting *meats, meat products, meat by-products,* and *such commodities* as are dealt in or used by meat packing houses, between points in Fort Morgan County, CO, on the one hand, and, on the other, points in the U.S.

MC 124905 (Sub-5F), filed September 29, 1980. Applicant: GARY W. GRAY, P.O. Box 48, Delaware, NJ 07823. Representative: Joseph A. Keating, Jr., 121 S. Main St., Taylor, PA 18517. Transporting *scrap metal,* from Easton, PA, to Port Newark, Newark, Perth Amboy, Raritan, and Florence, NJ.

MC 126305 (Sub-147F), filed September 29, 1980. Applicant: BOYD BROTHERS TRANSPORTATION CO., INC., RFD 1, Box 18, Clayton, AL 36016. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. Transporting (1) *alcoholic beverages* and (2) *equipment, materials and supplies* used in or in connection with alcoholic beverage, from Schenley, PA, to Jacksonville and Pensacola, FL.

MC 126305 (Sub-148F), filed September 30, 1980. Applicant: BOYD BROTHERS TRANSPORTATION CO., INC., RFD 1, Box 18, Clayton, AL 36016. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. Transporting *metal cans, and closures,* between points in AL, GA, FL, TN, MS, LA, NC, SC, TN, and AR.

MC 126305 (Sub-149F), filed September 30, 1980. Applicant: BOYD BROTHERS TRANSPORTATION CO., INC., RFD 1, Box 18, Clayton, AL 36016. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. Transporting (1) *paper and paper products,* and (2) *parts and supplies* for the commodities in (1), between facilities of Alabama Kraft Company, Division of Georgia Kraft at or near Cottonton, AL, on the one hand, and, on the other, points in that part of the U.S. in and east of ND, SD, NE, KS, OK, and TX.

MC 128294 (Sub-13F), filed September 29, 1980. Applicant: NITEHAWK EXPRESS, INC., 2334 University Avenue, St. Paul, MN 55114. Representative: Joseph J. Dudley, W-1260, First National Bank Bldg., St. Paul, MN 55101. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment), between points in the U.S. (except AK and HI), under continuing contract(s) with Northrup King Co., of Minneapolis, MN.

MC 134085 (Sub-5F), filed September 29, 1980. Applicant: AIM INDUSTRIES, INC., 330 Manhattan Avenue, Jersey City, NJ 07307. Representative: Lawrence S. Burnstein, Suite 2373, One World Trade Center, New York, NY 10048. Transporting *general commodities* (except (a) non inflammable liquids in bulk, in tank vehicles; and (b) automobiles, trucks, chassis, bodies and cabs), between New York, NY, and points in MA, CT, PA and NJ, restricted to traffic having an immediately prior or subsequent movement by water. Condition: To the extent this certificate authorizes the transportation of classes A and B explosives, it shall be limited to a period expiring 5 years from the date of issuance.

MC 134405 (Sub-102F), filed October 2, 1980. Applicant: BACON TRANSPORT

COMPANY, a corporation, P.O. Box 1134, Ardmore, OK 73401. Representative: Wilburn L. Williamson, Suite 615-East, The Oil Center, 2601 Northwest Expressway, Oklahoma City, OK 73112. Transporting *sand*, in bulk, between points in Johnston County, OK, on the one hand, and, on the other, points in AL and ND.

MC 134755 (Sub-126F), filed September 30, 1980. Applicant: CHARTER EXPRESS, INC., P.O. Box 3772, Springfield, MO 65804. Representative: S. Christopher Wilson (same address as applicant). Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in AR, IN, MI, VA, KY, NC, WV, NE, MO, IL, TX, NY, CO, PA, and OH, on the one hand, and, on the other, points in the U.S.

MC 133808 (Sub-59F), filed October 1, 1980. Applicant: LONE STAR CARRIERS, INC., Route 1-Box 48, Tolar, TX 76476. Representative: Don Garrison, P.O. Box 1065, Fayetteville, AR 72701. Transporting *chemicals*, between the facilities of National Starch & Chemical Corporation, at Meredosia, IL, on the one hand, and, on the other, points in the U.S.

MC 147034 (Sub-3F), filed September 29, 1980. Applicant: ALBANESE TRANSPORT, INC., 3537 Apulia Road, Jamesville, NY 13078. Representative: Donald G. Hichman, R.D. #1, Box 7, Union Springs, NY 13160. Transporting (1) *chemicals* (except in bulk), from points in Onondaga County, NY, to points in AR, FL, GA, IL, LA, NJ, PA, TX, and VA; and (2) *materials and supplies* used in the manufacture and distribution of chemicals (except commodities in bulk), in the reverse direction.

MC 148035 (Sub-7F), filed September 29, 1980. Applicant: QUANDT TRANSPORT SERVICE, INC., 2606 North 11th Street, Omaha, NE 68110. Representative: Arlyn L. Westergren, Suite 106, 7101 Mercy Road, Omaha, NE 68106. Transporting *liquid feed and liquid feed ingredients*, between Omaha, NE, on the one hand, and, on the other, points in IA, KS, MN, MO, and SD.

MC 149574 (Sub-1F), filed September 30, 1980. Applicant: PROUD SPIRIT REFRIGERATED EXPRESS, d.b.a. RICHARD R. COURNOYER, 51 Wrentham Rd., Bellingham, MA 02019 Representative: James F. Martin, Jr., 8 W. Morse Rd., Bellingham, MA 02019. Transporting *food and kindred products* as described in Item (20) of the Standard Transportation Commodity Code, from points in Suffolk County, MA, to points in the U.S.

MC 150515F, filed September 26, 1980. Applicant: T.W.C. TRUCKING, INC., 5086 Bangor, Kingsburg, CA 93631. Representative: Edward L. Fanucchi, 2409 Merced St., Suite No. 3, Fresno, CA 93721. Transporting *rough iron and steel castings* (except in bulk), between points in the U.S., under continuing contracts, with North American Foundry, of Fort Smith, AR.

Volume No. OP3–045

Decided: October 9, 1980.

By the Commission, Review Board Number 3, Members Parker, Fortier, and Hill.

MC 134734 (Sub-32F), filed September 9, 1980. Applicant: NATIONAL TRANSPORTATION, INC., 10810 South 144th St., Omaha, NE 68137 Representative: L. N. Fauss, P.O. Box 37096, Omaha, NE 68137. Transporting (1) *such commodities* as are dealt in or used by grocery and food business houses, (except commodities in bulk), between points in the U.S., under continuing contract(s) with General Foods Corporation, of White Plains, NY.

MC 146174 (Sub-9F), filed October 1, 1980. Applicant: PD EXPRESS, INC., 817 West Fifth Ave., Columbus, OH 43212. Representative: David H. Rowe (same address as applicant). Transporting *containers and container ends*, and *materials, equipment, and supplies* used in the manufacture and distribution of shortening and margarine products, from points in OH to points in Kankakee County, IL.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-32667 Filed 10-20-80; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special rule 247 was published in the **Federal Register** on July 3, 1980, at 45 FR 45539.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). Applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service and to comply with the appropriate statutes and Commission regulations. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings:

With the exception of those applications involving duly noted problems (e.gs., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests in the form of verified statements filed on or before December 5, 1980 (or, if the application later becomes unopposed) appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notice that the decision-notice is effective. Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Volume No. OP1–050

Decided: October 10, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce, and Jones.

MC 152040F, filed September 29, 1980. Applicant: JOHN FRANK BETTAZZA and CHERIE MARIE BETTAZZA, P.O. Box 127, Artois, CA 95913. Representative: Lawrence Marquette, P.O. Box 711, Pebble Beach, CA 93953. Transporting *food and other edible products* (including edible byproducts but excluding alcoholic beverages and

drugs) *intended for human consumption, agricultural limestone and other soil conditioners,* and *agricultural fertilizers,* if such transportation is provided with the owner of the motor vehicle in such vehicle, except in emergency situations, between points in the U.S.

MC 149570F, filed September 29, 1980. Applicant: KMD, INC., 18628 72nd Avenue South, Kent, WA 98031. Representative: Rebecca L. Bogard, 2000 IBM Bldg., Seattle, WA 98101. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the United States Government, between points in the U.S.

Volume No. OP1–052

Decided: October 14, 1980

By the Commission Review Board Number 1, Members Carleton, Joyce, and Jones.

MC 142310 (Sub-29F), filed October 7, 1980. Applicant: H. O. WILDING, INC., Box 56, Nelsonville, WI 54458. Representative: Wayne W. Wilson, 150 East Gilman St., Madison, WI 53703. Transporting *general commodities* (except used household goods, hazardous or secretive materials, and sensitive weapons and munitions), for the United States Government, between points in the U.S.

MC 144910 (Sub-17F), filed October 3, 1980. Applicant: TY PRUITT TRUCKING, INC., 6717 Quad Ave., Baltimore, MD 21237. Representative: Chester A. Zyblut, 3666 Executive Bldg., 1030 Fifteenth St., N.W., Washington, DC 20005. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions) for the U.S. Government, between points in U.S.

MC 146360 (Sub-26F), filed September 22, 1980. Applicant: FLOYD SMITH, JR. TRUCKING, INC., P.O. Box 26656, Oklahoma City, OK 73126. Representative: Timothy R. Stivers, P.O. Box 162, Boise, ID 83701. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the U.S. Government, between points in the U.S.

MC 146360 (Sub-27F), filed September 2, 1980. Applicant: FLOYD SMITH, JR. TRUCKING, INC., P.O. Box 26656, Oklahoma City, OK 73126. Representative: Timothy R. Stivers, P.O. Box 162, Boise, ID 83701. Transporting *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S.

MC 152090F, filed October 3, 1980. Applicant: CENTRAL PETROLEUM CORP., 309½ East Nolman, P.O. Box 506, Centralia, IL 62801. Representative: Michael W. O'Hara, 300 Reisch Bldg., Springfield, IL 62701. Transporting *residual oil, crude oil, fuel oil, and waste oil* between points in AR, IA, IL, IN, KS, KY, MO, NE, OK, and WI.

MC 149260 (Sub-1F), filed October 8, 1980. Applicant: ASSOCIATED COURIERS, INC., 35 S. Grady Way, Suite 237, Renton, WA 98055. Representative: George R. LaBissoniere, 15 S. Grady Way, Suite 233, Renton, WA 98055. Transporting *shipments weighing 100 pounds or less,* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S.

Volume No. OP3–040

Decided: October 7, 1980.

By the Commission, review Board Number 2, Members Chandler, Eaton, and Liberman.

MC 2095 (Sub-32F), filed September 26, 1980. Applicant: KEIM TRANSPORTATION, INC., P.O. Box 226, Sabetha, KS 66534. Representative: Clyde N. Christey, Ks Credit Union Bldg., 1010 Tyler, Suite 110L, Topeka, KS 66612. Transporting *general commodities* (except used household goods, hazardous or secret materials and sensitive weapons and munitions), for the United States Government, between points in the U.S.

MC 136295 (Sub-2F), filed September 26, 1980. Applicant: EXPRESSWAY MESSENGER SERVICE, INC., 2424 Maryland Avenue, Baltimore, MD 21218. Representative: Edward N. Button, 580 Northern Ave., Hagerstown, MD 21740. Transporting (1) *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions) for the United States Government, between points in the U.S., and (2) *shipments weighing 100 pounds or less,* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S.

MC 140744 (Sub-17F), filed September 26, 1980. Applicant: ARTIC AIR TRANSPORT, INC., 853 West Main Street, Mondovi, WI 54755. Representative: Wayne W. Wilson, 150 East Gilman Street, Madison, WI 53703. Transporting *general commodities* (except used household goods, hazardous or secretive materials, and sensitive weapons and munitions) for the United States Government, between points in the U.S.

MC 141664 (Sub-1F), filed September 26, 1980. Applicant: RAY HOLLAND, 13101 El Road, Little Rock, AR 72206. Representative: James M. Duckett, 411 Pyramid Life Bldg., Little Rock, AR 72201. Transporting *food and other edible products* (including edible byproducts but excluding alcoholic beverages and drugs) intended for human consumption, *agricultural limestone* and *other soil conditioners,* and *agricultural fertilizers,* if such transportation is provided with the owner of the motor vehicle in such vehicle, except in emergency situations, between points in the U.S.

MC 152044 (Sub-1F), filed September 29, 1980. Applicant: FLOYD JUENGER, INC., 611 South Jefferson Street, Mascoutah, IL 62258. Representative: Douglas G. Brown, The INB Center—Suite 555, One North Old State Capitol Plaza, Springfield, IL 62701. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions) for the U.S. Government, between points in the U.S.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-32668 Filed 10-20-80; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 311]

Expedited Procedures for Recovery of Fuel Costs

Decided: October 15, 1980.

In our recent decisions, a 13-percent surcharge was authorized on all owner-operator traffic, and on all truckload traffic whether or not owner-operators were employed. We ordered that all owner-operators were to receive compensation at this level.

The weekly figures set forth in the appendix for transportation performed by owner-operators and for truckload traffic is 13.2-percent. We are authorizing that the 13-percent surcharge for this traffic remain in effect, and that all owner-operators are to receive compensation at this level.

No change is authorized in the 2.3-percent surcharge on less-than-truckload (LTL) traffic performed by carriers not utilizing owner-operators, the 1.3-percent surcharge for United Parcel Service, nor in the 4.9-percent surcharge authorized for the bus carriers.

The Computer & Business Equipment Manufacturers' Association filed on April 16, 1980, a petition for leave to intervene and a motion for modification of the X–311 procedures. The petition is

granted. The motion is presently being considered.

Notice shall be given to the general public by mailing a copy of this decision to the governor of each State and to the Public Utilities Commissions or Boards of each State having jurisdiction over transportation, by depositing a copy at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., for public inspection and by delivering a copy to the Director, Office of the Federal Register for publication therein.

It is ordered:

This decision shall become effective Friday 12:01 a.m. October 17, 1980.

Division 1, Commissioners Clapp, Gresham, and Alexis. Commissioner Alexis absent and not participating.

Agatha L. Mergenovich,

Secretary.

Appendix—Fuel Surcharge

Base Date and Price Per Gallon (Including Tax): January 1, 1979—63.5 cents.

Date of Current Price Measurement and Price Per Gallon (Including Tax): October 14, 1980—113.1 cents.

Average Percent: Fuel Expenses (Including Taxes) of Total Revenue

(1) From transportation performed by owner-operators (apply to all truckload rated traffic)	(2) Other (including less-than-truckload traffic)	(3) Bus carriers	(4) UPS
16.9%	2.9%	6.3%	3.3%
	Percent Surcharge Developed		
13.2%	2.3%	4.9%	[1] 2.1%
	Percent Surcharge Allowed		
13.0%	2.3%	4.9%	[2] 1.3%

[1] The percentage surcharge developed for UPS is calculated by applying 81 percent of the percentage increase in the current price per gallon over the base price per gallon to UPS average percent of fuel expense to revenue figure as of January 1, 1979 (3.3 percent).

[2] The developed surcharge is reduced 0.8 percent to reflect fuel-related increases already included in UPS rates.

[FR Doc. 80-32671 Filed 10-20-80; 8:45 am]

BILLING CODE 7035-01-M

[AB 179 (SDM)]

Apache Railway Co.; Amended System Diagram Map

Notice is hereby given that, pursuant to the requirements contained in Title 49 of the Code of Federal Regulations, Part 1121.23, that the The Apache Railway Company has filed with the Commission its amended color-coded system diagram map in docket No. AB 179 (SDM). The Commission on October 8, 1980, received a certificate of publication as required by said regulation which is considered the effect date on which the system diagram map was filed.

Color-coded copies of the map have been served on the Governor of each State in which the railroad operates and the Public Service Commission or similar agency and the State designated agency. Copies of the map may also be requested from the railroad at a nominal charge. The maps also may be examined at the office of the Commission, Section of Dockets, by requesting docket No. AB 179 (SDM).

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-32670 Filed 10-20-80; 8:45 am]

BILLING CODE 7035-01-M

[AB 182 (SDM)]

Youngstown & Northern Railroad Co.; Amended System Diagram Map

Notice is hereby given that, pursuant to the requirements contained in Title 49 of the Code of Federal Regulations, Part 1121.23, that the Youngstown & Northern Railroad Company has filed with the Commission its amended color-coded system diagram map in docket No. AB 182 (SDM). The Commission on October 1, 1980, received a certificate of publication as required by said regulation which is considered the effective date on which the system diagram map was filed.

Color-coded copies of the map have been served on the Governor of each state in which the railroad operates and the Public Service Commission or similar agency and the State designated agency. Copies of the map may also be requested from the railroad at a nominal charge. The maps also may be examined at the office of the Commission, Section of Dockets, by requesting docket No. AB 182 (SDM).

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-32669 Filed 10-20-80; 8:45 am]

BILLING CODE 7035-01-M

INTERNATIONAL JOINT COMMISSION, UNITED STATES AND CANADA

Phosphorus Management for the Great Lakes; Public Hearings

The International Joint Commission will conduct public hearings at the times and places noted below to obtain the public's views on phosphorus management questions in light of the task force report titled, "Phosphorus Management for the Great Lakes". The report was prepared for the IJC's Great Lakes Science Advisory Board and the Great Lakes Water Quality Board.

At the request of Governments, this special report has been forwarded to the Governments of Canada and the United States without review or comment from the Commission or its Boards. These Boards will be commenting on the report for the International Joint Commission and the Commission also wishes to hear the views of the public before reporting to the Governments on the question of phosphorus management in the Great Lakes Basin. Governments are presently involved in discussions preparatory to establishing load allaocations and compliance schedules for phosphorus as called for in the Great Lakes Water Quality Agreement signed by Canada and the United States.

When the IJC reported to Governments in 1979 on the subject of Pollution of the Great Lakes From Land Use Activities, it indicated that additional recommendations concerning phosphorus would be provided upon completion of the special task force report. Now that the report is available, the International Joint Commission is following its usual practice of seeking the public's views before reporting to Governments.

Copies of the task force report may be obtained without charge from the IJC Regional Office at 100 Ouellete Avenue, Windsor, Ontario N9A 6T3. Many libraries and municipal offices throughout the Great Lakes Basin also have copies for reference.

The hearings are international in nature and citizens of the United States and Canada may participate at both hearings. If a written statement will take longer than ten (10) minutes to present, a summary statement should be given and the full statement submitted for the record. When a written statement is presented, extra copies should be provided, if possible, for distribution to the news media and for Commission purposes. Those unable to attend may also mail written submissions to the Commission offices in Ottawa or Washington and these will become part of the record.

Times and Places of Hearings

November 19: 2–4 p.m.; 7–9 p.m., Cleary Auditorium, Windsor, Ontario.

November 20: 2–4 p.m.; 7–9 p.m., Embassy Room, Buffalo Statler Hotel, Buffalo, New York.

David A. LaRoche,

Secretary, U.S. Section.

October 9, 1980.

[FR Doc. 80-32568 Filed 10-20-80; 8:45 am]

BILLING CODE 4710-14-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[Docket No. M-80-136-C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Consol Plaza, Pittsburg, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations) to its Robinson Run No. 95 Mine located in Harrison County, West Virginia, in accordance with section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. Rectifiers are located along an older haulage that is congested with major falls and severe water problems.

2. The haulage is ventilated with intake air, and there are no effective return airways in the immediate vicinity.

3. The intake air passing the rectifiers does not go directly to an active working section.

4. As an alternative to the application of 30 CFR 75.1105, the petitioner proposes to:

a. House the rectifier in a fire-proof building,

b. Install an automatic fire suppression device in the rectifier station. The device would be activated by sensors over the rectifier,

c. Install an automatic closing steel door. The door closure device would be activated by a heat sensor.

d. Prohibit storage of oil and other combustible material in the rectifier station,

e. Comply with all other requirements for underground electrical circuits, and

f. Conduct inspections of the facility according to the Federal Mine Safety and Health Act of 1977.

5. The petitioner alleges that the proposed alternative to application of 30 CFR 75.1105 will at all times guarantee no less than the same measure of protection as would be provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments on or before November 20, 1980. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: Octoberr 10, 1980.

Frank A. White,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 80-32734 Filed 10-20-80; 8:45 am]

BILLING CODE 4510-43-M

Office of the Secretary

[TA-W-10,512]

Acme Carbide Die, Inc.; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on September 2, 1980 in response to a worker petition received on August 19, 1980 which was filed on behalf of workers and former workers producing carbide cold forming dies at Acme Carbide Die, Incorporated, Melvindale, Michigan.

On August 13, 1980, a petition was filed on behalf of the same group of workers (TA-W-10,351).

Since the identical group of workers is the subject of the ongoing investigation TA-W-10,351, a new investigation would serve no purpose. Consequently, this investigation has been terminated.

Signed at Washington, D.C. this 10th day of October 1980.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 80-32728 Filed 10-20-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-9334]

D'Alonzo-Lancaster, Inc.; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on July 14, 1980 in response to a worker petition received on July 1, 1980 which was filed on behalf of workers at the D'Alonzo-Lancaster, Incorporated, Philadelphia, Pennsylvania. The workers produce men's custom tailored clothing.

In a letter dated September 8, 1980, the manager of the Almagamated Clothing and Textile Workers Union/ Philadelphia Joint Board requested withdrawal of the petition. The petitioner concurred with this request for withdrawal of the petition. On the basis of this withdrawal, continuing the investigation would serve no purpose. Consequently, the investigation has been terminated.

Signed at Washington, D.C. this 10th day of October 1980.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 80-32729 Filed 10-20-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-7665]

Dana Corp., Negative Determination Regarding Application for Reconsideration

By an application dated July 21, 1980, the petitioner requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance in the case of former workers producing light truck frames at Dana Corporation's Ecorse, Michigan plant. The determination was published in the Federal Register on June 27, 1980, (45 FR 43488).

Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justifies reconsideration of the decision.

The petitioner claims that Dana Corporation's Ecorse, Michigan plant is to be closed permanently with its production of light truck frames being shifted to Dana's Canadian subsidiaries for shipment back into the U.S. It is also claimed that significant amounts of frames have been imported back into the U.S. from Canadian facilities.

The Department's review showed that the workers at Dana's Ecorse, Michigan plant did not meet the "contributed importantly" test of the Trade Act of 1974. The only customer of the Ecorse plant indicated decreased purchases of imported truck frames in the first four months of model year (MY) 1980 compared to the same period of MY 1979. This customer's only foreign source of light truck frames is the Dana-Hayes plant in Ontario which showed production declines of light truck frames in calendar year 1979 compared to 1978 and in the first four months of 1980 compared to the same period in 1979. Dana has no other foreign plants which produce light truck frames.

The Department notes that Dana's Ecorse, Michigan plant closed on June 4, 1980 and that the production from one of

its three lines of light truck frames was shifted to another domestic facility of Dana. Production from the other two lines was stopped because of a lack of orders. Production swings at Dana's Ecorse plant and the Dana-Hayes plant in Canada have generally run in tandem over the past 16 months reflecting the light truck market as both plants showed production declines in 1979 compared to 1978 and in the first four months of 1980 compared to the same period in 1979. Production of light trucks in the U.S. declined in 1979 compared to 1978 and in the first four months of 1980 compared to the same period in 1979.

The Department did not find increased amounts of light truck frames being imported into the U.S. from Canada which contributed importantly to the decline in employment and production or sales at the Dana Corporation's Ecorse, Michigan plant.

Conclusion

After review of the application and the investigative file, I conclude that there has been no error or misinterpretation of fact or misinterpretation of the law which would justify reconsideration of the Department of Labor's prior decision. The application is, therefore, denied.

Signed at Washington, D.C., this 8th day of October 1980.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 80-32725 Filed 10-20-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-9026; 9246-48; 9250-51; 9253; 10,733; 10,735; 10,743-44; 10,748; 10,757; 10,761; 10,763; 10,766; 10,771-72; 10,775; 10,778; 10,781; 10,797; 10,799; 10,801-14; 10,818-44; 10,846-48]

General Motors Corp.; Certifications Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met. It is determined in this case that all of the requirements have been met.

Investigations were initiated on June 30, July 14 and September 15, 1980 in response to petitions which were filed on behalf of workers at the support facilities of General Motors Corporation listed in the Appendix.

Since workers at these facilities did not produce an article within the meaning of Section 222(3) of the Trade Act, they may be certified only if their separation was importantly caused by a reduced demand for their services from a firm which produces an article and which is related to the service workers' firm by ownership or by a substantial degree of proprietary control, or if the workers are determined to be *de facto* (according to the facts of the case) employees of the producing firm. In addition, the reduction in demand for their services must be determined to have originated at a production facility whose workers independently meet the statutory criteria for certification, and that reduction must directly relate to the product adversely affected by increased imports.

The Department has determined that increased imports contributed importantly to the decline in sales or production and to total or partial separations of workers at 19 of General Motors Corporation's car and truck assembly plants (TA-W-6783, 6917, 6999-7000, 7009, 7015-16, 7059, 7071, 7073-76, 7078-82, 8613). Workers at these plants are engaged in production of one or more of the following car or truck lines: mid-size, standard and luxury/specialty cars, pick-up trucks, vans, and general utility vehicles. The Department also certified workers at 68 GM component parts plants and support facilities as eligible for trade adjustment assistance (TA-W-6705, 6877, 7001-04, 7004A, 7005, 7007-08, 7010-14, 7018-19, 7021-24, 7026-33, 7035-41, 7044-46, 7048-50, 7052-53, 7055-57, 7065-68, 7070, 7305, 7603, 7782, 8017, 8105-07, 8572, 8581, 8609-12, 8614, 9249 and 9252).

During the course of the investigation, it was established that the facilities listed in the appendix perform activities which primarily support the sales and production of GM vehicles which have been subject to import injury. Therefore, each of these facilities is substantially integrated into the production of trade-impacted GM car and trucks lines.

Because U.S. auto manufacturers redesigned most of their automobiles and/or introduced completely new models from MY 1979 to MY 1981, the composition and distinguishable feature of each market class of vehicles has changed substantially. As a result, the continuation of the recent impact of import competition that existed in MY 1979 and 1980 may not continue in MY 1981.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with mid-size, standard and luxury/specialty automobiles, vans, utility vehicles and pick-up trucks produced at final assembly plants of General Motors Corporation contributed importantly to the decline in sales or production and to the total or partial separation of workers at the support facilities listed in the appendix. In accordance with the provisions of the Act, I make the following certification:

All workers of the support facilities of General Motors Corporation listed in the appendix who became totally or partially separated from employment on or after the impact date listed in the Appendix and before November 1, 1980 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 10th day of October 1980.

James F. Taylor,

Director, Office of Management Administration and Planning.

Appendix

General Motors Corp.

TA-W-	Facility and location	Impact date
9,026	Central office, Warren, MI	May 1, 1980.
9,246	Chevrolet Motor Division, central office, Warren, MI.	Feb. 1, 1980.
9,247	GM Assembly Division, central office, Westland, MI.	Do.
9,248	GM Assembly Division, central office, Warren, MI.	Do.
9,250	Central office, New York, NY	Do.
9,251	Central office, Detroit, MI	Jan. 1, 1980.
9,253	Chevrolet Motor Division, commercial accounting center, Warren, MI.	May 1, 1980.
10,733	GM proving grounds, Mesa, AR	June 1, 1980.
10,735	Central office, Los Angeles, CA	July 1, 1980.
10,743	Central office, Denver, CO	Do.
10,744	Central office, Washington, DC	June 1, 1980.
10,748	Central office, Chicago, IL	July 1, 1980.
10,757	Central office, Flint, MI	Do.
10,761	GM proving grounds, Milford, MI	June 1, 1980.
10,763	Central office, Livonia, MI	July 1, 1980.
10,766	Central office, St. Louis, MO	Do.
10,771	Central office, Union, NJ	Do.
10,772	Central office, Moorestown, NJ	Do.
10,775	Central office, Tarrytown, NY	Do.
10,778	Central office, Cincinnati, OH	Do.
10,781	Central office, Dayton, OH	Do.
10,797	Central office, Fairfax, VA	Do.
10,799	Central office, Milwaukee, WI	Do.
10,801	Central office, Detroit, MI	Feb. 1, 1980.
10,802	Regional sales office, Detroit, MI	May 1, 1980.
10,803	Zone and regional offices, Atlanta, GA.	Apr. 1, 1980.
10,804	Zone and regional offices, Tarrytown, NY.	Do.
10,805	Zone and regional offices, Sharonville, OH.	Do.
10,806	Zone and regional offices, Irving, TX.	Jan. 1, 1980.
10,807	Zone and regional offices, Fremont, CA.	July 1, 1979.
10,808	Zone and regional offices, Oakbrook, IL.	Mar. 1, 1980.
10,809	Zone and regional offices, Rockville, MD.	Apr. 1, 1980.
10,810	Zone sales office, Homewood, AL	May 1, 1980.
10,811	Zone sales office, Tempe, AZ	June 1, 1980.
10,812	Zone sales office, Santa Monica, CA.	Apr. 1, 1980.
10,813	Zone sales office, San Diego, CA	Aug. 1, 1979.

General Motors Corp.—Continued

TA-W-	Facility and location	Impact date
10,814	Zone sales office, Denver, CO	Oct. 1, 1979.
10,818	Zone sales office, Indianapolis, IN	Do.
10,819	Zone sales office, Des Moines, IA	May 1, 1980.
10,820	Regional sales office, Overland Park, KS.	Oct. 1, 1979.
10,821	Zone sales office, Lenexa, KS	Do.
10,822	Zone sales office, Louisville, KY	Sept. 1, 1979.
10,823	Zone sales office, Metairie, LA	Apr. 1, 1980.
10,824	Zone sales office, Westwood, MA	May 1, 1980.
10,825	Zone sales office, Southfield, MI	Do.
10,826	Zone sales office, Grand Blanc, MI	Sept. 1, 1979.
10,827	Zone sales office, Edina, MN	June 1, 1980.
10,828	Zone sales office, Maryland Heights, MO.	Do.
10,829	Zone sales office, Omaha, NE	May 1, 1980.
10,830	Zone sales office, Parsippany, NJ	May 1, 1980.
10,831	Zone sales office, Bethpage, Long Island, NY.	June 1, 1980.
10,832	Zone sales office, Syracuse, NY	Sept. 1, 1979.
10,833	Zone sales office, Cheektowaga, NY.	Apr. 1, 1980.
10,834	Zone sales office, Charlotte, NC	Do.
10,835	Zone sales office, Fargo, ND	May 1, 1980.
10,836	Zone sales office, Parma, OH	Do.
10,837	Zone sales office, Oklahoma City, OK.	June 1, 1980.
10,838	Zone sales office, Beaverton, OR	Sept. 1, 1979.
10,839	Zone sales office, Carnegie, PA	June 1, 1980.
10,840	Zone sales office, Wormleysburg, PA.	Do.
10,841	Zone sales office, King of Prussia, PA.	May 1, 1980.
10,842	Zone sales office, Memphis, TN	Sept. 1, 1979.
10,843	Zone sales office, Houston, TX	May 1, 1980.
10,844	Zone sales office, Salt Lake City, UT.	Oct. 1, 1979.
10,846	Zone sales office, Bellevue, WA	Sept. 1, 1979.
10,847	Zone sales office, Charleston, WV	Do.
10,848	Zone sales office, Brookfield, WI	Oct. 1, 1979.

[FR Doc. 80-32726 Filed 10-20-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-10,734; 10,736-42; 10,745-47; 10,749-56; 10,758-60; 10,762; 10,764-65; 10,767-70; 10,773-74; 10,776-77; 10,779-80; 10,782-96; 10,798; 10,800; 10,815-17; 10,845]

General Motors Corp.; Negative Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated.

(2) that sales or production, or both, of the firm or subdivision have decreased absolutely.

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The investigation was initiated on September 15, 1980 in response to a petition which was filed on behalf of workers at the support facilities of General Motors Corporation listed in the appendix.

The investigation revealed that criterion (1) has not been met.

Evidence developed during the course of the investigation revealed that significant total or partial separations did not occur at the 56 facilities listed in the appendix.

Fifty-one of these are GM Central Office locations which did not experience layoffs in 1980 through June. No layoffs are scheduled for these locations in the foreseeable future.

The remaining 5 facilities (TA-W-10,800; 10,815-17; 10,845) are part of the Chevrolet Motor Division. Average employment at each of these facilities either increased or remained the same during the first 10 months of MY 1980 compared with the same MY 1979 period. Employment was virtually unchanged at each facility through the first 10 months of MY 1980. None of these facilities anticipate layoffs in the foreseeable future.

Conclusion

After careful review, I determine that all workers of the support facilities of General Motors Corporation listed in the appendix are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 10th day of October 1980.

James F. Taylor,

Director, Office of Management, Administration and Planning.

[FR Doc. 80-32727 Filed 10-20-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-8432]

Standard Metals Co., Inc.; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on June 2, 1980 in response to a worker petition received on May 12, 1980 which was filed on behalf of workers of Standard Metals Company, Incorporated, Junction City, Kentucky. Workers at the firm produce coal processing machinery.

The petitioner requested withdrawal of the petition in a letter dated September 26, 1980. On the basis of the withdrawal, continuing the investigation would serve no purpose. Consequently the investigation has been terminated.

Signed at Washington, D.C., this 10th day of October 1980.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 80-32730 Filed 10-20-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-10,377]

Tela Tool Corp.; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on August 25, 1980 in response to a worker petition received on August 15, 1980 which was filed by the United Auto Workers, Local 157 on behalf of workers and former workers producing automobile machine tooling at Tela Tool Corporation, Romulus, Michigan.

In a letter dated September 2, 1980, the petitioner requested withdrawal of the petition. On the basis of the withdrawal, continuing the investigation would serve no purpose. Consequently, the investigation has been terminated.

Signed at Washington, D.C. this 10th day of October 1980.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 80-32731 Filed 10-20-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-10,592]

Whittaker Corp., Steel Strip Division, Sherwood Avenue Plant; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on September 5, 1980, in response to a worker petition received on August 19, 1980, which was filed on behalf of workers and former workers of the Whittaker Corporation; Steel Strip Division; Sherwood Avenue plant; Detroit, Michigan.

On May 2, 1980, a petition was filed on behalf of the same group of workers (TA-W-8124).

Since the identical group of workers is the subject of the ongoing investigation (TA-W-8124) a new investigation would serve no purpose. Consequently, the investigation has been terminated.

Signed at Washington, D.C., this 10th day of October 1980.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 80-32732 Filed 10-20-80; 8:45 am]

BILLING CODE 4510-28-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (80-70)]

NASA Advisory Council (NAC), Informal Ad Hoc Solar System Exploration Committee; Meeting

The NASA Advisory Council's Informal *Ad Hoc* Solar System Exploration Committee will meet on November 10, 1980, in the Board of Trustee's Room in the Millikan Library, at the California Institute of Technology, Pasadena, California 91125. All sessions will be open to the public up to the seating capacity of the room employed. The meeting room to be used seats 32 persons, including committee members and invited meeting participants. Visitors will be requested to sign a visitor's register.

The Informal *Ad Hoc* Solar System Exploration Committee was established under the NASA Advisory Council to translate the scientific strategy developed by the Committee on Planetary Exploration (Complex) into a realistic, technically sound sequence of missions consistent with that strategy and with resources expected to be available for solar system exploration. The committee will report its findings to the Council and to NASA. The chairperson of the committee is Dr. John E. Naugle, and the committee is composed of four other members of the Council and its standing committees, who will meet with about 9 other invited participants and certain NASA personnel. The agenda for this meeting is given below. For further information, please contact Mrs. Diane M. Mangel, National Aeronautics and Space Administration, Washington, DC 20546 (202/755-3728).

Agenda

8:30 a.m.–10:30 a.m.: Introduction
10:30 a.m.–12:00 noon: Planning Status
1:00 p.m.–4:00 p.m.: Alternate Planning
4:00 p.m.–5:00 p.m.: Summary

Russell Ritchie,

Deputy Associate Administrator for External Relations.

October 15, 1980.

[FR Doc. 80-32621 Filed 10-20-80; 8:45 am]

BILLING CODE 7510-01-M

[Notice (80-69)]

NASA Advisory Council (NAC) Space and Terrestrial Applications Advisory Committee (STAAC); Meeting Cancellation

The scheduled meeting on October 23 and 24, 1980, of the Ad Hoc Informal Advisory Subcommittee on Weather, Climate and Oceans, published in the **Federal Register** on October 7, 1980, (45 FR 66534), has been cancelled. The meeting may be rescheduled in late November.

For further information regarding the meeting, please contact Mr. William Bishop, Deputy Director, Environmental Observations Division, National Aeronautics and Space Administration, Washington, DC 20546 (202/755-8604).

Frank J. Simokaitis,

Acting Associate Administrator for External Relations.

October 15, 1980.

[FR Doc. 80-32622 Filed 10-20-80; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

Museum Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Museum Panel to the National Council on the Arts will be held November 2, 1980 at the San Francisco Hilton California Room from 1:00 p.m.–4:00 p.m. and November 3, 1980, at the San Francisco Museum of Modern Art from 9:00 a.m.–5:00 p.m.

A portion of this meeting will be open to the public on November 2, 1980 from 1:00 p.m.–4:00 p.m. for the discussion of a joint meeting with the Western Association of Art Museums and the Western Regional Conference of the AAM.

The remaining sessions of this meeting on November 3, 1980, from 9:00 a.m.–5:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these session will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634-6070.

Dated: October 8, 1980.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 80-32707 Filed 10-20-80; 8:45 am]

BILLING CODE 7537-01-M

Music Panel (Chorus Section); Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music Panel (Chorus Section) to the National Council on the Arts will be held November 5–8, 1980, from 9:00 a.m. to 5:30 p.m. and November 5, 1980, from 9:00 a.m. to 11:30 a.m. in room 1426, Columbia Plaza Office Complex, 2401 E Street N.W., Washington, D.C.

A portion of this meeting will be open to the public on November 5–8, 1980 from 9:00 a.m. to 5:30 p.m. for the Discussion of National Choral Festival.

The remaining sessions of this meeting on November 5, 1980, from 9:00 a.m. to 11:30 a.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634-6070.

Dated: October 8, 1980.

John H. Clark,

Director, Office of Council and Panel Operation, National Endowment for the Arts.

[FR Doc. 80-32709 Filed 10-20-80; 8:45 am]

BILLING CODE 7537-01-M

Music Panel (Orchestra Section); Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music Panel (Orchestra Section) to the National Council on the Arts will be held November 17–19, 1980 from 9:00 a.m. to 5:30 p.m. and November 20, 1980 from 9:00 a.m. to 3:30 p.m., in room 1426,

Columbia Plaza Office Complex, 2401 E St., N.W., Washington, D.C. 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b, of Title United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634–6070.

Dated: October 8, 1980.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 80-32708 Filed 10-20-80; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Permit Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit issued under the Antarctic Conservation Act of 1978, Pub. L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice of permits issued.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers, Permit Office, Division of Polar Programs, National Science Foundation, Washington, D.C. 20550. Telephone (202) 357–7934.

SUPPLEMENTARY INFORMATION: On August 29, 1980, the National Science Foundation published a notice in the **Federal Register**, page 57800 of permit applications received. On October 2, 1980 a permit was issued to Donald B. Siniff.

Charles E. Myers,

Permit Office, Division of Polar Programs.

[FR Doc. 80-32706 Filed 10-20-80; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Applications for Licenses To Export/Import; Nuclear Facilities or Materials

Pursuant to 10 CFR 110.70(b) "Public Notice of Receipt of an Application", please take notice that the Nuclear Regulatory Commission has received the following application(s) for export/import licenses. A copy of each application is on file in the Nuclear Regulatory Commission's Public Document Room located at 1717 H St., N.W., Washington, D.C.

A request for a hearing or a petition for leave to intervene may be filed by November 20, 1980. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, the Secretary, U.S. Nuclear Regulatory Commission and the Executive Secretary, Department of State, Washington, D.C. 20520.

In its review of applications for license to export production or utilization facilities, special nuclear material or source material, noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the facility or material to be exported.

Dated this day October 7, 1980 at Bethesda, Maryland.

For the Nuclear Regulatory Commission.

James R. Shea,

Director, Office of International Programs.

Name of applicant, date of application, date received, application number	Material type	Material in kilograms		End-use	Country of destination
		Total element	Total isotope		
Transnuclear, 08/25/80, 08/26/80, XSNMO1721	45.4% enriched uranium	7.508	3.409	Will be used as fuel in FRM Reactor at Garching.	West Germany.
Transnuclear, 09/08/80, 09/09/80, XSNMO1725	93.3% enriched uranium	4.371	4.078	Fuel for the ASTRA Reactor	Austria.
Transnuclear, 09/08/80, 09/09/80, XSNMO1726	19.95% enriched uranium	33.000	6.584	Fuel for the ASTRA Reactor	Austria.
Mitsui & Co., 09/05/80, 09/09/80, XSNMO1730	3.95% enriched uranium	22,475	626	Routine reload for Hamaoka Unit 2.	Japan.
General Electric, 09/04/80, 09/10/80, XSNMO1731	3.1% enriched uranium	9,675	265	Routine reload for Tsuruga	Japan.
Mitsubishi Int'l, 09/12/80, 09/17/80, XSNMO1734	2.85% enriched uranium	11,823	337	Routine reload for Takahama Unit 1.	Japan.
Mitsubishi Int'l, 09/12/80, 09/17/80, XSNMO1735	3.25% enriched uranium	15,141	493	Routine reload for Ohi Unit 2	Japan.
Nissho-Iwai America, 09/15/80, 09/22/80, XSNMO1736	12.18% enriched uranium	456.138	55.558	Fuel for JOYO Fast Breeder Reactor.	Japan.
Mitsubishi Int'l, 09/19/80, 09/26/80, XSNMO1738	2.0% enriched uranium	14,613	359	Routine reload fuel for Mihama Unit 1.	Japan.
Edlow Int'l, 09/24/80, 09/25/80, XSNMO1740	2.71% enriched uranium	19,858.8	487.3	Routine reload for Tarapur	India.
Edlow Int'l, 09/02/80, 09/03/80, XUO8508	Natural uranium	117,319		For storage purposes only for ultimate use in the Grohnde Reactor.	West Germany.

[FR Doc. 80-32644 Filed 10-20-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50–155 and 50–255]

Consumers Power Co.; Issuance of Amendments To Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 35 to Facility Operating License No. DPR–6 for the Big Rock Point Nuclear Plant and Amendment No. 61 to Provisional Operating License No. DPR–20 for the Palisades Plant to Consumers Power Company (the licensee). The Big Rock Point Plant is located in Charlevoix County, Michigan and the Palisades Plant is located in Van Buren County, Michigan. The amendments are effective

as of the date of issuance and are to be fully implemented within 30 days of Commisson approval in accordance with the provisions of 10 CFR 73.40(b).

The amendments and license conditions to include the Commission-approved Safeguards Contingency Plan as part of the licenses.

The licensee's filing complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of the amendments.

The licensee's filing dated July 11, 1980 (transmitted by letter dated July 24, 1980) is being withheld from public disclosure pursuant to 10 CFR 2.790(d). The withheld information is subject to disclosure in accordance with the provisions of 10 CFR 9.12.

For further details with respect to this action, see (1) Amendment Nos. 35 and 61 to License Nos. DPR–6 and DPR–20, respectively, and (2) the Commission's related letter to the licensee dated October 1, 1980. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the Charlevoix Public Library, 107 Clinton Street, Charlevoix, Michigan 49720 (Big Rock Point) and at the Kalamazoo Public Library, 315 South Rose Street, Kalamazoo, Mighigan 49006 (Palisades Plant). A copy of items (1) and (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C., 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this first day of October, 1980.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Chief, Operating Reactors Branch No. 5, Division of Licensing.

[FR Doc. 80-32637 Filed 10-20-80; 8:45 am]

BILLING CODE 7590-01-M

[Dockets Nos. 50-269, 50-270 and 50-287]

Duke Power Co., Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendments Nos. 87, 87 and 84 to Facility Operating Licenses Nos. DPR–38, DPR–47 and DPR–55, respectively, issued to Duke Power Company, which revised the Technical Specifications for operation of the Oconee Nuclear Station, Units Nos. 1, 2 and 3, located in Oconee County, South Carolina. The amendments are effective as of the date of issuance.

These amendments revise the Station's Common Technical Specifications as applicable only to Oconee Units 2 and 3 by modifying the reactor vessel pressure-temperature operating limit curves to enable the extension of reactor vessel operation for 4 to 5 effective full power years.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with the issuance of these amendments.

For further details with respect to this action, see (1) the application for amendments dated July 22, 1980, (2) Amendments Nos. 87, 87, and 84 to Licenses Nos. DPR–38, DPR–47 and DPR–55, respectively, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Oconee County Library, 201 South Spring Street, Walhalla, South Carolina. A copy of items (2) and (3) may be obained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 7th day of October 1980.

For the Nuclear Regulatory Commission.

Robert W. Reid,

Chief, Operating Reactors Branch No. 4, Division of Licensing.

[FR Doc. 80-32641 Filed 10-20-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-498A, 50-499A and 50-445A, 50-446A]

Houston Lighting & Power Co., et al. (south Texas Project, Units 1 and 2) and Texas Utilities Generating Co., et al. (Comanche Peak Steam Electric Station, Units 1 and 2); Special Prehearing Conference

October 14, 1980.

Please take notice that a special prehearing conference will be held in this consolidated proceeding on Thursday, October 23, 1980, commencing at 10:00 a.m., local time, at the Nuclear Regulatory Commission Hearing Room, located at 4350 East-West Highway, 5th Floor, Bethesda, Maryland 20014.

This conference will consider all pending motions, requests suggestions, reports and the like, including without limitations thereto all aspects of proposed settlements or stipulations, conditions and comments on negotiated agreements; and adequacy under prior orders of trials briefs, lists of witnesses and exhibits, and summaries of testimony. No further responsive statements or briefs will be required of the parties until after these matters have been considered and ruled on by the Board at or after the prehearing conference.

Dated at Bethesda, Maryland, this 14th day of October 1980.

It is so ordered.

For the Atomic Safety and Licensing Board.

Marshall E. Miller,

Chairman.

[FR Doc. 80-32639 Filed 10-20-80; 8:45 am]

BILLING CODE 7590-01-M

[Byproduct Material License No. 48-04585-01]

Lakeview Hospital; Rescission of Suspension Order and Confirmatory Order To Modify License

I

Lakeview Hospital, 10010 West Blue Mound Road, Wauwatosa, Wisconsin (the "licensee") is the holder of Byproduct Material License No. 48–04585–01 (the "licensee") issued by the Nuclear Regulatory Commission (the "Commission"), the license authorizes the possession of byproduct material and is use for medical diagnostic

purposes. The license was originally issued on January 19, 1959 and has been amended periodically since. The expiration date of the license is January 31, 1985.

II

In response to an allegation of improper use of radiactive materials at Lakeview Hospital, an investigation was conducted into the Licensee's activities by representatives of the NRC Region III office (Glenn Ellyn, Illinois) on August 1, 6 and 7, 1980. The investigation showed the existence of a number of apparent items of noncompliance. This finding resulted in the issuance to the licensee on August 11, 1980 of an Order Suspending License, effective immediately, and an Order to Show Cause why the license should not be revoked.

III

By letter dated September 4, 1980 the licensee responded to the Order to Show Cause and Order Suspending License. In the September 4, 1980 response, the licensee denied four of the apparent items of noncompliance set forth in Section II of that Order, admitted the remaining items, and provided a description of corrective actions to achieve greater control over licensed activities. The NRC's response to the specific items of noncompliance which were denied by the licensee have been addressed elsewhere (See Enclosure 1 to letter from V. Stello to Lakeview Hospital dated October 8, 1980.) However, even in areas where the licensee denied the specific items of noncompliance, corrective action was proposed to assure that similar noncompliance would not occur in the future.

IV

After a careful review of the licensee's September 4, 1980 resonse, it was determined that further clarification was needed on the controls to be instituted by the licensee to assure that licensed activities will be performed safely and in accordance with regulatory requirements. Accordingly, on September 12, 1980, members of the NRC Region III staff met with licensee representatives at the NRC Region III office in Glen Ellyn, Illinois. Subsequent to the meeting, the licensee provided supplemental information on September 16, 1980 proposing additional corrective measures. The proposed corrective measures as supplemented appear to be adequate to assure sufficient management control of the licensee's byproduct materials program. Based on the licensee's implementation of this corrective action, as required by this Order, the Order Suspending License, dated August 11, 1980, is hereby rescinded.

V

As noted above, the licensee has proposed certain measures as corrective actions in response to the noncompliance alleged in the August 11, 1980 Order. In view of the seriousness of the circumstances surrounding this matter, it is appropriate to confirm the licensee's commitments by order. Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Part 2, 20, 30 and 35, License No. 48-04585-01 is hereby modified, effective immediately, to include, as conditions thereof, the statements, representations, and procedures contained in the letters submitted to the NRC dated September 4, and September 16, 1980.

VI

Any person who has an interest affected by the license modifications ordered in Section V above may request a hearing within twenty-five (25) days of the date of this Order. Any request for a hearing will not stay the effectiveness of this Order. any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, with a copy to the Executive Legal Director at the same address. A request for a hearing should describe specifically the nature of the petitioner's interest and the manner in which the petitioner's interest is affected by the ordered license modifications. If a hearing is requested by a person who has an interest affected by the license modifications, the Commission will issue an order designating the time and place of any such hearing.

If a hearing is held, the issue to be considered at such a hearing shall be whether the licensee should be modified to include the conditions set forth in section V of this Order.

Activities under the license on terms consistent with this Order are not stayed by the pendency of any proceeding on the Order.

Effective Date: October 8, 1980, Bethesda, Maryland.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Director, Office of Inspection and Enforcement.

[FR Doc. 80-32646 Filed 10-20-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-311]

Public Service Electric & Gas Co., Philadelphia Electric Co., Delmarva Power & Light Co., and Atlantic City Electric Co.; Issuance of Amendment To License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 3 to License No. DPR-75, issued to Public Service Electric and Gas Company, Philadelphia Electric Company, Delmarva Power and Light Company and Atlantic City Electric Company (the licensees), which revised Technical Specifications for operation of the Salem Nuclear Generating Station, Unit No. 2 (the facility) located in Salem County, New Jersey. The amendment is effective as of the date of issuance.

The amendment deletes the requirement for Public Service Electric and Gas Company to plug certain tubes in the steam generators prior to exceeding 5 percent power, approves an organizational change to establish a new Radiation Protection Department, and revises the Technical Specification concerning High Radiation Area.

The applications for the amendment comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since this amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the two letters of application for amendment both dated August 22, 1980, (2) Amendment No. 3 to License No. DPR-75, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Salem Free Public Library, 112 West Broadway, Salem, New Jersey. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 10th day of October, 1980.

For the Nuclear Regulatory Commission.

B. C. Buckley,

Acting Chief Licensing Branch No. 3, Division of Licensing.

[FR Doc. 80-32642 Filed 10-20-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-327; DD-80-31]

Tennessee Valley Authority (Sequoyah Nuclear Plant, Unit 1); Director's Decision

October 8, 1980.

By petition dated May 29, 1980, "The Nuclear Regulatory Commission" (TNRC, a five-member musical group) requested that the Nuclear Regulatory Commission (NRC) revoke the license issued to conduct the low power test program at the Sequoyah facility in order to protect the public health and safety. The petition also requested such other action as may be proper. This request has been considered under the provisions of 10 CFR 2.206 of the Commission's requlations. Notice of receipt of the petition was published in the **Federal Register** on July 3, 1980 (45 FR 45429).

TNRC's concern with respect to low power operation was based upon the potential failure of the ice-condenser pressure suppression containment system employed at the Sequoyah facility. Containment integrity is not a safety concern during the conduct of low power testing. The issue of containment integrity during low power testing was examined by the NRC staff. The staff considered whether a loss-of-coolant accident from low power operations would likely lead to significant metal-water reaction (and hydrogen generation) even under severely degraded ECCS conditions. It was concluded that there is time available to take corrective action to cool the core before there is any substantial hydrogen generation.[1] Also, the potential for the release of radioactivity, should the containment fail, is virtually non-existent since the power levels during the low power testing do not exceed five percent of full power and the one-week test program would produce insignificant amounts of radioactivity. This program has been completed at the Sequoyah facility without endangering the public health and safety.

TNRC also expressed a concern in its petition that the Sequoyah containment building could provide inadequate protection in the event of a TMI-2 type incident. A TMI-2 type incident could produce large amounts of hydrogen in the Sequoyah containment. Should a combustion pressure spike of the magnitude experienced at TMI-2 occur, the Sequoyah containment pressure rating could ber exceeded resulting in a loss of containment. TNRC noted in its petition that, in light of operating experience obtained at TMI-2, a multiple-failure accident sequence with significant core damage, hydrogen liberation and combustion, and major metal-water reactions, must be regarded as a plausible occurrence.

This concern was intensively studied by the NRC staff, the Advisory Committee on Reactor Safeguards (ACRS) and the Commission prior to the issuance of the Sequoyah full power license which occurred on September 17, 1980. Specifically, the Commission had before it:

1. SECY 80-107, Proposed Interim Hydrogen Control Requirements for Small Containments, dated February 22, 1980.
2. SECY 80-107A, Additional Information Re: Proposed Interim Hydrogen Control Requirements, dated April 22, 1980.
3. SECY 80-107B, Additional Information Re: Proposed Interim Control requirements, dated June 20, 1980.
4. Supplement No. 1 to Safety Evaluation Report Related to Operation of Sequoyah Nuclear Plant Units 1 and 2 (Page 11.B-1), dated Febraury 1980. (NUREG-0011)
5. Supplement No. 2 to Safety Evaluation Report Related to Operation of Sequoyah Nuclear Plant Units 1 and 2 (Page 22.2-27), dated August 1980. (NUREG-0011)
6. Supplement No. 3 to Safety Evaluation Report Related to Operation of Sequoyah Nuclear Plant Units 1 and 2, dated September 1980. (NUREG-0011)
7. ACRS letter on Sequoyah Nuclear Plant, dated September 8, 1980.

These documents and reports embrace the concerns raised by TNRC in its petition. The conclusion reached by both the NRC staff and the ACRS was that full power licensing of Sequoyah facility need not await completion of ongoing work related to hydrogen control measures for the Sequoyah-type of containment.[2]

After due consideration of this issue, the Commission approved on September 17, 1980 the issuance by the Director of the Office of Nuclear Reactor Regulation of a full-power facility operating license for Sequoyah Nuclear Plant, Unit 1, subject, however, to the following conditions relative to hydrogen control measures:

(a) By January 31, 1981, TVA shall by testing and anlysis show to the satisfaction of the NRC staff that an interim hydrogen control system will provide with reasonable assurance protection against breach of containment in the event that a substantial quantity of hydrogen is generated.

(b) For operation of the facility beyond January 31, 1982, the Commission must confirm that an adequate hydrogen control system for the plant is installed and will perform its intended function in a manner that provides adequate safety margins.

(c) During the interim period of operation, TVA shall continue a research program on hydrogen control measures and the effects of hydrogen burns on safety functions and shall submit to the NRC quarterly reports on that research program.

In my judgement, the analyses performed by the NRC staff and accepted by the Commission, as described in the documents referenced above, in conjunction with the license conditions imposed on the Sequoyah facility, adequately address the concerns raised in your petition and, on these bases, I deny your petition.

A copy of this Decision and its attachments will be placed in the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C. 20555 and the Local Public Document Room for the Sequoyah facility, located at the Chattanooga Hamilton County Bicentennial Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

A copy of this Decision will also be filed with the Secretary for the Commission for its review in accordance with 10 CFR § 2.206(c) of the Commission's regulations.

As provided in 10 CFR § 2.206(c) of the Commission's regulations, this Decision will constitute the final action of the Commission twenty (20) days after the date of issuance, unless the Commission, on its own motion, institutes a review of this Decision within that time.

Dated at Bethesda, Maryland, this 8th day of October, 1980.

Harold R. Denton,

Director, Office of Nuclear Regulation.

[FR Doc. 80-32645 Filed 10-20-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-338]

Virginia Electric & Power Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 20 to Facility Operating License No. NPF-4 issued to the Virginia Electric and Power Company (the licensee) for operation of the North Anna Power Station, Unit No. 1 (the facility) located in Louisa County, Virginia. The amendment is effective as

[1] Supplement No. 1 to Safety Evaluation Report related to operation of Sequoyah Nuclear Plant, Page 11.B-1.

[2] Supplement 3 to Safety Evaluation Report related to operation of Sequoyah Nuclear Plant (Page 22.2-1) and ACRS letter of September 8, 1980.

of the date of issuance and is to be fully implemented within 30 days of Commission approval in accordance with the provisions of 10 CFR 73.40(b).

The amendment revises a license condition to include the Commission approved Safeguards Contingency Plan as part of the license.

The licensee's filings comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of the amendment.

The licensee's filings dated November 30, 1977, September 25, October 25, 1978, January 12, February 16, 1979 and May 1, 1980 are being withheld from public disclosure pursuant to 10 CFR 2.790(d). The withheld information is subject to disclosure in accordance with the provisions of 10 CFR § 9.12.

For further details with respect to this action, see (1) Amendment No. to Facility Operating License NPF–4 and (2) the Commission's related letter to the licensee dated October 3, 1980. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. 20555 and at the Board of Supervisor's Office, Louisa County Courthouse, Louisa, Virginia 23093 and at the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

A copy of these items may be obtained upon request to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland this 3rd day of October 1980.

For the Nuclear Regulatory Commission.

Robert A. Clark,

Chief Operating Reactors Branch No. 3 Division of Licensing.

[FR Doc. 80-32643 Filed 10-20-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50–266 and 50–301]

Wisconsin Electric Power Co.; Granting of Relief From ASME Section XI Inservice Testing Requirements

The U.S. Nuclear Regulatory Commission (the Commission) has granted relief from certain requirements of the ASME Code, Section XI, "Rules for Inservice Inspection of Nuclear Power Plant Components" to Wisconsin Electric Power Company. The relief relates to the revised inservice testing program for pumps and valves for Point Beach Nuclear Plant, Units 1 and 2, located in Two Creeks, Wisconsin. The ASME Code requirements are incorporated by reference into the Commission's rules and regulations in 10 CFR Part 50. The relief is effective as of its date of issuance, and is similar to that granted on August 26, 1977 for Unit 1 and October 25, 1979 for Unit 2.

The relief consists of exemption from the requirements for measuring certain parameters in the Pump Testing Program and revised schedules for conducting valve stroking tests in the Valve Testing Program.

The request for relief 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 letter granting relief. Prior public notice of this action was not required since the granting of this relief from ASME Code requirements does not involve a significant hazards consideration.

The Commission has determined that the granting of this relief will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

For further details with respect to this action, see (1) the requests for relief (2) dated July 25, 1980 and (3) the Commission's letter to the licensee dated September 30, 1980.

The items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Joseph Mann Library, 1516 16th Street, Two Rivers, Wisconsin 54241. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland this 30th day of September 1980.

For the Nuclear Regulatory Commission.

Robert A. Clark,

Chief Operating Reactors Branch No. 3 Division of Licensing.

[FR Doc. 80-32640 Filed 10-20-80; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Procedures and Administration; Meeting

The ACRS Subcommittee on Procedures and Administration will hold a meeting on November 5, 1980 in Room 1046, 1717 H St., NW, Washington, DC to discuss proposed changes in the ACRS role to strengthen its position in the regulatory process.

In accordance with the procedures outlined in the **Federal Register** on October 7, 1980 (45 FR 66535), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Wednesday, November 5, 1980—4:30 p.m. until approximately 6:30 p.m.: Members of the Subcommittee, along with any of its consultants who may be present, and ACRS Staff members will exchange views regarding items proposed as methods to strengthen the role of the ACRS in the regulatory process.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. Raymond F. Fraley (telephone 202/634–3265) between 8:15 a.m. and 5:00 p.m., Eastern Time.

Dated: October 15, 1980.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 80-32640 Filed 10-20-80; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Regulatory Activities; Meeting

The ACRS Subcommittee on Regulatory Activities will hold a meeting on November 5, 1980 in Room 1046, 1717 H St., NW, Washington, DC. Notice of this meeting was published September 18, 1980.

In accordance with the procedures outlined in the **Federal Register** on October 7, 1980 (45 FR 66535), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Wednesday, November 5, 1980—The meeting will commence at 8:45 a.m.: The Subcommittee will hear presentations from the NRC Staff and will hold discussions with this group pertinent to the following:

(1) Regulatory Guide 1.12, Revision 2, "Instrumentation for Earthquakes"

(2) Regulatory Guide 1.97, Revision 2, "Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident" (Post Comment)

(3) Proposed Amendment to 10 CFR Part 50, "Domestic Licensing of Production and Utilization Facilities," on Interim Requirements Related to Hydrogen Control and Certain Degraded Core Conditions (Pre Comment)

Other matters which may be of a predecisional nature relevant to reactor operation or licensing activities may be discussed following this session.

Persons wishing to submit written statements regarding Regulatory Guide 1.97, Revision 2, may do so by providing a readily reproducible copy to the Subcommittee at the beginning of the meeting. However, to insure that adequate time is available for full consideration of these comments at the meeting, it is desirable to send a readily reproducible copy of the comments as far in advance of the meeting as practicable to Mr. Sam Duraiswamy, the Designated Federal Employee for the meeting, in care of ACRS, Nuclear Regulatory Commission, Washington, DC 20555 or telecopy them to the Designated Federal Employee (202/634–3319) as far in advance of the meeting as practicable. Such comments shall be based upon documents on file and available for public inspection at the NRC Public Document Room, 1717 H St., N.W., Washington, DC 20555.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the Designated Federal Employee for this meeting, Mr. Sam Duraiswamy, (telephone 202/634–3267) between 8:15 a.m. and 5:00 pm., Eastern Time.

Dated: October 15, 1980.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 80-32650 Filed 10-20-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-293]

Boston Edison Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 43 to Facility Operating License No. DPR–35, issued to Boston Edison Company (the licensee), which revised the license for operation of the Pilgrim Nuclear Power Station, Unit No. 1 (the facility), located in Plymouth, Massachusetts. The amendment is effective as of the date of issuance and is to be fully implemented within 30 days of Commission approval in accordance with the provisions of 10 CFR 73.40(b).

The amendment adds license conditions to include the Commission-approved Safeguards Contingency Plan as part of the license.

The licensee's filing 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 is set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

The licensee's filing dated April 5, 1979, revised by letter dated December 20, 1979, and April 22, 1980, is being withheld from public disclosure pursuant to 10 CFR 2.790(d). The withheld information is subject to disclosure in accordance with the provisions of 10 CFR 9.12.

For further details with respect to this action, see (1) Amendment No. 43 to License No. DPR–35 and (2) the Commission's related letter to the licensee dated October 3, 1980. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Plymouth Public Library on North Street in Plymouth, Massachusetts 02360. A copy of items (1) and (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland this 3rd day of October, 1980.

For the Nuclear Regulatory Commission.

Thomas A. Ippolito,

Chief, Operating Reactors Branch No. 2, Division of Licensing.

[FR Doc. 80-32789 Filed 10-20-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-409]

Dairyland Power Cooperative; Issuance of Amendment to Provisional Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 21 to Provisional Operating License No. DPR–45, issued to Dairyland Power Cooperative (the licensee), which revised the license for operation of the LaCrosse Boiling Water Reactor located in Vernon County, Wisconsin. The amendment is effective as of its date of issuance, and is to be fully implemented within 30 days of Commission approval in accordance with the provisions of 10 CFR 73.40(b).

The amendment adds a license condition to include the Commission-approved Safeguards Contingency Plan as part of the license.

The licensee's filing complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license

amendment. Prior public notice of this amendment was not required since the amendment since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

The licensee's filing dated September 5, 1979 (transmitted by letter dated September 12, 1979) is being withheld from public disclosure pursuant to 10 CFR 2.790(d). The withheld information is subject to disclosure in accordance with the provisions of 10 CFR 9.12.

For further details with respect to this action, see (1) Amendment No. 21 to license No. DPR–45, and (2) the Commission's related letter to the licensee dated September 25, 1980. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and the LaCrosse Public Library, 800 Main Street, LaCrosse, Wisconsin 54601. A copy of items (1) and (2) may be obtained by request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 25th day of September 1980.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Chief, Operating Reactors Branch No. 5, Division of Licensing.

[FR Doc. 80-32785 Filed 10-20-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-219]

Jersey Central Power & Light Co.; Issuance of Amendment to Provisional Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 51 to Provisional Operating License No. DPR–16, issued to Jersey Central Power & Light Company (the licensee), which revised the license for operation of the Oyster Creek Nuclear Generating Station located in Ocean County, New Jersey. The amendment is effective as of its date of issuance and is to be fully implemented within 30 days of Commission approval in accordance with the provisions of 10 CFR 73.40(b).

The amendment adds a license condition to include the Commission approved Safeguards Contingency Plan as part of the license.

The licensee's filing complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

The licensee's filing transmitted by letter dated June 3, 1980, is being withheld from public disclosure pursuant to 10 CFR Section 2.790(d). The withheld information is subject to disclosure in accordance with the provisions of 10 CFR § 9.12.

For further details with respect to this action, see (1) Amendment No. 51 to License No. DPR–16, and (2) the Commission's related letter to the licensee dated September 25, 1980. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Ocean County Library, Brick Township Branch, 401 Chambers Bridge Road, Brick Town, New Jersey 08723. A copy of items (1) and (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 25th day of September, 1980.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Chief, Operating Reactors Branch No. 5, Division of Licensing.

[FR Doc. 80-32786 Filed 10-20-80; 8:45 am]

BILLING CODE 7590-01-M

[Dockets Nos. 50-529 and 50-260]

Tennessee Valley Authority; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 62 to Facility Operating License No. DPR–33 and Amendment No. 57 to Facility Operating License No DPR–52 issued to Tennessee Valley Authority (the licensee), which revised Technical Specifications for operation of the Browns Ferry Nuclear Plant, Units Nos. 1 and 2, located in Limestone County, Alabama. The amendments are effective as of the date of issuance.

These amendments change the Technical Specifications to extend the exposure range of the Maximum Average Planar Linear Heat Generation Rate (MAPLHGER) versus average planar exposure from 30,000 MWd/T to 40,000 MWd/T. The extension of the fuel exposure range was requested by TVA after it discovered that fuel exposure presently exceeds approved limits in at least one fuel assembly in Unit 2. The extension would increase remaining core fuel lifetime and thus decrease the rate of spent fuel generation at the Browns Ferry Nuclear Plant. Although the extension would increase the inventory of fission products in the spent fuel generated it would decrease the demand on currently available spent fuel storage capacity at the Browns Ferry Nuclear Plant.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR Section 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of these amendments.

For further details with respect to this action, see (1) the application for amendments dated August 13, 1980, (2) Amendment No. 62 to License No. DPR–33 and Amendment No. 57 to License No. DPR–52 and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Athens Public Library, South and Forrest, Athens, Alabama 35611. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555,

Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland this 6th day of October, 1980.

For the Nuclear Regulatory Commission.

Thomas A. Ippolito,

Chief Operating Reactors Branch No. 2, Division of Licensing.

[FR Doc. 80-32788 Filed 10-20-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-339]

Errata to Virginia Electric & Power Co.; Issuance of Facility Operating License

On August 25, 1980, a notice was published in the **Federal Register** (45 FR 56476) concerning the issuance of a full power license (100 percent power) for the North Anna Power Station, Unit No. 2. The notice made the following documents available to the public:

For further details with respect to this action, see (1) Facility Operating License NPF-7, and (2) the Commission's related Safety Evaluation, NUREG-0053, Supplement Nos. 11 and 12, dated August 1980.

These items are available for public inspection at the Commission's Public Document Room 1717 H Street, N.W., Washington, D.C., and at the local public document rooms in the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901 and at the Office of the Board of Supervisors, Louisa County Courthouse, P.O. Box 27, Louisa, Virginia 23093. A copy of item 1 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing, Office of Nuclear Reactor Regulation. Copies of item 2 may be purchased at current rates from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

The above-mentioned paragraphs have been revised to include additional documents available to the public. Accordingly, the Commission has issued the following replacement for the August 25, 1980 notice:

The U.S. Nuclear Regulatory Commission (the Commission) has issued Facility Operating License NPF-7, issued to the Virginia Electric and Power Company (VEPCO), which authorizes operation of the North Anna Power Station, Unit 2 at reactor core power levels not in excess of 2775 megawatts thermal (100 percent power) in accordance with the provisions of the license and the Technical Specifications.

The North Anna Power Station, Unit 2 is a pressurized water nuclear reactor located at the licensee's site near Mineral in Louisa County, Virginia. The license is effective as of its date of issuance.

The application for the license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the license. Prior public notice of the overall action involving the proposed issuance of an operating license was issued in the **Federal Register** on May 25, 1973 (38 FR 13772).

The Commission has determined that the issuance of this license will not result in any environmental impacts other than those evaluated in the Final Environmental Statement since the activity authorized by this license is encompassed by the overall action evaluated in the Final Environmental Statement.

For further details with respect to this action, see (1) Facility Operating License NPF-7 complete with Technical Specifications; (2) License for Fuel Loading and Low Power Testing, NPF-7, dated April 11, 1980 and Amendments 1 and 2 thereto, dated July 3, 1980 and August 18, 1980, respectively; (3) the report of the Advisory Committee on Reactor Safeguards, dated January 17, 1977; (4) the Office of Nuclear Reactor Regulation's Safety Evaluation Report, dated June 4, 1976, and Supplements 1 through 12; (5) the Final Safety Analysis Report and Amendments thereto; (6) the Final Environmental Statement, dated April 1973; and Addendum 1 and Errata thereto, dated November 1976 (NUREG-0134) and Addendum 2, dated August 1980 (NUREG-0134); (7) the Environmental Report, dated June 17, 1970 and supplements thereto; and (8) the Assessment of Floodplain Aspects of the North Anna Power Station, Unit 2, dated August 21, 1980.

Items 1, 2, 3, and 8 are available upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing. Copies of items 4 and 6 may be purchased at current rates from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, and all items 1 through 8 are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the local public document rooms in the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901 and at the Office of the Board of Supervisors, Louisa County Courthouse, P.O. Box 27, Louisa, Virginia 23093.

Dated at Bethesda, Maryland, this 6th day of October 1980.

For the Nuclear Regulatory Commission.

B. J. Youngblood,

Chief, Licensing Branch No. 1, Division of Licensing.

[FR Doc. 80-32788 Filed 10-20-80; 8:45 am]

BILLING CODE 7590-01-M

Regulatory Guide; Notice of Withdrawal

The Nuclear Regulatory Commission staff has withdrawn Regulatory Guide 1.101, Revision 1, "Emergency Planning for Nuclear Power Plants," which was issued in March 1977 to provide guidance to applicants for developing the emergency plans required in Final Safety Analysis Reports for nuclear power plants.

Since the guide was issued, the NRC has undertaken a formal reconsideration of the role of emergency planning in ensuring the continued protection of the public health and safety in areas around nuclear power plants. The Commission began this reconsideration in recognition of the need for more effective emergency planning and in response to the TMI accident and to reports issued by responsible offices of government and the NRC's Congressional oversight committees. As a result of this effort, the Commission has upgraded its requirements for emergency preparedness in amendments to 10 CFR Part 50 that were published in the **Federal Register** on August 19, 1980 (45 FR 55402). Revision 1 of Regulatory Guide 1.101 does not reflect these new requirements.

The information contained in the amendments and in NUREG-0654 (FEMA-REP-1), "Criteria for Preparation and Evaluation of Radiological Emergency Response Plan and Preparedness in Support of Nuclear Power Plants," which has been published for interim use and comment, will be used to completely revise Regulatory Guide 1.101. NUREG-0654 is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. It may also be purchased at current rates through the GPO Sales Program, Distribution Services Section, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Publications Sales Manager, or from the National Technical Information Service, Springfield, VA 22161.

Regulatory guides are developed to describe and make available to the public methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations and, in

some cases, to delineate techniques used by the staff in evaluating specific problems. Guides may be withdrawn when they are superseded by the Commission's regulations, when equivalent recommendations have been incorporated in applicable approved codes and standards, or when changes in methods and techniques or in the need for specific guidance have made them obsolete.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland this 6th day of October 1980.

For the Nuclear Regulatory Commission.

Robert B. Minogue,

Director, Office of Standards Development.

[FR Doc. 80-32789 Filed 10-20-80; 8:45 am]

BILLING CODE 7590-01-M

PRESIDENT'S COMMISSION FOR THE STUDY OF ETHICAL PROBLEMS IN MEDICINE AND BIOMEDICAL AND BEHAVIORIAL RESEARCH

Public Meeting

Notice is hereby given, pursuant to Section 10(a)(2) of the Federal Advisory Committees Act, that the fifth meeting of the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research will be held in Room 2010 of the New Executive Office Building, 1726 Jackson Place, N.W., Washington, D.C., from 9:00 a.m., to 5:30 p.m. on Friday, November 7, 1980 and from 8:30 a.m. to 4:00 p.m. on Saturday, November 8, 1980.

The meeting will be open to the public, subject to limitations of available space. The agenda of this Commission meeting will include among other things, the following topics: the adequacy and appropriateness of rules governing research involving human subjects funded or regulated by the Federal Government; ethical issues in the availability of health services; consideration of draft working paper on the advisability of a uniform definition of death.

During the afternoon of Friday November 7, one-half hour will be devoted to comments from the floor on the subject of any of the agenda items, limited to three minutes per comment. Written suggestions and comments will be accepted from those who are able to speak because of the constraints of time or those unable to attend the meeting.

Records shall be kept of all Commission proceedings and will be available for public inspection at the Commission's office, located in Suite 555, 2000 K Street, N.W., Washington, D.C. 20006.

For further information, contact Andrew Burness, Public Information Officer, at (202) 653-8051.

Alexander M. Capron,

Executive Director.

[FR Doc. 80-32719 Filed 10-20-80; 8:45 am]

BILLING CODE 6820-AV-M

RADIATION POLICY COUNCIL

[AS-FRL 1638-4]

Request for Comments on the 1981-83 Agenda of the U.S. Radiation Policy Council

SUMMARY: On September 25, 1980, the U.S. Radiation Policy Council adopted a preliminary long-term agenda of issues it plans to address in the 1981-83 time period. The Council invites public comment on the agenda. Written comments must be received by the Council no later than Friday, December 5, 1980. Oral comments may be made at a meeting with the public scheduled for Thursday, December 4, 1980 in Washington, D.C.

BACKGROUND: The Council has engaged in an extensive process to develop an agenda of substantive, policy-oriented issues to address in the 1981-83 time period. To obtain suggestions, the Council held meetings with the public in Washington, D.C.; Boston, Massachusetts; Denver, Colorado; San Francisco, California; and Atlanta, Georgia. The Council and its member agencies requested suggestions through two **Federal Register** notices (May 23, 1980 and June 27, 1980) and through mailings to more than 12,000 individuals and groups. The Council also contacted Federal agencies for their suggestions.

In total about 150 different issues were raised. A number of these were clearly the responsibility of a single agency and were referred to that agency for consideration. A number of the issues concerned low-level radioactive waste disposal, radon in structures, radiological emergencies, and public information and education. As the Council has taken action on the first two issues and has work underway on the last two issues, these four issues are not included on the preliminary long-term agenda at this time.

The remaining issues formed the bases for nine broad policy issues, presented in the next section, that the Council adopted as its preliminary 1981-83 agenda at its September 25 meeting.

PRELIMINARY AGENDA: The preliminary agenda consists of the following issues:

- Principles and concepts of radiation protection;
- Standards-setting processes;
- Roles and function of Federal agencies;
- Radiation exposure reduction;
- Data base and methodologies;
- Federal/State relationships;
- Facility monitoring and surveillance;
- Scientific and technical personnel needs; and
- Building construction and land use controls.

These issues are discussed in more detail below.

Principles and Concepts of Radiation Protection

Objective: To develop a Federal policy statement that enunciates a set of basic principles and concepts and that will guide Federal programs in providing and assessing radiation protection.

Discussion: Current Federal policy on radiation protection is limited in scope. It exists primarily in Federal guides published in the 1960's. While several of these guides remain valid today, new issues have been raised concerning the adequacy of protection and the basis for establishing standards and regulations. Therefore, the Council intends to take up the development of a Federal policy statement on these issues.

Among the possible topics to be addressed are:

—Should radiation protetion policies be based on some inherent level of risk, e.g., risk associated with natural background radiation? At the levels of exposure generally experienced, are there meaningful ways to express degrees of risk and to compare risks at different levels of exposure?

—To what extent should tradeoffs between risks and benefits be used in setting policy? How should the concept of "as low as reasonably achievable" (ALARA) be applied?

—How can the concept of *de minimus non curat lex* be applied in radiation protection, e.g., to radioactive wastestreams and to radiation exposure?

—How should protection efforts factor in differences in population characteristics, e.g., radiosensitivity, protection for current vis-a-vis future generation, protection of individuals or specific subgroups vis-a-vis the total population, and "prudent conservatism" in considering uncertainties in risk estimates?

—How can degrees of radioactivity or radiation exposure be defined in a consistent and publicly understandable manner, e.g., low-level or high-level waste, low-level exposure, etc.?

The following tasks also will have to be undertaken:

—Evaluate the feasibility of developing a uniform Federal policy on radiation protection.

—Recommend an effective means of developing and issuing this policy.
—Prepare or support the preparation of a policy statement, contingent upon achievement of the previous two tasks.

Standards-Setting Processes

Objective: To examine the current processes for setting radiation protection standards and to determine how they might be improved and made more consistent.

Discussion: A number of Federal agencies presently have authority to set radiation protection standards, including the Departments of Health and Human Services, Labor, and Transportation and the Environmental Protection Agency, Nuclear Regulatory Commission, and Consumer Product Safety Commission. In addition, standards set by these agencies influence programs in a number of other agencies, including the Departments of Housing and Urban Development and Energy and the Federal Emergency Management Agency. These varied authorities and responsibilities are based on numerous laws, though most relate to a guidance function presently the responsibility of EPA. In developing this guidance, EPA draws upon current scientific and technical information and embraces, where possible, social and economic considerations.

As the Libassi Task Force pointed out, the current standards-setting procedure generates numerous problems, and examination of the entire standards-setting process seems necessary.

Among the possible topics to be addressed are:

—Examine the preparation of guidance documents and their use in setting standards over the last 20 years.
—Determine the current feasibility of the guidance function as the basic Federal approach to setting all radiation protection standards.
—If data analyses, guidance-development, and actual standards-setting are to be carried out by separate agencies, develop procedures to assure consistent application of data and guidance in the setting of standards.
—If each agency is to be responsible for interpreting the data in its standards-setting process, develop procedures for assuring consistency in the resulting standards.
—If Radiation Protection Guides are to continue being used, determine how they should be applied in a performance standard as opposed to an environmental standard.
—Determine how the standards-setting process can be monitored to assure protection for all groups in a consistent fashion.
—Establish whether substantially greater efficiency and effective protection can be achieved by seeking changes in current laws and executive orders that would identify agency responsibilities for establishing radiation protection standards.

Roles and Functions of Federal Agencies

Objective: To delineate the statutory responsibilities of Federal agencies and the manner and extent to which they are being carried out, with a view either to recommending changes in the laws and Executive Branch directives on agency responsibilities, or to suggesting external means of coordination to improve consistency and efficiency.

Discussion: Federal policies on radiation protection have developed piecemeal over a period of 33 years, starting with the Atomic Energy Act of 1947, when virtually all Federal activities were in the interest of national security. The introduction of licensing followed in 1954. The need for interagency coordination led to the creation of the Federal Radiation Council in 1960. The regulation of manufacturers started with the Electronic Product Radiation Safety Act of 1967, and in 1972 OSHA was given responsibility for regulating those sources of radiation in the workplace *not* covered by other statutes. Along the line, the Departments Transportation, Defense, and Agriculture and the Food and Drug Administration, the Mine Safety and Health Administration, the Environmental Protection Agency, the National Institute of Occupational Safety and Health, and the Federal Emergency Management Agency were given authority to address various other facets of radiation protection.

The resulting maze of functions and responsibilities within the Federal establishment appears to have fragmented Federal radiation protection efforts, created undue administrative difficulties for those being regulated, and bewildered the public. The need for a comprehensive study of Federal radiation protection roles was demonstrated by the confusion that surrounded the emergency at Three Mile Island. No Federal voice spoke with authority, and a jumble of Federal, state and local authorities sought to fill the void.

The states also have major responsibilities in radiation protection. The role of the Federal government vis-a-vis the states will be examined in the policy issue on Federal/State relationships. That policy development activity will be coordinated closely with this task.

Among the possible topics to be addressed are:

—Develop a definitive inventory of Federal activities that would pinpoint the gaps in the radiation-protection matrix, e.g., regulation of naturally-occurring and accelerator-produced radioactive materials, and overlapping responsibilities.
—Determine which radiation protection functions are appropriate for what agencies, e.g., should an agency that promotes the use of radiation be responsible for regulatory activities, or for research on possible detrimental effects on radiation, and develop criteria for assigning responsibilities.
—Examine current legislative requirements and suggest, where appropriate, recommendations for legislative changes.
—Explore whether certain classes of activities (control, monitoring or research) can be coalesced in a single lead agency, or whether better mechanisms exist for assuring coordination of similar activities.
—Determine if agency responsibility can be assigned on the basis of source of radiation, by types of persons exposed, or by location of exposure.

Radiation Exposure Reduction

Objective: To rank the main sources of radiation, as well as the groups for which exposure reduction is feasible, and to assure that adquate policies and plans are developed for reducing exposure.

Discussion: The Interagency Task Force on the Health Effects of Ionizing Radiation (the Libassi Task Force), through its Work Group on Exposure Reduction, identified a number of opportunities for reducing exposure to radiation. The feasibility and cost-effectiveness of each opportunity need to be evaluated and a strategy for exposure-reduction efforts needs to be developed. Clearly one source of exposure that should be targeted for concerted action is medical and dental radiation.

Among the possible topics to be addressed are:

—Review findings of existing surveys and studies to assure that all significant sources of exposure or potential exposure to individuals, specific groups, and the general population have been identified and quantified so far as possible, and determine which merit priority attention.

—Develop criteria for determining where it is most feasible to reduce or limit radiation exposure.
—Examine whether there are special subgroups of the population with either higher risks or higher exposure levels than the general population that need to be targeted for exposure reduction.
—Examine how baseline data on exposure levels might be gathered.
—Determine what, if any, role radiation-exposure registries can play in promoting exposure reduction; is there a need for registries of temporary or transient workers, of persons receiving radiation for medical and dental purposes, of nurses and technicians in hospitals who are currently not monitored although exposed to radiation?
—Decide if improvements in personnel monitoring would lead to significant reduction in exposure. Are there particular groups of the population that should be monitored closely?
—Analyze whether making standards more restrictive for workers and/or for the general public would result in exposure reduction.
—Determine if ALARA should be applied more widely.
—Study whether exposure limits should be developed for workers in emergency situations.

Data Base and Methodologies

Objective: To establish policies that assure an adequate, scientifically valid data base for radiation policy decisions and for public understanding, and that assure a consistent methodology for determining health effects.

Discussion: A sound data base and methodologies for interpreting the data, particularly on health effects, are essential to making informed radiation policy decisions. Groups outside the government have questioned the validity of the current data base; in addition, the fact that different agencies use different methodologies in arriving at technical decisions can lead to confusion on the part of the public. The Interagency Radiation Research Committee may undertake work in this area, so any RPC effort would need to be closely coordinated with the IRRC.

Among the possible topics to be addressed are:

—Is the existing knowledge base adequate for major radiation protection policy decisions? Are there gaps in the knowledge base where the necessary data could be obtained in three to five years?
—Would any special studies, such as epidemiological investigations of airline personnel, county-by-county radon levels, etc., add needed information?
—Do any particular research disciplines need to be strengthened before data-base inadequacies can be overcome?
—What impediments hinder data collection? Are any policies feasible to improve access to basic data or to minimize widely divergent interpretations of data?
—Should data on radiation exposure from all sources be centralized in order to be readily available for extensive research activities? How can this be done while still protecting individual privacy? Are there other ways to obtain these data?
—How do different methodologies or ways of handling data affect policy decisions? What can be done to assure consistent policy decisions and public understanding when different methodologies are used? Specific methodologies to be examined include: dose models to predict health effects, taking into account potential future health hazards; risk-benefit analyses; and computation of cumulative doses from radionuclides that persist for several generations.

Federal/State Relationships

Objective: To improve the coordination of radiation protection activities between the Federal government and state governments.

Discussion: Except where preempted or assumed by the Federal government, state governments regulate the hazards to workers, the public, and the environment resulting from the production or use of radiation within their borders. For example, states may regulate the use of naturally-occurring and accelerator-produced radioactive material (NARM) and medical and industrial applications of x-ray machines and accelerators, microwave, laser, and ultrasound sources.

One example of Federal preemption is the Nuclear Regulatory Commission's preemptive regulatory authority over licensing of nuclear reactors and over byproduct, source and special nuclear material. However, the Atomic Energy Act of 1954, as amended, authorizes the NRC to enter into agreements allowing qualified states to assume regulatory responsibility over byproduct material and source material and small quantities of special nuclear material. Currently, 26 states qualify as NRC Agreement States.

Another example of Federal preemption is the Department of Labor's regulatory authority over the development and enforcement of occupational safety and health standards. However, the Occupational Safety and Health Act of 1970 authorizes the Secretary of Labor to approve plans from any state for the development and enforcement of occupational safety and health standards. Presently, 24 state plans which include regulation of ionizing radiation have been approved by the Secretary of Labor.

In addition, several Federal agencies support and participate in the activities of the Conference of State Radiation Control Program Directors (an organization of the 50 states, the territories, and certain local governments) whose objective is to provide a coordinated approach to Federal/State relationships concerning radiation control.

Over the past few years, state interest in the regulation of radiation has grown. Areas of particular interest to the states include: nuclear reactor regulation, emergency preparedness, radioactive waste disposal, and decommissioning of facilities that use radioactive materials. This increasing interest underscores the need for closer coordination between Federal and state programs.

While there is and will continue to be a deversity of state interests and capabilities in radiation protection, the existing set of Federal/State programs, authorities, and responsibilities needs to be examined with a view towards satisfying state interests and clarifying Federal responsibilities. In examining this issue, the RPC will need to work closely with the State Planning Council on Radioactive Waste Management.

Among the possible topics to be addressed are:

—What institutional and administrative problems do states encounter in working with the Federal government on radiation protection?
—Is it possible to better define the appropriate roles of Federal, state and local governments in developing radiation protection standards, in regulating the siting and operation of facilities (including surveillance, monitoring, enforcement, and emergency planning activities), and in determining research agendas?
—How can coordination be improved between Federal and state governments in areas where the Federal government exercises preemption?
—How can the Federal government assist state and local governments in assuming their roles?

Facility Monitoring and Surveillance

Objective: To determine the roles of Federal agencies, state governments, and non-Federal groups in monitoring and surveillance of Federal and non-Federal facilities where the potential

exists for release of radioactive material to the environment.

Discussion: Although many agencies have responsibilities for the monitoring and surveillance of Federal and independent facilities, there is concern that these responsibilities are not fully coordinated or exercised efficiently. Agencies are involved in a variety of monitoring and surveillance activities, such as making measurements; developing radiation-detection devices and measurement protocols; overseeing measurement activities of facility operators; certification; and instrument calibration—yet no overall policy governs facility monitoring and surveillance.

Among the possible topics to be addressed are:

—Should independent monitoring be carried out in Federal facilities and/or non-Federal facilities? If the measurements are made by the facility operator, should there be active independent oversight or surveillance of the monitoring? Should the Federal government develop a broad set of quality-assurance guidelines to be used where there is not independent monitoring?
—Should all occupational monitoring of Federal facilities be conducted by the Occupational Safety and Health Administration? Would OSHA have the capability to carry out the monitoring or oversight of such activities?
—Should EPA or another Federal agency coordinate a national environmental radiation monitoring program and provide funds, guidance and technical assistance to the states? If so, what should be the characteristics of the program?
—What role, if any, should states and non-governmental public groups play in monitoring and surveillance activities of Federal facilities or Federally-regulated facilities?

Scientific and Technical Personnel Needs

Objective: To review the requirements for scientific and technical personnel in radiation activities and to propose an appropriate role for the Federal government in meeting these needs.

Discussion: The need for trained radiation protection experts to work in such areas as medical facilities and nuclear fuel cycle facilities (including power plants) and radiation monitoring and control has increased and a potential shortage may occur. For example, based on the most recent estimates, the requirement for professionals and technicians in health physics is expected to grow at a rate of 7% annually in the period 1980–1985, yet not that many people are now entering the field.

The personnel problem crosses all institutional boundaries, but no focal point exists for planning, developing and implementing personnel development strategies.

Among the possible topics to be addressed are:

—Preparation of a current estimate of future personnel needs and an estimate of the sources of such needs.
—Examination of both Federal and non-Federal means of assuring adequate numbers of properly trained personnel, if a shortage appears likely.

Building Construction and Land Use Controls

Objective: To determine if land use controls would be appropriate in areas of high, naturally-occurring or technologically-enhanced radioactivity, or near potential radioactive hazards, such as nuclear power plants and other nuclear facilities. To determine whether standards applicable to the use of building materials containing radioactive materials should be developed at this time, and to provide guidance, if necessary, for such standards development.

Discussion: During the past several years the Federal government has become involved in a number of incidents where naturally-occurring or technologically-enhanced radioactivity has posed particular threats to human health. The first recognition of this problem was in Grand Junction, Colorado where uranium mill tailings were used as foundation material, and as a sand substitute in concrete mix and the manufacture of concrete building blocks. As a result, approximately 1,000 homes, public buildings and commercial structures have been affected with high indoor concentrations of radon gas. Additional problems have been identified more recently on land reclaimed from other types of mining or sites of mill tailings in Southwest Florida; Butte and Anaconda, Montana; Edgemont, South Dakota; and Cannonsburg, Pennsylvania. Some aspects of this problem are already being addressed in response to the task force report on radon in structures. However, other more generic issues still need to be examined.

Another concern is to determine what constitutes an adequate distance for separating inhabited structures from nuclear power plants or other nuclear facilities. The solution to this problem involves potential exclusion zones and/or local land use restrictions.

Among the possible topics to be addressed are:

—What are acceptable levels for radioactivity in inhabited structures?
—What constitutes an acceptable distance from a nuclear facility? What process should be used to establish these levels and distances?
—What, if any, actions should the Federal government take to rectify situations where hazards already exist, and how can these actions be made consistent in specific situations?
—What can the Federal government do to develop adequate guidance in a timely fashion for manufacturers of construction materials, building contractors, and state and local governments?

REQUEST FOR COMMENTS: The Council invites public comment on this preliminary agenda. Oral comments can be made at a meeting with the public to be held on Thursday, December 4, 1980, at 9:00 a.m. in: Room 2010, New Executive Office Building, 726 Jackson Place, N.W., Washington, D.C.

Persons wishing to speak at this meeting should notify the Council (at the address or phone number listed below) by Monday, December 1, 1980. Written comments should be sent directly to the Council at the address listed below and should be received by Friday, December 5, 1980.

After reviewing comments from the public, the Council anticipates adopting the final agenda at its next meeting scheduled for December 18, 1980.

FOR FURTHER INFORMATION CONTACT: U.S. Radiation Policy Council, Room 3026, New Executive Office Building, 726 Jackson Place, N.W., Washington, D.C. 20503 (202) 395–4931.

Carl R. Gerber,

Director, U.S. Radiation Policy Council.

[FR Doc. 80-32792 Filed 10-20-80; 8:45 am]

BILLING CODE 6560-36-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 11397; 812-4717]

Algemene Bank Nederland N.V.; Application for an Order Exempting Applicant From All Provisions of Investment Company Act

October 15, 1980.

In the matter of Algemene Bank Nederland N.V., c/o Michael F. Orr, Esq., Milbank, Tweed, Hadley & McCloy, 1 Chase Manhattan Plaza, New York, New York 10005 (812–4717).

Notice is hereby given that Algemene Bank Nederland N.V. ("Applicant") filed an application on August 22, 1980, and

an amendment thereto on October 3, 1980, for an order of the Commission pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act") exempting Applicant from all the provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations made therein, which are summarized below.

Applicant states that it is a commercial bank organized under the laws of The Netherlands by an instrument of incorporation on February 7, 1825, and that it is one of the largest commercial banks in the world and the largest in The Netherlands. Applicant's registered head office is at 32, Vijzelstraat, P.O. Box 669, Amsterdam, The Netherlands. As of the end of March 1980, Applicant operated 712 branches in The Netherlands and had branches and affiliates in 42 foreign countries. In the United States Applicant maintains bank branches in New York, Chicago, Pittsburgh and Los Angeles; banking agencies in San Francisco and Atlanta; a subsidiary, LaSalle Nationl Bank, in Chicago; and a representative office in Houston.

The application states that in addition to its primary business of receiving deposits and making loans, Applicant is engaged in providing a wide range of banking services, including assistance in foreign exchange transactions, Eurocurrency business, letters of credit, international payments, trade and investment information, stock exchange trading, individual portfolio management and mangement of a number of investment funds, securities safekeeping and new issue business. As of December 31, 1979, Applicant's total consolidated assets amounted to $45,529, 553,000; deposits (savings accounts plus fixed-term deposits plus creditors) amounted to $40,157,253,000, and shareholders' equity and subordinated loans amounted to $1,822,543,000. As of December 31, 1979, approximately 70 percent of Applicant's total consolidated assets related to business conducted in and from the Netherlands. On the same date it had outstanding 5,947,184 ordinary shares (of which a small percentage were registered) and 30 priority shares.

Applicant represents that it is extensively regulated pursuant to Dutch banking laws which include supervision by the Minister of Finance of The Netherlands and by De Nederlandsche Bank N.V. ("Central Bank"), the central bank of The Netherlands. The application states that various aspects of Applicant's business, including capital and reserves, solvency, liquidity, investments and loans are subject to regulation in The Netherlands. According to the Applicant, the Revised Act on the Supervision of the Credit System ("ASCS") embodies the principal characteristics in respect of the supervision of Dutch credit institutions, viz. *Monetary supervision, Prudential control* and *Structural supervision.* Applicant, as qualifying as a "universal bank" as defined by the ASCS, is subject to the fullest extent to the provisions of the ASCS. The Central Bank is charged with the implementation of these three aspects of banking supervision, although its responsibilities regarding structural policy are shared with the Minister of Finance. According to the application, the Central Bank regularly examines Dutch credit institutions and requires reports in a specified form on a monthly basis, as part of its regulatory and supervisory function.

The application also states that Applicant's branches and agencies in the United States are licensed by state banking authorities under the banking laws of the states in which such branches and agencies are located. Applicant's branches and agencies are examined by such state banking authorities, and must obseve the banking regulations of such states. In addition, Applicant's subsidiary, LaSalle National Bank, is subject to all legal requirements, including supervision and examination by the Comptroller of the Currency, which are applicable to national banks. By reason of its ownership of LaSalle, Applicant itself is registered with the Federal Reserve Board as a bank holding company, and Applicant is restricted under the Bank Holding Company Act from acquiring another bank outside of Illinois and is subject to restrictions on business and investments it may have in the United States outside the banking sector.

Applicant proposes to issue and sell unsecured short-term promissory notes of the type generally referred to as commercial paper ("notes") in the United States. The notes will be in bearer form, denominated in United States dollars, of prime quality and issued in minimum denominations of $100,000. They will be direct liabilities of Applicant and will rank *pari passu* among themselves and equally with all other unsecured unsubordinated idebtedness of Applicant, including deposit liabilities and superior to the rights of shareholders. Applicant states that the notes will provide it with an alternative source of funding to meet its United States dollar requirements. The aggregate principal amount of notes to be outstanding at any one time is not expected to exceed $300 million.

Applicant states that the terms of the notes and the use of the proceeds of the notes to finance current transactions will be such as to qualify them for the exemption from registration under the Securities Act of 1933 ("1933 Act"), as amended, provided by Section 3(a)(3) of the 1933 Act. Applicant will not issue and sell the notes until it has received an opinion of its legal counsel in the United States to the effect that, under the circumstances of the proposed offering, the notes would be entitled to such exemption. Applicant does not request review or approval of such opinion letter and the Commission expresses no opinion as to the availability of any such exemption. Applicant further represents that the presently proposed issue of notes, and any future issue of such debt securities in the United States, shall have received prior to issuance one of three highest investment grade ratings from at least one of the nationally recognized United States statistical rating organizations, and that its American counsel shall have certified that such rating has been received.

The notes will be issued and sold by Applicant through one or more commercial paper dealers in the United States to institutional investors and other entities and individuals who normally purchase commercial paper notes. However, the notes will not be advertised or otherwise offered for sale to the general public. Applicant undertakes to ensure that the dealer or dealers will provide each offeree of the notes, prior to any sale of notes to such offeree, with (i) a memorandum which describes the business of Applicant, (ii) the most recent publicly available fiscal year-end balance sheet and income statement of Applicant, which shall have been audited in such manner as is customarily done for Applicant by its auditors (to be included in (i)), and (iii) the most recent publicly available unaudited semi-annual financial statements of Applicant. Such memorandum will be updated periodically to reflect material changes in Applicant's business and financial status. The memorandum will be at least as comprehensive as those customarily used in offering commercial paper in the United States. Such memorandum will describe the material differences between the accounting principles applied by Applicant in the preparation of its financial statements and generally accepted accounting principles as employed by commercial banks in the United States. Applicant consents to

any order granting the relief requested pursuant to Section 6(c) of the Act being expressly conditioned upon Applicant's compliance with all of its undertakings regarding disclosure documents.

The application states that Applicant will appoint a bank in the United States as its authorized agent to issue the notes from time to time and will appoint such bank to accept any service of process in any action based on the notes and instituted in any State or Federal court by the holder of any note. Applicant will accept the jurisdiction of any State or Federal court in the City and State of New York in respect of any such action. Such appointment of an authorized agent to accept service of process and such consent to jurisdiction will be irrevocable until all amounts due and to become due with respect to the notes have been paid by Applicant. Applicant will also be subject to suit in any other court in the United States which would have jurisdiction because of the manner of the offering of the notes or otherwise. Applicant similarly represents that it will consent to jurisdiction and will appoint an agent for service of process in suits arising from any other future offer of debt securities that it may make in the United States.

Applicant states that in the future it might offer other debt securities for sale in the United States. Except for deposit taking or other ordinary commercial banking activities of Applicant's bank branches, banking agencies and subsidiaries in the United States, any future offerings of Applicant's securities in the United States will be done on the basis of disclosure documents at least as comprehensive in their description of Applicant, its business and its financial statements, as the dealer's memorandum referred to above. In no event will such disclosure documents be less comprehensive than is customary for United States offerings of similar debt securities. Applicant undertakes to ensure that such disclosure documents will be provided to each offeree who has indicated an interest in the securities then being offered by Applicant, prior to any sale of such securities to such offeree, except that in the case of an offering made pursuant to a registration statement under the 1933 Act, such disclosure documents will be provided to such persons and in such manner as may be required by such Act and the rules and regulations thereunder.

Section 3(a)(3) of the Act defines investment company to mean "any issuer which is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 percent of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis."

Section 6(c) of the Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons securities, or transactions from any provision or provisions of the Act or of any rule or regulation under the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant requests an order pursuant to Section 6(c) of the Act exempting it from all provisions of the Act because of uncertainty as to whether a foreign commercial bank such as Applicant would be considered an investment company as defined under the Act. Applicant states that absent an exemption a foreign bank would be denied ready access to the credit markets in the United States, a result said to be both inherently inequitable and in direct conflict with the objective of the International Banking Act of 1978. Applicant also states that an exemptive order here is both necessary and appropriate because it affords foreign banks access to a source of dollars which is necessary in view of their activities in the Eurodollar market and because it would benefit U.S. investors by making available to them additional opportunities for investment in short term, prime quality securities. Applicant asserts that its activities are extensively regulated by the Dutch banking authorities and that the limitations imposed by Dutch laws as to liquidity and solvency afford substantial protection to investors in debt securities. The application further claims that a commercial bank, such as itself, is substantially different from the typical investment company that Congress intended the Act to regulate, and that Applicant's activities do not lend themselves to the abuses which the provisions of the Act were designed to prevent. Finally, Applicant states that granting its requested order will not give it any advantage over U.S. banks in the issuance of commercial paper.

Notice is further given that any interested person may, not later than November 10, 1980, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of any attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-32702 Filed 10-20-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21745; 70–6510]

Blackstone Valley Electric Co.; Proposed Amendment of Preferred Stock Provisions and Order Authorizing Solicitation of Proxies

October 15, 1980.

In the matter of Blackstone Valley Electric Company, Washington Highway, P.O. Box 111, Lincoln, Rhode Island 02865 (70–6510).

Notice is hereby given that Blackstone Valley Electric Company ("BVEC"), an electric utility subsidiary company of Eastern Utilities Associates, a registered holding company, has filed a declaration with this Commission, pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a), 7, and 12(e) thereof and Rules 62 and 65 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transactions.

The declaration states that the provisions relating to the issuance and the terms, limitations and relative rights and preferences of the preferred stock of

BVEC are set out in the Preferred Stock Provisions. The Preferred Stock Provisions provide that, except with the consent of a majority of the preferred stock then outstanding, the amount of unsecured indebtedness of BVEC having maturities of less than ten years which the company may issue or assume shall not exceed 10% of the sum of the principal amount of all bonds and other securities representing secured indebtedness and the capital (including premiums on capital stock) and surplus of the company and that the amount of all unsecured indebtedness of the company issued or assumed shall not exceed 20% of such sum.

BVEC proposes to amend the Preferred Stock Provisions and intends to hold a special meeting of the holders of its preferred stock on November 20, 1980, to permit such shareholders to consider and act upon a proposal to authorize BVEC, for a five year period, to issue or assume unsecured indebtedness having maturities of less than ten years in excess of the present 10% limitation thereon. Under the applicable provisions of the Preferred Stock Provisions, adoption of the proposal with respect to the short-term unsecured debt limitation requires the affirmative vote of a majority of the total number of outstanding shares of BVEC's preferred stock (which consists of two series) voting as a single class.

In connection with the special meeting to be held on November 20, 1980, BVEC proposes to solicit proxies seeking the affirmative vote of holders of its preferred stock with respect to the above-described amendment to the Preferred Stock Provisions.

It is stated that no state or federal commission, other than this Commission, has jurisdiction over the proposed transactions. A statement of the fees and expenses to be incurred in connection with the proposed transactions is to be filed by amendment. BVEC has filed its proxy solicitation material and requests that the effectiveness of its declaration with respect to the solicitation be accelerated as provided in Rule 62.

Notice is further given that any interested person may, not later than November 10, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rules 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

It appearing to the Commission that BVEC's declaration regarding the proposed solicitation of proxies should be permitted to become effective forthwith pursuant to Rule 62 and that jurisdiction should be reserved with respect to the expenses thereof:

It is ordered that the declaration regarding the proposed solicitation of proxies be, and it hereby is, permitted to become effective forthwith pursuant to Rule 62, and that jurisdiction be, and it hereby is, reserved with respect to the expenses thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-32704 Filed 10-20-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21746; 70-6508]

Louisiana Power & Light Co.; Proposed Issuance and Sale of First Mortgage Bonds at Competitive Bidding

October 15, 1980.

In the matter of Louisiana Power & Light Company, 142 Delaronde Street, New Orleans, Louisiana 70174 (70-6508).

Notice is hereby given that Louisiana Power & Light Company ("Louisiana"), an electric utility subsidiary of Middle South Utilities, Inc., a registered holding company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a) and 7 of the Act and Rule 50 promulgated thereunder as applicable to the following proposed transaction. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transaction.

Louisiana proposed to issue and sell, subject to the competitive bidding requirements of Rule 50, up to $100,000,000 principal amount of its first mortgage bonds of a new series having a term of not less than five years nor more than thirty years. The interest rate of the bonds (which will be a multiple of ⅛th of 1%) and the price, exclusive of accrued interest, to be paid to Louisiana for the bonds (which will not be less than 98% nor more than 101¾% of the principal amount thereof) will be determined by competitive bidding. The bonds will be issued under Louisiana's Mortgage and Deed of Trust, dated as of April 1, 1944, to The Chase Manhattan Bank (National Association), Trustee, as heretofore supplemented by various indentures and as it is to be further supplemented by a Twenty-eighth Supplemental Indenture to be dated as of the first day of the calendar month in which the bonds are issued. The supplemental indenture will include a prohibition, for a period of not more than five years, against refunding the bonds, directly or indirectly, with funds borrowed at a lower effective interest cost.

Louisiana will use the net proceeds derived from the sale of the bonds to pay, inpart, short-term borrowings estimated to total $120,000,000 at the time the proceeds are received, to finance, in part, Louisiana's construction program (estimated to total approximately $263,800,000 in 1980), and for other corporate purposes.

The fees and expenses to be incurred in connection with the proposed transaction are estimated at $220,000, including legal fees of $51,500 and auditor's fees of $9,800. The fee of counsel for the purchasers of the bonds is estimated at $19,000 and will be paid by the successful bidders. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than November 17, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated

address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A Fitzsimmons,

Secretary.

[FR Doc. 80-32703 Filed 10-20-80; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Proposed License No. 06/06-0241]

Aspen Financial Corp.; Application for a 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 Section 107.102 (1980)) under the name of Aspen Financial Corporation, Suite 300, 654 East Northbelt, Houston, Texas 77060, for a license to operate as a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958, as amended (the Act), (15 U.S.C. 661 *et seq.*), and the Rules and Regulations promulgated thereunder.

The proposed officers, directors and shareholders of the Applicant are as follows:

William E. Dueease III, 5415 Havenwoods, Houston, TX 77066; President, Treasurer and Director; 71.3 percent Shareholder.
Julie Ann Dueease, 5415 Havenwoods, Houston, TX 77066; Vice President and Secretary.
Carl L. Norton, 3112 Locke Lane, Houston, TX 77019; Director, 9.9 percent Shareholder.
Earl R. Hagaman, 14113 Bronte Drive, Whittier, California 90602; Director; 18.8 percent Shareholder.

There will be one class of stock authorized: one million shares of common stock. Initially, only 50,500 shares will be issued with a resultant private capital of $505,000. Applicant proposes to conduct its operations principally in the State of Texas.

Matters involved in SBA's consideration of the application include the general business reputation and character of shareholders and management, and the probability of successful operation of the new company in accordance with the Act and Regulations.

Notice is further given that any person may, not later than 15 days from the date of publication of this notice, submit to SBA, in writing, comments on the proposed licensing of this company. Any such communications should be addressed to: Acting Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416.

A copy of this notice shall be published by the Applicant in a newspaper of general circulation in Houston, Texas.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 11, 1980.

Peter F. McNeish,

Acting Associate Administrator for Investment.

[FR Doc. 80-32772 Filed 10-20-80; 8:45 am]

BILLING CODE 8025-01-M

[License No. 06/06-0239]

Mapleleaf Capital Corp.; Issuance of License To Operate as a Small Business Investment Company

On August 25, 1980, a notice was published in the Federal Register (45 FR 56490) stating that an application had been filed by Mapleleaf Capital Corporation, Suite 1207, 201 Wilcrest Drive, Houston, Texas, 77042, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1980)), for a license to operate as a small business investment company (SBIC).

Interested parties were given until the close of business September 9, 1980, to submit their written comments to SBA. No comments were received.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, and after having considered the application and all other information, SBA issued License No. 06/06-0239 on October 6, 1980, to Mapleleaf Capital Corporation, to operate as an SBIC.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 11, 1980.

Peter F. McNeish,

Acting Associate Administrator for the Investment.

[FR Doc. 80-32771 Filed 10-20-80; 8:45 am]

BILLING CODE 8025-01-M

[Proposed License No. 09/09-5265]

Pacific Capital Fund, Inc.; Application for License To Operate as a Small Business Investment Company

An application for a license to operate as a small business investment company under the provisions of Section 301(d) of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 *et seq.*), has been filed by Pacific Capital Fund, Inc. (Applicant) with the Small Business Administration (SBA), pursuant to 13 CFR 107.102 (1980).

The officers, directors and stockholders of the Applicant are as follows:

Victor H. Gallego, President, Director General Manager and .994% Stockholder, 3227 Adelaide Way, Belmont, CA 94402.
Oscar C. Ongpin, Secretary, Chief Financial Officer, Director and .006% Stockholder, 1532 Tarrytown, San Mateo, CA 94401.
Jose Luis C. Cervero, Assistant Secretary and Director, 482 Fatham Court, Redwood City, CA 94065.
Benedicto V. Yujuico, Director and 50% Stockholder, 69 Santiago Avenue, Atherton, CA 94025.
Teresita M. Yujuico, Director and 49% Stockholder, 69 Santiago Avenue, Atherton, CA 94025.

The Applicant, a California corporation, with its principal place of business at 500 Airport Boulevard, Suite 400, Burlingame, California 94010, will begin operations with $1,000,000 of paid-in capital and paid-in surplus from the sale of 1,006,000 shares of common stock.

The Applicant will conduct its activities principally in the State of California.

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 charted solely for the purpose of performing the functions and conducting the activities contemplated under the Small Business Investment Act of 1958, as amended, from time to time, and will provide assistance solely to small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns

by persons whose participation in the free enterprise system is hampered because of social or economic disadavantages.

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 this management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is hereby given that any person may, not later than November 5, 1980, submit to SBA written comments on the proposed Applicant. Any such communication should be addressed to the Acting Associate Administrator for Investment, 1441 L Street, N.W., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in Burlingame, California.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 10, 1980.

Peter F. McNeish,

Acting Associate Administrator for Investment.

[FR Doc. 80-32773 Filed 10-20-80; 8:45 am]

BILLING CODE 8025-01-M

Region V Advisory Council; Public Meeting

The Small Business Administration Region V Advisory Council, located in the geographical area of Madison, Wisconsin, will hold a public meeting from 9:00 a.m. to 12:00 noon, Wednesday, November 19, 1980, at the Milwaukee Athletic Club, Rooms B and C (5th Floor), 758 North Broadway, Milwaukee, Wisconsin, to discuss such business as may be presented by members, the staff of the U.S. Small Business Administration, and others attending.

FOR FURTHER INFORMATION: Write or call Curtis A. Charter, District Director, U.S. Small Business Administration, 212 East Washington Avenue, Room 213, Madison, Wisconsin 53703 (608) 264-5267.

Dated: October 15, 1980.

Michael B. Kraft,

Deputy Advocate for Advisory Councils.

[FR Doc. 80-32774 Filed 10-20-80; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice 727]

Participation of Private-Sector Representatives on U.S. Delegations

As announced in Public Notice No. 623 (43 FR 37783), August 24, 1978, the Department is submitting its September 1980 list of U.S. accredited Delegations which included private-sector representatives.

Publication of this list is required by Article IV(c)(4) of the guidelines published in the **Federal Register** on August 24, 1978.

Dated: October 9, 1980.

John W. Kimball,

Director, Office of International Conferences.

United States Delegation to the Sixth United Nations Congress on Crime Prevention and Treatment of Offenders, Caracas, August 25-September 5, 1980

Representative

The Honorable Charles B. Renfrew, Deputy Attorney General, Department of Justice.

Alternate Representatives

The Honorable Norman A. Carlson, Director, Bureau of Prisons, Department of Justice.

The Honorable Ronald Gainer, Deputy Assistant Attorney General, Office for Improvements in the Adminstration of Justice, Department of Justice.

Congressional Advisers

The Honorable John Conyers, Jr., United States House of Representatives.

The Honorable Robert F. Drinan, United States House of Representatives.

Congressional Staff Advisers

Timothy A. Boggs, Legislative Assistant, Judiciary Committee, United States House of Representatives.

Gregory Hayden, Counsel to the Sub-Committee on Crime, Judiciary Committee, United States House of Representatives.

Steven Raikin, Counsel to the Sub-Committee on Crime, Judiciary Committee, United States House of Representatives.

Judicial Advisers

The Honorable James M. Burns, Chief Judge, U.S. District Court of Oregon.

The Honorable Carl Moultrie, Chief Judge, Superior Court of the District of Columbia, Department of Justice.

The Honorable Robert C. Murphy, Chief Judge, State of Maryland Court of Appeal.

The Honorable Robert J. Sheran, Chief Judge, Supreme Court of Minnesota.

The Honorable Gerald B. Tjoflat, Judge, U.S. Court of Appeals, Fifth Circuit.

Advisers

The Honorable Allen Breed, Director, National Institute of Corrections, Department of Justice.

The Honorable Homer Broome, Administrator, Law Enforcement Assistance Administration, Department of Justice.

H. Lee Colwell, Executive Assistant Director, Federal Bureau of Investigation.

The Honorable Mathea Falco, Assistant Secretary for International Narcotics Matters, Department of State.

Philip K. Johnson, Political Counselor, United States Embassy, Caracas.

The Honorable Audrey Kaslow, Commissioner, United States Parole Commission, Department of Justice.

Jacob Nena, Governor, Kosrae District, Trust Territory of the Pacific Islands.

Harry S. Scarr, Administrator, Federal Justice Research Program, Office for Improvements in the Administration of Justice, Department of Justice.

The Honorable Ira M. Schwartz, Administrator, Office of Juvenile Justice and Delinquency Prevention, Department of Justice.

Norman T. Shaft, Office of Human Rights Affairs, Bureau of International Organization Affairs, Department of State.

Charles F. Welford, Deputy Administrator, Federal Justice Research Program, Department of Justice.

Private Sector Advisers

Alfred Blumstein, Professor of Urban Affairs, Carnegie-Mellon University, Pittsburgh, Pennsylvania.

Norman Darwick, Executive Director, International Association of Chiefs of Police, Gaithersburg, Maryland.

Marvin F. Wolfgang, Professor of Criminology and Criminal Law, University of Pennsylvania, Philadelphia, Pennsylvania.

U.S. Delegation, 25th Session, Subcommittee on Subdivision Stability and Load Lines, Intergovernmental Maritime Consultative Organization (IMCO), London, September 15-19, 1980

Representative

William A. Cleary, Chief, Ship Characteristics Branch, Office of Merchant Marine Safety, United States Coast Guard, Department of Transportation.

Alternate Representative

Kevin A. Feeney, LCDR, USCG, Ship Characteristics Branch, Office of Merchant Marine Safety, United States Coast Guard, Department of Transportation.

Adviser

Zelvin Levine, Office of Advanced Ship Development, Maritime Administration, Department of Commerce.

Private Sector Advisers

Edward H. Middleton, Technical Advisor, Maritime Institute for Research and Industrial Development, Washington, D.C.

Thomas F. Robinson, Technical Manager, Bethlehem Steel Corporation;, Central Technical Division—Shipbuilding, Sparrows Point, Maryland.

U.S. Delegation to the International Coffee Organization Meetings of the Council and Executive Board, London, September 15-26, 1980

Representative

Michael Calingaert, Deputy Assistant Secretary for International Resources and

Food, Bureau of Economic and Business Affairs, Department of State.

Alternate Representative

James A. Truran, Office of the Trade Representative, Executive Office of the President.

Advisers

Milton Anderson, Foreign Agricultural Service, Department of Agriculture.

Ralph Ives, Resources Policy Division, Department of Commerce.

Paul P. Pilkauskas, United States Embassy, London.

James Woolwine, Tropical Products Division, Bureau of Economic and Business Affairs, Department of State.

Private Sector Advisers

George E. Boecklin, President, National Coffee Association, New York, New York, Sept. 15, 17, 19.

John C. K. Buckley, Vice President, Purchasing, Nestle Company, Inc., White Plains, New York, Sept. 15, 18.

Kenneth R. Dunnivant, Vice President, Proctor and Gamble, Cincinnati, Ohio, Sept. 22, 25.

John Heuman, President, Coffee & Food Manufacturing Division, CFS Continental, Inc., Chicago, Illinois, Sept. 23, 25.

Paul Keating, Vice President, General Foods Corporation, New York, New York, Sept. 19, 22, 24.

Esward Rosen, President, Coffee Division, ACLI International, Inc., White Plains, New York, Sept. 23, 24.

John W. Schimelpfenig, Machado and Company, New York, New York, Sept. 23, 26.

Andrew A. Scholtz, President, Scholtz and Company, New York, New York, Sept. 16, 17, 22.

Izadore Michael Schulman, Law Center, University of Southern California, Los Angeles, California.

Marvin Schur, President, J. Aron and Company, New York, New York, Sept. 16, 18, 19.

H. Grady Tiller, Vice President, Director of Purchasing, The Coca Cola Company, Foods Division, Houston, Texas, Sept. 24, 25.

U.S. Delegation to the Insurance Committee Working Group on LDCS, Organization For Economic Cooperation and Development (OECD), Paris, September 18–19, 1980

Representative

Albert N. Alexander, Director, International Services Division, Department of Commerce.

Private Sector Adviser

Edwin A. Sterns, International Insurance Advisory Council, Chamber of Commerce of the United States, Washington, D.C.

U.S. Delegation to the Joint Meeting of the Working Party on Facilitation of International Trade Procedures, Group of Experts on Data Requirements and Documentation, Group of Experts on Automatic Data Processing and Coding, Economic Commission for Europe (ECE), Geneva, September 20–26, 1980

Representative

William R. Myers,

Peter Keller,

Director, Office of Facilitation, Department of Transportation.

Adviser

U.S. Mission, Geneva.

Private Sector Advisers

Arthur E. Baylis, Executive Director, National Committee on International Trade Documentation, New York, New York.

Edward A. Guilbert, President, Transportation Data Coordinating Committee, Washington, D.C.

U.S. Delegation to the Fifth Consultative Meeting, London Ocean Dumping Convention, Intergovernmental Maritime Consultative Organization (IMCO), London, September 22–26, 1980

Representative

William N. Hedeman, Jr., Director, Office of Environmental Review, Environmental Protection Agency.

Alternate Representative

Alan B. Sielen, Acting Director, Oceans and Regulatory Division, Office of International Activities, Environmental Protection Agency.

Advisers

William Brewer, Jr., Special Assistant to the Administrator, National Oceanic and Atmospheric Administration, Department of Commerce.

Robert M. Engler, Corps of Engineers, United States Army.

John Simmons, Shipping Attache, American Embassy, London.

Thaddeus A. Wastler, Chief, Marine Protection Branch, Office of Water and Waste Management, Environmental Protection Agency.

Phyllis N. Windle, Office of Environment and Health, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State.

Private Sector Adviser

Kenneth S. Kamlet, Counsel, National Wildlife Federation, Washington, D.C.

U.S. Delegation to the Committee on Invisibles and Financing Related to Trade, United Nations Conference on Trade and Development (UNCTAD), Geneva, September 29—October 3, 1980

Representatives

Vincent Travaglini, Acting Deputy Assistant Secretary for Finance, Investment and Services, Department of Commerce.

Alternate Representative

Edith Bruce, United States Mission, Geneva.

Edwin A. Sterns, International Insurance Advisory Council, Chamber of Commerce of the United States.

U.S. Delegation to the 22nd Session, Subcommittee on Radio Communications of the Intergovernmental Maritime Consultative Organization (IMCO), London, September 29—October 3, 1980

Representative

James G. Williams, Commander, USCG, Chief, Telecommunications Management Division, United States Coast Guard, Department of Transportation.

Alternate Representative

Richard F. Carlson, Lt. USCG, Chief, Systems Development and Technology Branch, United States Coast Guard, Department of Transportation.

Advisers

Gordon F. Hempton, Captain, USCG (Ret), Special Assistant, Private Radio Bureau, Federal Communications Commission.

Earl J. Holliman, Chief, Frequency Management Staff, United States Coast Guard, Department of Transportation.

Robert C. McIntyre, Engineer, Federal Communications Commission.

Lawarence M. Palmer, International Staff, Federal Communications Commission.

Private Sector Advisers

M. Harvey Strichartz, American Radio Association, New York, New York.

Kenneth P. Wenthen, Maritime Services Committee, New York, New York.

U.S. Delegation to the Workshop on Resettlement of Refugees From Indo China, United Nations High Commissioner for Refugees (UNHCR), Geneva, Sepatember 29–October 3, 1980

Representative

Carol Pratt Hecklinger, Assistant Coordinator for Domestic Programs, Office of the U.S. Coordinator for Refugee Affairs, Department of State.

Alternate Representative

Margaret Carpenter, Assistant Coordinator for Congressional and Public Affairs, Office of the U.S. Coordinator for Refugee Affairs, Department of State.

Advisers

Joseph Coleman, Program Development Officer, Office of the U.S. Coordinator for Refugee Affairs, Department of State.

Douglas Hunter, Political Officer, United States Mission to the United Nations, Geneva.

Kenneth Quinn, Administrative Assistant to Governor of Iowa, Des Moines, Iowa.

Lionel Rosenblatt, Refugee Coordinator, United States Embassy, Bangkok.

Frank Sieverts, Minister-Counselor for Humanitarian and Refugee Affairs, United States Mission to the United Nations, Geneva.

Mary Spillane, Director of Operations, Office of Refugee Resettlement, Department of Health and Human Services.

Roger Winter, Director, Office of Refugee Resettlement, Department of Health and Human Services.

Private Sector Advisers

Edward Ferguson, Lutheran Immigration and Refugee Center, Indochinese Cultural and Service Center, Portland, Oregon.

Christine Gaffney, Assistant Director, American Council for Nationalities Service, New York, New York.

Pho Ba Long, Co-Director of the Orientation Resource Center, Center for Applied Linguistics, Washington, D.C.

John McCarthy, Executive Director, Migration and Refugee Services, United States Catholic Conference, Washington, D.C.

Robert J. Stein, Director, Indochina Refugee Action Center, Washington, D.C.

[FR Doc. 80-32749 Filed 10-20-80; 8:45 am]

BILLING CODE 4700-19-M

[Public Notice CM-8/333]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea; Meeting

The Panel on Bulk Cargoes under the SOLAS Subcommittee Working Group on Containers and Cargoes will conduct an open meeting at 10:00 a.m. on Wednesday, November 12, 1980 in Room 6332 of the Nassif Building, 7th and D Sts., S.W., Washington, D.C. 20590.

The purpose of the meeting will be to:

—review the draft US paper on Direct Reduced Iron prepared for submission to the next session of the Subcommittee on Containers and Cargoes; and

—review all papers received from the IMCO Secretariat for the next session of the Subcommittee on Containers and Cargoes.

For further information contact Mr. Donald L. Ewing, USCG (G-MMT-5/12), Washington, D.C. 20593. Tel: (202) 426-2188 or Captain S. Fraser Sammis, National Cargo Bureau, Inc., Suite 2757, One World Trade Center, New York, N.Y. 10048. Tel: (212) 432-1280.

Dated: October 2, 1980.

John Todd Stewart,

Chairman, Shipping Coordinating Committee.

[FR Doc. 80-32713 Filed 10-20-80; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/334]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea; Meeting

The Subcommittee on Safety of Life at Sea Working Group on the Carriage of Dangerous Goods will conduct an open meeting at 9:30 a.m. on November 6, 1980 in Room 3201 of the Coast Guard Headquarters Building, 2100 Second Street, S.W., Washington, D.C. 20593.

The purpose of the meeting will be to:

—discuss the Report of the XXXI Session of the IMCO Subcommittee on the Carriage of Dangerous Goods;

—discuss United States positions on matters concerning the Carriage of Dangerous Goods to be considered at the XLIII Session of the IMCO Maritime Safety Committee;

—discuss the progress of IMCO activities of a continuing nature such as implementation of the IMDG Code.

Requests for further information on the meeting should be direced to: Lt. Kevin J. Eldridge, USCG (G-MHM-2), 2100 Second St., S.W., Washington, D.C. 20593. Tel: (202) 426-1577.

Dated: October 2, 1980.

John Todd Stewart,

Chairman, Shipping Coordinating Committee.

[FR Doc. 80-32714 Filed 10-20-80; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TREASURY

Privacy Act of 1974; Revised System of Records

AGENCY: Office of the Secretary, Department of the Treasury.

ACTION: Notice of intent to revise Privacy Act Systems of Records.

SUMMARY: Pursuant to the requirements of the Privacy Act of 1974 (5 U.S.C. 552a) the Assistant Secretary (Domestic Finance) gives notice of the proposed revision and update of the information contained in previous notices for system Treasury/OS 00.011, Office of Domestic Finance, General Correspondence (45 FR 18666), March 21, 1980. This revision updates three data elements; the policies and practices for storing, retrieving, and disposing of records in the system, the System manager, and the record access procedures. This revision does not constitute an expansion of the system involved.

DATES: Public comments on this system of records must be received on or before November 20, 1980. If no public comments are received, to which the Department publishes a revision to incorporate comments, this system of records will become effective November 21, 1980.

ADDRESS: Department of the Treasury, Office of the Assistant Secretary (Domestic Finance), Administrative Office, Room 1204, 1500 Pennsylvania Ave., NW, Washington, D.C. 20220.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony L. Conques, Administrative Officer, Office of the Assistant Secretary (Domestic Finance), Department of the Treasury, Room 1204, 1500 Pennsylvania Avenue, NW., Washington, D.C. 22020, 202-566-5152.

Dated: October 14, 1980.

Walter J. McDonald,

Assistant Secretary (Administration).

TREASURY/OS 00.011

SYSTEM NAME:

Office of Domestic Finance, General Correspondence-Treasury/OS

* * * * *

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Locator file system stored in small desk top file box. The files are stored in a locked file cabinet in the Administrative Office.

RETRIEVABILITY:

Files are indexed by name of correspondent, subject, and an interoffice correspondence code.

SAFEGUARDS:

Files are locked during non-business hours and are stored in a physically secure building.

RETENTION AND DISPOSAL:

Correspondence is retained for one year, at which time it is destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Officer for the Office of the Assistant Secretary (Domestic Finance), Room 1204, Main Treasury Building, 1500 Pennsylvania Avenue, Washington, D.C. 20220.

* * * * *

RECORD ACCESS PROCEDURES:

Chief, Disclosure Branch, Room 1322, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

* * * * *

[FR Doc. 80-32717 Filed 10-21-80; 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 November 21, 1980, at 1:00 p.m., the Veterans Administration Regional Office Station Committee on Educational Allowances shall at Estes Kefauver Federal Building—U.S. Courthouse, Room A-220, 110 Ninth Avenue, South, Nashville, Tennessee, conduct a hearing to determine whether Veterans Administration benefits to all

eligible persons enrolled in Draughon's Junior College, 6204 Baum Drive, Knoxville, Tennessee, should be discontinued, as provided in 38 C.F.R. 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: October 8, 1980.

R. S. Bielak,

Director, VA Regional Office, Nashville, Tenn.

[FR Doc. 80-32625 Filed 10-20-80; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 45, No. 205
Tuesday, October 21, 1980

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL COMMUNICATIONS COMMISSION.

The Federal Communications Commission will hold a Special Open Meeting on the subject listed below on Monday, October 20, 1980 at 9:30 a.m., in Room 856, at 1919 M Street, N.W., Washington, D.C.

Agenda, Item No., and Subject

General—1—*Title:* Network Inquiry Final Report. *Summary:* The Network Inquiry will present its Final Report to the Commission. The Inquiry Staff will also present its responses to comments on the Inquiry's preliminary reports. The Final Report is designed principally to address the policy questions raised for the Commission by the changes which are taking place in the television industry. These deal with entry policy, ownership policy, regulation of existing and new kinds of networks and Commission jurisdiction over networking.

The prompt and orderly conduct of commission business did not permit prior notice of this Special Meeting.

The prompt and orderly conduct of Commission business requires that less than 7-days notice be given.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Edward Dooley, FCC Public Affairs Office, telephone number (202) 254-7674.

Issued: October 15, 1980.

Federal Communications Commission.
William J. Tricarico,
Secretary.

[S-1926-80 Filed 10-16-80; 3:50 pm]
BILLING CODE 6712-01-M

2

FEDERAL ENERGY REGULATORY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: To be published October 10, 1980.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., October 22, 1980.

CHANGE IN MEETING: The following items have been added:

Item number, Docket Number, and Company

ER-7: ER78-517, Connecticut Light & Power Co.
M-11: GP81- . USGS at Metairie, Louisiana, well category determination, Mesa Petroleum Co., JD80-56544.
RP-2: RP79-64, Florida Gas Transmission Co.

Kenneth F. Plumb,
Secretary.

[S-1927-80 Filed 10-17-80; 1:22 pm]
BILLING CODE 6450-85-M

3

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION.

October 15, 1980.

TIME AND DATE: 10 a.m., Wednesday, October 22, 1980.

PLACE: Room 600, 1730 K Street NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Secretary of Labor on behalf of Larry Long v. Island Creek Coal Co., & Langley & Morgan Contracting Co., Docket No. VA 79-81-D (Petition for Discretionary Review—issues include whether substantial evidence supports finding of violation of section 105(d) of the 1977 Mine Act.)
2. Jackie Ray Hammonds v. National Mines Corporation, Docket No. KENT 79-345-D (Petition for Discretionary Review—issues include whether default was appropriate.)

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, 202-653-5632.

[S-1925-80 Filed 10-16-80; 3:19 pm]
BILLING CODE 6820-12-M

4

FEDERAL RESERVE SYSTEM.

Committee on Employee Benefits of the Board of Governors

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Notice forwarded to Federal Register on Tuesday, October 14, 1980.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 11 a.m., Wednesday, October 22, 1980.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting: 1. Retirement credit for periods of disability retirement.

CONTACT PERSON FOR MORE INFORMATION: Joseph R. Coyne, Assistant to the Board (202) 452-3204.

Dated: October 17, 1980.

Theodore E. Allison,
Secretary of the Board.

[S-1929-80 Filed 10-17-80; 2:45 pm]
BILLING CODE 6210-01-M

5

FEDERAL RESERVE SYSTEM.

TIME AND DATE: 10 a.m., Monday, October 27, 1980.

PLACE: 20th Street and Constitution Avenue NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any agenda items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board, (202) 452-3204.

Dated: October 17, 1980.

Theodore E. Allison,
Secretary of the Board.

[S-1928-80 Filed 10-17-80; 2:38 pm]
BILLING CODE 6210-01-M

6

[NM-80-36]

NATIONAL TRANSPORTATION SAFETY BOARD.

TIME AND DATE: 9 a.m., Tuesday, October 28, 1980.

PLACE: NTSB Board Room, National Transportation Safety Board, 800 Independence Avenue SW., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. *Pipeline Accident Report*—Pipelines of Puerto Rico, Inc., Petroleum Products Pipeline Rupture and Fire, Bayamon, Puerto Rico, January 30, 1980, and *Recommendations* to the Pipelines of Puerto Rico, Inc., the Public Service Commission of the Commonwealth of Puerto Rico, the Governor of the Commonwealth of Puerto Rico, the Puerto Rico Telephone Company, and the Research and Special Programs Administration of the U.S. Department of Transportation.

2. *Special Investigation Report*—Increased Shipper Involvement in Hazardous Materials Transportation.

3. *Safety Effectiveness Evaluation*—The Improvement of Nighttime Conspicuity of Railroad Trains.

CONTACT PERSON FOR MORE INFORMATION: Sharon Flemming, 202–472–6022.

October 17, 1980.

[S–1933–80 Filed 10–17–80; 3:21 pm]

BILLING CODE 4910–58–M

7

[OP0401]

PAROLE COMMISSION.

(Commissioners presently maintaining offices at Washington, D.C. Headquarters)

TIME AND DATE: 9:30 a.m., Friday, October 17, 1980.

PLACE: Room 724, 320 First Street NW., Washington, D.C. 20537.

STATUS: Closed pursuant to a vote to be taken at the beginning of the meeting.

CHANGES IN THE MEETING: On October 16, 1980, the Commission determined that the above meeting be continued to 9:30 a.m. on Monday, October 20, 1980 for consideration of case referrals from Regional Commissioners. The above change is being announced at the earliest practicable time.

CONTACT PERSON FOR MORE INFORMATION: Linda Wines Marble, Analyst, National Appeals Board, U.S. Parole Commission (202) 724–3094.

[S–1930–80 Filed 10–17–80; 3:13 pm]

BILLING CODE 4410–01–M

8

[OP0401]

PAROLE COMMISSION.

TIME AND DATE:

9 a.m.–5:30 p.m., Monday, October 27.

9:30 a.m.–12:30 p.m., Tuesday, October 28, 1980.

PLACE: Room 500, 320 First Street NW., Washington, D.C. 20537.

STATUS: Closed pursuant to a vote to be taken at the beginning of the meeting.

MATTERS TO BE CONSIDERED: Appeals to the Commission of approximately 17 cases decided by the National Commissioners pursuant to a reference under 28 CFR § 2.17 and appealed pursuant to 28 CFR § 2.27. These are all cases originally heard by examiner panels wherein inmates of Federal Prisons have applied for parole or are contesting revocation of parole or mandatory release.

CONTACT PERSON FOR MORE INFORMATION: Linda Wines Marble, Analyst (202) 724–3094.

[S–1931–80 Filed 10–17–80; 3:14 pm]

BILLING CODE 4410–01–M

9

[OP0401]

PAROLE COMMISSION.

TIME AND DATE:

1:30 p.m.–5:30 p.m., Tuesday, October 28, 1980.

9:30 a.m.–5:30 p.m., Wednesday, October 29, 1980.

PLACE: Room 500, 320 First Street, NW., Washington, D.C. 20537.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Reports from Chairman and Commissioners.

2. Topics involving the U.S. Probation Service.

a. Classification for Supervision purposes.

b. Presence of Probation Officers at Preliminary Interviews/Reduction in field staff/workload.

3. Representatives at Original Jurisdiction Appeals and Regional Appellate Hearings.

4. Proposed modification of definitions and ratings concerning manslaughter.

5. Modification of guidelines for termination of supervision.

6. Proposed Revision of the Salient Factor Score.

7. Declassification of Original Jurisdiction Cases.

8. Commission Recommendations for release Through a Community Treatment Center.

9. "Superior Program Achievement" Report on Research during the first six months of implementation.

10. Witness Protection Cases—planning.

11. A. Codefendant Disparity; B. Correction of Errors.

12. Early Release with Restitution as a Condition of Parole.

13. Clarification of the rating of Drug Conspiracy cases.

14. Clarification of rulings on executing warrants on parole violator terms

15. Search and Seizure.

16. Ancient Prior record—definition and effect.

17. Administrative Reviews—Method of Handling.

18. Refusal of Inmates to accept parole conditions and/or sign parole release agreements.

19. Proposed revisions of 28 C.F.R. § 2.23—Examiner recommendations.

20. Proposed revisions of 28 C.F.R. § 2.24—Allowing for a rehearing prior to a final decision to assess adverse information.

21. *Consent Agenda.*

The following Consent Agenda items if specifically requested to be opened for discussion at the meeting.

Policy and procedures Memoranda Issued Since Last Meeting or Issued but not Previously Approved.

(a) 80/17: Dispositional Revocation Regulation.

(b) 8/18: Rescission Guidelines.

(c) 80/19: Conditions of Parole.

(d) 80/21: Specificity in Case Evaluation.

22. Proposed Policy and Procedure Memorandum: Forfeiture of Street Time for Mexican and Canadian Sentenced Parole Violators.

23. Ratification of Emergency Rule concerning Sentence Aggregation.

24. Proposed revisions of language in the following rules:

(a) 28 CFR § 2.28(f)—Providing for an automatic stay of the release date upon referral under this section.

(b) 28 CFR § 2.44—Concerning the effect of issuing a warrant on the running of the sentence.

CONTACT PERSON FOR MORE INFORMATION: Barbara Meierhoefer, Research Analyst (202) 724–3095.

[S–1932–80 Filed 10–17–80; 3:14 pm]

BILLING CODE 4410–01–M

10

SECURITIES AND EXCHANGE COMMISSION.

Notice is hereby given, pursuant to the provisions of the Government Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of October 20, 1980, in Room 825, 500 North Capitol Street, Washington, D.C.

Closed meetings will be held on Tuesday, October 21, 1980 at 10:00 a.m. and on Wednesday, October 22, 1980, following the 10 a.m. open meeting.

The Commissioners, their legal assistants, the Secretary of the Commission, and recording secretaries will attend the closed meetings. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meetings may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 522b(c)(4)(8)(9)(A) and (10) and 17 CFR 200.402(a)(4)(8)(9)(i) and (10).

Chairman Williams and Commissioners Loomis, Evans, and Friedman determined to hold the aforesaid meetings in closed session.

The subject matter of the closed meeting scheduled for Tuesday, October 21, 1980, at 10:00 a.m., will be:

Formal orders of investigation.
Access to investigative files by Federal, State, or Self-Regulatory authorities.
Settlement of injunctive action.
Litigation matters.
Freedom of Information Act appeals.
Institution of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Institution and settlement of administrative proceedings of an enforcement nature.
Settlement of administrative proceeding of an enforcement nature.
Regulatory matter bearing enforcement implications.
Opinions.
Proposed orders in administrative proceedings of an enforcement nature.

The subject matter of the closed meeting scheduled for Wednesday, October 22, 1980, following the 10:00 a.m. open meeting, will be:

Institution of administrative proceedings of an enforcement nature.
Institution of injunctive actions.
Regulatory matter bearing enforcement implications.

The subject matter of the open meeting scheduled for Wednesday, October 22, 1980, at 10 a.m., will be:

1. Consideration of whether to adopt Rules 12b–1 and 17d–3 and amendments to Form N–1 under the Investment Company Act of 1940, which would: (1) establish conditions under which registered open-end management investment companies could directly or indirectly finance distribution of their own shares; (2) provide, where applicable, an exemption from the requirement of prior Commission approval for certain transactions complying with rule 12b–1; and (3) obtain appropriate disclosure about funds bearing distribution expenses. For further information, please contact Richard Grant at (202) 272–2041.

2. Consideration of whether to approve a proposed response by the Division of Investment Management to a letter from the American Council of Life Insurance which requested reconsideration and clarification of certain issues discussed in the Commission's General Statement of Policy Regarding Exemptive Provisions Relating to Annuity and Insurance Contracts. For further information, please contact Laura A. Boughan at (202) 272–2060.

3. Consideration of whether to grant the request of Rogers & Wells for a waiver of imputed disqualification pursuant to 17 CFR 200.735–8(e). For further information, please contact Myrna Siegel at (202) 272–2430.

4. Consideration of whether to grant the application of Ernest Cummins and Lauren H. Peppler for relief pursuant to Rule 252(f) of Regulation A. For further information, please contact Thomas J. Baudhuin at (202) 272–2644.

5. Consideration of whether to issue a release setting forth the new procedures for responding to no-action and interpretative letters by the Division of Corporation finance. For further information, please contact William E. Morley at (202) 272–2573.

6. Consideration of whether to grant the application of Thomas D. Sullivan to permanently modify the Commission's order dated April 22, 1977 which, among other things, prohibits him from acting as an underwriter and participating in underwritings of municipal and other securities, restricts his business in municipal securities to transactions with financial institutions and broker-dealers, and limits municipal serurities sold by him to those with a "Baa" or better rating. For further information, please contact John Courtade at (202) 272–2985.

7. Consideration of whether to issue a release requesting public comment on proposed amendments to Rule 463 of Regulation C and related Form SR (Report of Sales of Securities and Use of Procedures Therefrom) under the Securities Act of 1933. The purpose of the amendments is to enable the commission to provide investors and the staff with more meaningful information concerning first-time offerings, direct distributions and best efforts underwritings. For further information, please contact Elizabeth K. Norsworthy at (202) 272–2589 or Jeffry L. Davis at (202) 272–2850.

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: Marcia Macharg at (202) 272–2468.

October 16, 1980.

S–1924–80 Filed 10–16–80; 3:18 pm

BILLING CODE 8010–01–M

federal register

Tuesday
October 21, 1980

Part II

Department of Health and Human Services

Food and Drug Administration

General Hospital and Personal Use Devices; Classification Regulations

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 880

[Docket No. 78N-1267]

General Hospital and Personal Use Devices; General Provisions

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: Food and Drug Administration (FDA) is issuing a final rule regarding general provisions applicable to the classification of general hospital and personal use devices. The preamble to this rule responds to general comments received on the proposals regarding classification of general hospital and personal use devices. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7555.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 24, 1979 (44 FR 49844), FDA published a proposed regulation containing general provisions applicable to the classification of general hospital and personal use devices. The preamble to the regulation described the development of the proposed regulations classifying general hospital and personal use devices and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel), an FDA advisory committee that makes recommendations to FDA concerning the classification of general hospital and personal use devices. FDA also published in that issue of the **Federal Register** individual proposed regulations to classify 99 general hospital and personal use devices. FDA provided a period of 60 days for interested persons to submit written comments on these proposals.

Comments on Classification Proposals

Elsewhere in this issue of the **Federal Register**, FDA is issuing final regulations classifying 94 individual general hospital and personal use devices. FDA is responding to specific comments regarding the classification of individual devices in the final regulations for these devices.

Several general comments were received regarding the process used for publishing classification regulations for general hospital and personal use devices. The agency is responding to these general comments below:

1. A comment stated that whenever a device is exempted from other good manufacturing practice (GMP) regulatory sections in the Code of Federal Regulations (CFR), it should also be exempted from §§ 820.180 and 820.198 (21 CFR 820.180 and 820.198) relating to records and complaint files.

The agency disagrees with the comment. As stated in the proposed general provisions, the agency has determined that no exemption from the device GMP regulation will extend to § 820.180, with respect to general requirements concerning records, or § 820.198, with respect to complaint files. The agency believes that granting exemption from these sections would not be in the public interest, and that compliance with these sections is not unduly burdensome for device manufacturers. To ensure that device manufacturers have adequate systems for complaint investigation and followup, all manufacturers are required to comply with the complaint file requirement. The purpose of requiring all device manufacturers to comply with the general requirements concerning records is to ensure that FDA has access to the complaint files, can investigate device-related injury reports and complaints about product defects, may determine whether the manufacturer's corrective actions are adequate, and may determine whether the exemption from other sections of the GMP regulation is still appropriate.

2. The comment also stated that FDA's intent in not granting an exemption from § 820.180 is unclear and that the agency's decision not to grant this exemption could be construed to mean that FDA wants manufacturers to maintain all records referred to throughout the GMP regulation, even though the device would be exempt from all other GMP requirements except the requirements to maintain and grant access to complaint files.

FDA disagrees with the comment's view that the agency's intent in refusing to exempt manufacturers from § 820.180 is unclear. The discussion above and in the proposed regulation clearly states FDA's intent regarding this section, which is to assure FDA access to complaint files.

3. A comment agreed with the proposed exemption from certain sections of the GMP regulation for five devices. These devices are the elastic bandage (Docket No. 78N-1287), therapeutic medical binder (Docket No. 78N-1295), cast cover (Docket No. 78N-1343), skin pressure protector (Docket No. 78N-1353), and protective restraint (Docket No. 78N-1358).

No change is needed in the regulations on these devices in order to respond to this comment.

4. A comment stated that the device registration and listing product code should be included in the list of general hospital and personal use devices to assist in the identification of the devices.

Although the suggestion in the comment has merit, practical problems prevent its adoption. Some manufacturers have become accustomed to identifying a device by its registration and listing name and three-letter code used for purposes of device listing under section 510 of the act (21 U.S.C. 360). However, FDA is still making changes in the names and identifications of generic types of devices in the classification regulations for all devices for which final regulations have not been published. Because FDA has not used the present device registration and listing names in the proposed and final classification regulations, FDA has prepared an index of names of generic types of medical devices used in classification regulations to aid a manufacturer in matching its device with the proper classification regulation. The index shows the device registration and listing product code for each device reviewed by a classification panel and the corresponding name of the generic type of device and classification panel in which the device classification will be published in the **Federal Register**. The agency announced the availability of this index in the **Federal Register** of March 6, 1979 (44 FR 12269). If necessary, this index will be updated, and the availability of the revised index will be reannounced in the **Federal Register**. FDA believes that, because this index is available, it is unnecessary to include or cross-reference the present device registration and listing name and product code in the classification regulations. In the future, following publication of most of the device classification regulations, the agency will revise and reissue the device registration and listing product code, so the device names to be used for registration and listing correspond to the device names in the final device classification regulations.

5. A comment stated that general purpose hospital mattresses without medical claims in their labeling are not medical devices because they are not covered by the statutory definition of a medical "device." The comment stated

that general purpose hospital mattresses are essentially identical to interspring and urethane foam mattresses sold for residential and other uses.

The comment is largely correct. A general purpose hospital matress that is not intended for a medical purpose is not considered a "device" under section 201(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(h)). Because FDA is unaware of general purpose hospital mattresses which are intended for medical purposes, FDA is not publishing a classification regulation for those products.

FDA also has clarified several regulations classifying products that have both medical and nonmedical uses. FDA will regulate a multipurpose product as a medical device if it is intended for a medical purpose, that is, for "use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease," or "to affect the structure or any function of the body." Section 201(h) of the act. FDA will determine the intended use of a product based upon the expressions of the person legally responsible for its labeling and by the circumstances surrounding its distribution. The most important factors the agency will consider in determining the intended use of a particular product are the labeling, advertising, and other representations accompanying the product. Products that have medical uses only are clearly intended for medical purposes and, therefore, will be regulated as medical devices whether or not medical claims are made for them.

Exemptions for Class I Devices

FDA proposed to exempt 28 generic types of general hospital and personal use devices from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)) and Subpart E of Part 807 of the regulations, which implements section 510(k) of the act.

FDA also proposed to exempt 31 generic types of general hospital and personal use devices from certain requirements of the GMP regulation in Part 820.

The agency is exempting two additional generic types of devices from premarket notification procedures and from certain requirements of the GMP regulation, if the devices are not labeled or otherwise represented as sterile, in the final classification regulations for these two devices that are published elsewhere in this issue of the **Federal Register**. These devices are medical absorbent fibers (Docket No. 78N–1303) and specimen containers (Docket No. 78N–1342). The final regulation for each of these devices exempts the device from all requirements of the GMP regulation with the exception of §§ 820.180 and 820.198 relating to records and complaint files. The agency has determined that exemption of any device from §§ 820.180 and 820.198 for the reasons given above in comment/response number one.

Guidelines for Preparing Petitions Requesting Exemption or Variance From the Device GMP Regulation for Devices Classified Into Either Class I or Class II

FDA has prepared guidelines on the procedures that should be followed by persons who wish to submit petitions for exemption or variance from the device GMP regulation. These petitions may be submitted in accordance with provisions of section 520(f)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360j(f)(2)). The agency announced the availability of the guidelines in a notice published in the **Federal Register** on Friday, January 18, 1980 (45 FR 3671). FDA has granted two manufacturers' petitions for exemption from the GMP regulation for four general hospital and personal use devices (Docket Nos. 79P–0290, 79P–0292, 79P–0294, and 79P–0320), if these devices are not labeled or otherwise represented as sterile. The exemptions did not extend to § 820.180, with respect to general requirements concerning records, or § 820.198, with respect to complaint files. These actions are described in more detail in the preambles to individual final regulations for the four devices:

Device name	Docket No.
Elastic bandage	78N–1287
Therapeutic scrotal support	78N–1324
Disposable bedding	78N–1333
Patient examination gloves	78N–1347

Minor Changes Made in Final Regulations

FDA is making minor changes in the names of some devices or in their identification for clarification purposes. Additionally, the agency is adding an explanation in § 880.1 that references in Part 880 to other regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21 unless otherwise noted.

Final Regulations Not Published at This Time

The agency is not publishing the final regulations for the following devices at this time:

Device name	Docket No.	Disposition
Urine collection bags for infants	78N–1286	To be published with Gastroenterology-Urology Devices.
Naso-gastric tubes	78N–1327	To be published with Gastroenterology-Urology Devices.
Infant oxygen hoods	78N–1305	Was published with Anesthesiology Devices (44 FR 63395).
I.V. set stopcocks	78N–1323	See 78N–1309 published elsewhere in this issue of the **Federal Register**.
Fluid delivery tubing	78N–1328	See 78N–1309 published elsewhere in this issue of the **Federal Register**.

Separate termination notices will be published in the **Federal Register** for the above docket numbers at a later time.

Changes in Classification in Final Orders

Based on the comments received and on additional consideration of the information before the agency, FDA has classified each of several devices into a different class from that originally proposed. Changes in classification were made in each of the following regulations with respect to all or some devices subject to the regulation: Pressure infusor for I.V. bags (Docket No. 78N–1380) and medical support stockings (Docket No. 78N–1322). FDA does not believe that it is necessary to issue a new proposal concerning these decisions. The purpose of publishing a proposal and soliciting comments is to enable the agency to determine whether its proposed classification of a device was correct. After reviewing the comments submitted on a proposal, the agency may be persuaded that its proposed classification is incorrect. Persons interested in the classification process should therefore anticipate that in a final regulation a device may be placed in a class different from the one originally proposed. This possibility was specifically identified in the proposed general provisions for general hospital and personal use devices (see 44 FR 49844). Persons who disagree with a final classification for a device may petition for reclassification of the device under Subpart C of Part 860 (21 CFR Part 860).

Changes in Device Advisory Committee Names

On April 28, 1978, the agency terminated all of the device classification panels, and then reestablished them with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). The General Hospital and

Personal Use Device Classification Panel was terminated, and its functions are now conducted by the General Hospital and Personal Use Device Section of the General Medical Devices Panel.

Classification Regulations Published to Date

The following table shows the current structure of the advisory committees involved with the classification of medical devices and a list of all proposed and final classification regulations published to date:

Panel/section name	Publication date in FEDERAL REGISTER
Circulatory Systems Devices Panel	March 9, 1979, 44 FR 13284–13434 (proposals); February 5, 1980, 45 FR 7904–7971 (final regulations).
Clinical Chemistry and Hematology Devices Panel:	
Clinical Chemistry Device Section	
Clinical Toxicology Device Section	
Hematology and Pathology Device Section	September 11, 1979, 44 FR 52950–53063 (proposals); September 12, 1980, 45 FR 60576–60651 (final regulations).
General Medical Devices Panel:	
General Hospital and Personal Use Device Section.	August 24, 1979, 44 FR 49844–49954 (proposals).
Gastroenterology-Urology Device Section	
Immunology and Microbiology Devices Panel:	
Immunology Device Section	April 22, 1980, 45 FR 27204–27359 (proposals).
Microbiology Device Section	April 22, 1980, 45 FR 27204–27359 (proposals).
Obstetrics-Gynecology and Radiologic Device Panel:	
Obstetrics-Gynecology Device Section	April 3, 1979, 44 FR 19894–19971 (proposals); February 26, 1980, 45 FR 12682–12720 (final regulations).
Radiology Device Section	
Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel:	
Ophthalmic Device Section	
Ear, Nose, and Throat Device Section	
Dental Device Section	
Respiratory and Nervous System Devices Panel:	
Anesthesiology Device Section	November 2, 1979, 44 FR 63292–63426 (proposals).
Neurological Device Section	November 28, 1978, 43 FR 54640–55732 (proposals); September 4, 1979, 44 FR 51726–51778 (final regulations).
Surgical and Rehabilitation Devices Panel:	
Physical Medicine Device Section	August 28, 1979, 44 FR 50458–50537 (proposals).
Orthopedic Device Section	
General and Plastic Surgery Device Section	

List of General Hospital and Personal Use Devices

The following is a list of general hospital and personal use devices being classified in final regulations published elsewhere in this issue of the **Federal Register**. The list shows the section in the Code of Federal Regulations under which the regulation classifying the device is being codified, the docket number of the classification regulation, and the classification of each device.

Subpart C—General Hospital and Personal Use Monitoring Devices

Section	Device	Docket No.	Class
880.2200	Liquid crystal forehead temperature strip	78N–1268	II
880.2400	Bed-patient monitor	78N–1269	I
880.2420	Electronic monitor for gravity flow infusion systems	78N–1270	II
880.2440	Neonatal ventilatory effort monitor (apnea detector)	78N–1271	II
880.2460	Electrically powered spinal fluid pressure monitor	78N–1272	II
880.2500	Spinal fluid manometer	78N–1273	II
880.2700	Stand-on patient scale	78N–1274	I
880.2720	Patient scale	78N–1275	I, II
880.2740	Surgical sponge scale	78N–1276	I
880.2800	Sterilization process indicator	78N–1277	II
880.2900	Clinical color change thermometer	78N–1279	II
880.2910	Clinical electronic thermometer	78N–1280	II
880.2920	Clinical mercury thermometer	78N–1281	II

Subparts D and E—[Reserved]

Subpart F—General Hospital and Personal Use Therapeutic Devices

Section	Device	Docket No.	Class
880.5025	I.V. container	78N-1284	II
880.5045	Medical recirculating air cleaner	78N-1285	II
880.5075	Elastic bandage	78N-1287	I
880.5090	Liquid bandage	78N-1288	I
880.5100	AC-powered adjustable hospital bed	78N-1289	II
880.5110	Hydraulic adjustable hospital bed	78N-1290	I
880.5120	Manual adjustable hospital bed	78N-1291	I
880.5130	Infant radiant warmer	78N-1292	III
880.5140	Pediatric hospital bed	78N-1293	II
880.5150	Nonpowered flotation therapy mattress	78N-1294	I
880.5160	Therapeutic medical binder	78N-1295	I
880.5180	Burn sheet	78N-1297	I
880.5200	Intravascular catheter	78N-1298	II
880.5210	Intravascular catheter securement device	78N-1299	I
880.5240	Medical adhesive tape and adhesive bandage	78N-1301	I
880.5270	Neonatal eye pad	78N-1302	I
880.5300	Medical absorbent fiber	78N-1303	I
880.5400	Neonatal incubator	78N-1306	II
880.5410	Neonatal transport incubator	78N-1307	II
880.5420	Pressure infusor for an I.V. bag	78N-1380	I
880.5430	Nonelectrically powered fluid injector	78N-1308	II
880.5440	Intravascular administration set	78N-1309	II
880.5450	Patient care reverse isolation chamber	78N-1310	II
880.5475	Jet lavage	78N-1311	II
880.5500	AC-powered patient lift	78N-1312	II
880.5510	Non-AC-powered patient lift	78N-1313	I
880.5550	Alternating pressure air flotation mattress	78N-1314	II
880.5560	Temperature regulated water mattress	78N-1315	II
880.5570	Hypodermic single lumen needle	78N-1316	II
880.5630	Nipple shield	78N-1317	I
880.5640	Lamb feeding nipple	78N-1318	I
880.5680	Pediatric position holder	78N-1319	I
880.5700	Neonatal phototherapy unit	78N-1320	II
880.5725	Infusion pump	78N-1321	II
880.5740	Suction snakebite kit	78N-1381	I
880.5760	Chemical cold pack snakebite kit	78N-1382	III
880.5780	Medical support stocking	78N-1322	I, II
880.5820	Therapeutic scrotal support	78N-1324	I
880.5860	Piston syringe	78N-1325	II
880.5950	Umbilical occlusion device	78N-1329	I

Subpart G—General Hospital and Personal Use Miscellaneous Devices

880.6025	Absorbent tipped applicator	78N-1330	I
880.6050	Ice bag	78N-1332	I
880.6060	Medical disposable bedding	78N-1333	I
880.6070	Bed board	78N-1334	I
880.6080	Cardiopulmonary resuscitation board	78N-1335	I
880.6085	Hot/cold water bottle	78N-1336	I
880.6100	Ethylene oxide gas aerator cabinet	78N-1338	II
880.6140	Medical chair and table	78N-1340	I
880.6150	Ultrasonic cleaner for medical instruments	78N-1341	I
880.6175	Specimen container	78N-1342	I
880.6185	Cast cover	78N-1343	I
880.6190	Mattress cover for medical purposes	78N-1344	I
880.6200	Ring cutter	78N-1345	I
880.6230	Tongue depressor	78N-1346	I
880.6250	Patient examination glove	78N-1347	I
880.6265	Examination gown	78N-1348	I
880.6280	Medical insole	78N-1383	I
880.6320	AC-powered medical examination light	78N-1384	II
880.6350	Battery-powered medical examination light	78N-1350	I
880.6375	Patient lubricant	78N-1351	I
880.6430	Liquid medication dispenser	78N-1386	I
880.6450	Skin pressure protector	78N-1353	I
880.6500	Medical ultraviolet air purifier	78N-1354	II
880.6710	Medical ultraviolet water purifier	78N-1355	II
880.6730	Body waste receptacle	78N-1356	I
880.6740	Vacuum-powered body fluid suction apparatus	78N-1357	II
880.6760	Protective restraint	78N-1358	I
880.6775	Powered patient transfer device	78N-1359	II
880.6785	Manual patient transfer device	78N-1360	I
880.6800	Washer for body waste receptacles	78N-1361	I
880.6820	Medical disposable scissors	78N-1362	I
880.6850	Sterilization wrap	78N-1363	II
880.6860	Ethylene oxide gas sterilizer	78N-1364	II
880.6870	Dry-heat sterilizer	78N-1365	II
880.6880	Steam sterilizer	78N-1366	II
880.6900	Hand-carried stretcher	78N-1367	I
880.6910	Wheeled stretcher	78N-1368	II
880.6920	Syringe needle introducer	78N-1369	II
880.6960	Irrigating syringe	78N-1388	I
880.6970	Liquid crystal vein locator	78N-1371	I
880.6980	Vein stabilizer	78N-1372	I

Patient Information

FDA is considering requiring the development and dissemination of information for patients and consumers about the uses, benefits, and risks of medical devices. For example, patient information has already been required by FDA for intrauterine devices and hearing aids. In addition, the Bureau of Radiological Health is conducting a consumer education program on x-rays that includes posters on the effects of radiation during pregnancy and the distribution of x-ray record cards.

FDA believes that patient information is needed if: (1) There is a choice among alternatives of which the patient should be aware; (2) There are substantial risks or discomforts associated with the product; (3) The cost of the product is significant; (4) There is a need for the patient to strictly adhere to a specific treatment regimen; and (5) There is substantial public or professional controversy about the device or its related procedures.

FDA can require that manufacturers make medical device information available to providers for their use and the use of their patients through the premarket approval or standards setting processes as well as the general control provisions of the Federal Food, Drug, and Cosmetic Act. The mechanisms available to FDA to provide patient information for devices include: (1) Labeling for restricted and nonrestricted devices; (2) Patient and provider information; and (3) Consumer and patient education programs.

FDA has tentatively identified several general hospital and personal use devices for which patient information may be required. Other general hospital and personal use devices may be identified in the future, after the criteria for selection of devices needing patient information have been further refined. The devices that have been identified so far are listed below:

Device	Docket No.
1. Liquid crystal forehead temperature strip	78N-1268
2. Ventilatory effort monitor (apnea detector for home use)	78N-1271
3. Infant radiant warmer	78N-1291
4. Nonelectrically powered fluid injector (for home use)	78N-1308
5. Infusion pump (for home use)	78N-1321
6. Suction snakebite kit	78N-1381
7. Chemical cold pack snakebite kit	78N-1382
8. Neonatal phototherapy unit	78N-1320

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs amends Chapter I of Title 21 of the Code of Federal Regulations by adding new Part 880, Subpart A, to read as follows:

PART 880—GENERAL HOSPITAL AND PERSONAL USE DEVICES

Subpart A—General Provisions

Sec.
880.1 Scope.

Authority: Secs. 513, and 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, and 371(a)).

Subpart A—General Provisions

§ 880.1 Scope.

(a) This part sets forth the classification of general hospital and personal use devices intended for human use.

(b) The identification of a device in a regulation in this part is not a precise description of every device that is, or will be, subject to the regulation. A manufacturer who submits a premarket notification submission for a device under Part 807 may not show merely that the device is accurately described by the section title and identification provision of a regulation, but shall state why the device is substantially equivalent to other devices as required by § 807.87.

(c) To avoid duplicative listings, a general hospital and personal use device that has two more types of uses (e.g., used both as a diagnostic device and as a therapeutic device), is listed in the subpart representing one use of the device, rather than in two or more subparts.

(d) References in this part to regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21 unless otherwise noted.

Effective date. This regulation is effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31540 Filed 10-20-80; 8:45 am]

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21 CFR Part 880

[Docket No. 78N-1268]

General Hospital and Personal Use Devices; Classification of Liquid Crystal Forehead Temperature Strips

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying liquid crystal forehead temperature strips into class II (performance standards). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49852) a proposed regulation to classify liquid crystal forehead temperature strips into class II (performance standards). A period of 60 days was provided for interested persons to submit comments to FDA. No comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted without change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 by adding new Subpart C and new § 880.2200, to read as follows:

Subpart C—General Hospital and Personal Use Monitoring Devices

§ 880.2200 Liquid crystal forehead temperature strip.

(a) *Identification.* A liquid crystal forehead temperature strip is a device applied to the forehead that is used to indicate the presence or absence of fever, or to monitor body temperature changes. The device displays the color changes of heat sensitive liquid crystals corresponding to the variation in the surface temperature of the skin. The liquid crystals, which are cholesteric esters, are sealed in plastic.

(b) *Classification.* Class II (performance standards).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31541 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1269]

General Hospital and Personal Use Devices; Classification of Bed-Patient Monitors

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying bed-patient monitors

into class I (general controls). The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49854) a proposed regulation to classify bed-patient monitors into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted without change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart C by adding new § 880.2400, to read as follows:

§ 880.2400 Bed-patient monitor.

(a) *Identification.* A bed-patient monitor is a battery-powered device placed under a mattress and used to indicate by an alarm or other signal when a patient attempts to leave the bed.

(b) *Classification.* Class I (general controls).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80–31542 Filed 10–20–80; 8:45 am]

BILLING CODE 4110–03–M

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21 CFR Part 880

[Docket No. 78N–1270]

General Hospital and Personal Use Devices; Classification of Electronic Monitors for Gravity Flow Infusion Systems

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying electronic monitors for gravity flow infusion systems into class II (performance standards). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49044), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49855) a proposed regulation to classify electronic monitors for gravity flow infusion systems into class II (performance standards). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted without change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart C by adding new § 880.2420, to read as follows:

§ 880.2420 Electronic monitor for gravity flow infusion systems.

(a) *Identification.* An electronic monitor for gravity flow infusion systems is a device used to monitor the amount of fluid being infused into a patient. The device consists of an electronic transducer and equipment for signal amplification, conditioning, and display.

(b) *Classification.* Class II (performance standards).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80–31548 Filed 10–20–80; 8:45 am]

BILLING CODE 4110–03–M

21 CFR Part 880

[Docket No. 78N-1271]

General Hospital and Personal Use Devices; Classification of Neonatal Ventilatory Effort Monitors (APNEA Detectors)

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying neonatal ventilatory effort monitors (apnea detectors) into class II (performance standards). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49856) a proposed regulation to classify neonatal ventilatory effort monitors (apnea detectors) into class II (performance standards). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. However, the agency has made minor changes in the identification of the device to clarify its use. Accordingly, the proposed regulation is being adopted with these changes.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register**.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart C by adding new § 880.2440, to read as follows:

§ 880.2440 Neonatal ventilatory effort monitor (apnea detector).

(a) *Identification.* A neonatal ventilatory effort monitor (apnea detector) is a device that monitors the ventilatory efforts (body movements necessary to move or attempt to move air in and out of the lungs) of an infant by a health care provider by means of a motion sensitive transducer, a change of thoracic impedance, or other suitable means. An abnormal pause in breathing efforts may be detected by the device, which activates an alarm. The device may include movement transducers, thoracic impedance electrodes, and electronic signal amplification, conditioning, and display equipment.

(b) *Classification.* Class II (performance standards).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31544 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1272]

General Hospital and Personal Use Devices; Classification of Electrically Powered Spinal Fluid Pressure Monitors

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying electrically powered spinal fluid pressure monitors into class II (performance standards). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Panel). FDA also published in that issue of the **Federal Register** (44 FR 49857) a proposed regulation to classify AC-powered spinal fluid pressure monitors into class II (performance standards). A period of 60 days was provided for interested persons to submit comments to FDA. No comments have been received regarding the proposed regulation to classify this device. However, the agency has made minor changes in the name and the identification of the device to clarify the range of devices included in the generic class covered by this rule. Accordingly, the proposed regulation is being adopted with these changes.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register**.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart C by adding new § 880.2460, to read as follows:

§ 880.2460 Electrically powered spinal fluid pressure monitor.

(a) *Identification.* An electrically powered spinal fluid pressure monitor is an electrically powered device used to measure spinal fluid pressure by the use

of a transducer which converts spinal fluid pressure into an electrical signal. The device includes signal amplification, conditioning, and display equipment.

(b) *Classification.* Class II (performance standards).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31545 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1273]

General Hospital and Personal Use Devices; Classification of Spinal Fluid Manometers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issing a final rule classifying spinal fluid manometers into class II (performance standards). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49858) a proposed regulation to classify spinal fluid pressure manometers into class II (performance standards). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. However, the agency has made minor changes in the name and identification of the device to eliminate redundancy. Accordingly, the proposed regulation is being adopted with these changes.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart C by adding new § 880.2500, to read as follows:

§ 880.2500 Spinal fluid manometer.

(a) *Identification.* A spinal fluid manometer is a device used to measure spinal fluid pressure. The device uses a hollow needle, which is inserted into the spinal column fluid space, to connect the spinal fluid to a graduated column so that the pressure can be measured by reading the height of the fluid.

(b) *Classification.* Class II (performance standards).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31546 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1274]

General Hospital and Personal Use Devices; Classification of Stand-On Patient Scales

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying stand-on patient scales into class I (general controls) and exempting manufacturers of the device from premarket notification procedures and certain requirements of the good manufacturing practice regulation. The effect of this rule is to require that the device meet only the general controls applicable to all devices, except for the premarket notification procedures and certain requirements of the good manufacturing practice regulation. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49859) a proposed regulation to classify stand-on patient scales into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. However, the agency has made minor changes in the identification of the device to clarify that the rule applies to only those devices that are intended for medical purposes. Accordingly, the proposed regulation is being adopted with these changes.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs, Part

880 is amended in Subpart C by adding new § 880.2700, to read as follows:

§ 880.2700 Stand-on patient scale.

(a) *Identification.* A stand-on patient scale is a device intended for medical purposes that is used to weigh a patient who is able to stand on the scale platform.

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device also is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31547 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1275]

General Hospital and Personal Use Devices; Classification of Patient Scales

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying mechanical and battery powered patient scales into class I (general controls) and AC-powered patient scales into class II (performance standards). The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATES: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49860) a proposed regulation to classify patient scales into class I (general controls) for mechanical patient scales and class II (performance standards) for AC-powered patient scales. A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. However, the agency has made minor changes in the identification of the device to clarify that the rule applies to only those devices that are intended for medical purposes and also that the rule applies to battery powered patient scales intended for medical purposes. Accordingly, the proposed regulation is being adopted with these changes.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart C by adding new § 880.2720, to read as follows:

§ 880.2720 Patient scale.

(a) *Identification.* A patient scale is a device intended for medical purposes that is used to measure the weight of a patient who cannot stand on a scale. This generic device includes devices placed under a bed or chair to weigh both the support and the patient, devices where the patient is lifted by a sling from a bed to be weighed, and devices where the patient is placed on the scale platform to be weighed. The device may be mechanical, battery powered, or AC-powered and may include transducers, electronic signal amplification, conditioning and display equipment.

(b) *Classification.* (1) Class I (general controls) for a mechanical or battery powered patient scale.

(2) Class II (performance standards) for an AC-powered patient scale.

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31548 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1276]

General Hospital and Personal Use Devices; Classification of Surgical Sponge Scales

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying surgical sponge scales into class I (general controls) and exempting manufacturers of the device from premarket notification procedures and certain requirements of the good manufacturing practice regulation. The effect of this rule is to require that the device meet only the general controls applicable to all devices, except for the premarket notification procedures and certain requirements of the good manufacturing practice regulation. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49861) a proposed regulation to classify surgical

sponge scales into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted without change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart C by adding new § 880.2740, to read as follows:

§ 880.2740 Surgical sponge scale.

(a) *Identification.* A surgical sponge scale is a nonelectrically powered device used to weigh surgical sponges that have been used to absorb blood during surgery so that, by comparison with the known dry weight of the sponges, an estimate may be made of the blood lost by the patient during surgery.

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device also is exempt from the good manufacturing practice regulation in Part 820 with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31549 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 880

[Docket No. 78N-1277]

General Hospital and Personal Use Devices; Classification of Sterilization Process Indicators

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying sterilization process indicators into class II (performance standards). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49862) a proposed regulation to classify sterilization indicators into class II (performance standards). A period of 60 days was provided for interested persons to submit comments to FDA.

Ten comments were received. The following is a summary of the comments and the agency's responses to them:

1. A comment disagreed that sterilization indicators be classified into class II. The comment suggested that this device be classified into class I and be exempt from premarket notification and the good manufacturing practices regulation (GMP's). The comment stated that the application of the GMP regulation is unlikely to improve the safety and effectiveness of the device.

FDA believes that sterilization indicators (sterilization process indicators) are properly classified into class II, for the reasons given in the proposal. The comment did not submit any additional data or information that were not considered by the agency before publishing the proposal to classify sterilization indicators into class II. Therefore, the agency disagrees with this comment.

2. Six comments objected to the treatment of biological sterilization indicators and physical/chemical sterilization indicators as a single generic category and recommended that each type of indicator be placed in a separate category. Eight comments objected to the proposed name and identification of sterilization indicators. The comments stated that these devices are not indicators of sterility. The comments suggested several names and identifications for these devices.

FDA does not believe that it is necessary to have two separate classification regulations for the two types of sterilization indicators. The agency has decided to change the name of this device from "sterilization indicators" to "sterilization process indicators." The agency agrees with the comment to identify separately biological sterilization process indicators and physical/chemical sterilization process indicators but concludes this can be done within one regulation.

3. One comment argued that sterilization indicators are not medical devices because these products are manufacturing tools used in the industrial process of obtaining a finished device and they do not meet the definition of "device."

FDA agrees that sterilization indicators (sterilization process indicators) used by manufacturers in the manufacture of sterile devices are not considered to be for medical purposes and thus are not accessories to medical devices. However, sterilization process indicators used by health care providers, such as hospitals, are considered to be for medical purposes and thus are accessories to medical devices and therefore are themselves medical devices under section 201(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(h)). Therefore, FDA has made changes in the identification to clarify that this rule applies to only sterilization process indicators used by health care providers. Accordingly, the proposed regulation to classify this device is being adopted with these changes.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device

advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart C by adding new § 880.2800, to read as follows:

§ 880.2800 Sterilization process indicator.

(a) *Biological sterilization process indicator*—(1) *Identification.* A biological sterilization process indicator is a device intended for use by a health care provider to accompany products being sterilized through a sterilization procedure and to monitor adequacy of sterilization. The device consists of a known number of microorganisms, of known resistance to the mode of sterilization, in or on a carrier and enclosed in a protective package. Subsequent growth or failure of the microorganisms to grow under suitable conditions indicates the adequacy of sterilization.

(2) *Classification.* Class II (performance standards).

(b) *Physical/chemical sterilization process indicator*—(1) *Identification.* A physical/chemical sterilization process indicator is a device intended for use by a health care provider to accompany products being sterilized through a sterilization procedure and to monitor one or more parameters of the sterilization process. The adequacy of the sterilization conditions as measured by these parameters is indicated by a visible change in the device.

(2) *Classification.* Class II (performance standards).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31550 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1279]

General Hospital and Personal Use Devices; Classification of Clinical Color Change Thermometers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying clinical color change thermometers into class II (performance standards). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49863) a proposed regulation to classify clinical color change thermometers into class II (performance standards). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. However, the agency has made minor changes in the identification of the device to clarify the operating principle of the device. Accordingly, the proposed regulation is being adopted with these changes.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart C by adding new § 880.2900, to read as follows:

§ 880.2900 Clinical color change thermometer.

(a) *Identification.* A clinical color change thermometer is a disposable device used to measure a patient's oral, rectal, or axillary (armpit) body temperature. The device records body temperature by use of heat sensitive chemicals which are sealed at the end of a plastic or metal strip. Body heat causes a stable color change in the heat sensitive chemicals.

(b) *Classification.* Class II (performance standards).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31551 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1280]

General Hospital and Personal Use Devices; Classification of Clinical Electronic Thermometers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying clinical electronic thermometers into class II (performance standards). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel

(formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49864) a proposed regulation to classify clinical electronic thermometers into class II (performance standards). A period of 60 days was provided for interested persons to submit comments to FDA.

Two comments were received. Both comments agreed with the proposal to classify clinical electronic thermometers into class II, and both comments made remarks pertinent to the development of performance standards for these devices.

FDA appreciates the concern expressed in these comments about the development of performance standards for this device. At a future date, the agency will initiate proceedings to adopt performance standards for this device, as well as for other devices that are classified into class II. At that time, the agency will publish an appropriate notice in the **Federal Register** seeking comments on that proceeding. Accordingly, the proposed regulation is being adopted without change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Part 880 is amended in Subpart C by adding new § 880.2910, to read as follows:

§ 880.2910 Clinical electronic thermometer.

(a) *Identification.* A clinical electronic thermometer is a device used to measure the body temperature of a patient by means of a transducer coupled with an electronic signal amplification, conditioning, and display unit. The transducer may be in a detachable probe with or without a disposable cover.

(b) *Classification.* Class II (performance standards).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31552 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1281]

General Hospital and Personal Use Devices; Classification of Clinical Mercury Thermometers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying clinical mercury thermometers into class II (performance standards). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49865) a proposed regulation to classify clinical mercury thermometers into class II (performance standards). A period of 60 days was provided for interested persons to submit comments to FDA.

One comment was received which identified several risks to health not discussed in the proposal. The risks identified were due to misuse of the device and improper cleaning of the device. As stated in the preamble to the proposed general provisions for general hospital and personal use devices (44 FR 49844), the agency recognizes that not all possible risks to health are identified in the classification recommendations and the proposed FDA regulations. Future regulations establishing performance standards under section 514 of the act (21 U.S.C. 360) may identify other risks to health that are to be addressed by FDA requirements in addition to those identified in the Panel recommendation and classification regulations. Accordingly, the proposed regulation is being adopted with only a minor clarifying change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart C by adding new § 880.2920, to read as follows:

§ 880.2920 Clinical mercury thermometer.

(a) *Identification.* A clinical mercury thermometer is a device used to measure oral, rectal, or axillary (armpit) body temperature using the thermal expansion of mercury.

(b) *Classification.* Class II (performance standards).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31553 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1284]

General Hospital and Personal Use Devices; Classification of I.V. Containers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final

rule classifying I.V. containers into class II (performance standards). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49866) a proposed regulation to clasify I.V. containers into class II (performance standards). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. However, the agency has made minor changes in the identification of the device to clarify clear that the rule also applies to containers made of plastic or glass that are intended to be used for holding fluids for intravascular infusion. Accordingly, the proposed regulation is being adopted with this change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 by adding new Subpart F and new § 880.5025, to read as follows:

Subpart F— General Hospital and Personal Use Therapeutic Devices

§ 880.5025 I.V. container.

(a) *Identification.* An I.V. container is a container made of plastic or glass used to hold a fluid mixture to be administered to a patient through an intravascular administration set.

(b) *Classification.* Class II (performance standards).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80–31554 Filed 10–20–80; 8:45 am]

BILLING CODE 4110–03–M

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21 CFR Part 880

[Docket No. 78N–1285]

General Hospital and Personal Use Devices; Classification of Medical Recirculating Air Cleaners

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying medical recirculating air cleaners into class II (performance standards). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49867) a proposed regulation to classify recirculating air cleaners into class II (performance standards). A period of 60 days was provided for interested persons to submit comments to FDA.

1. A comment disagreed with the risks to health cited by the Panel and submitted that a standard for recirculating air cleaners was not necessary and that the device should be classified into class I. The comment further stated that the risk of ineffective particle removal could be addressed by labeling, that the risk of burns and electric shock from contact with the device was no greater than other common appliances such as table lamps, and that the Panel concern about ozone toxicity was already addressed by an FDA regulation (21 CFR 801.415).

The agency disagrees with the comment that the device be classified into class I and that the risk of ineffective particle removal can be addressed by labeling. FDA believes that a standard is needed to assure the effectiveness of the device. A standard is also necessary to protect against electrical shock and unnecessary electric arcing with subsequent ozone production and to avoid burns should a patient or attendant personnel contact an inadequately designed or constructed unit. Like FDA, the Panel believed that general controls would not provide adequate control of these potential hazards and that a performance standard is necessary for this device. If a standard addressing the risks to health presented by this device is now in existence or is developed in the future, the agency will consider adopting it rather than developing a separate FDA standard.

2. Two comments were concerned that the rule might apply to recirculating air cleaners that are not used for medical purposes.

FDA agrees with this comment and has made minor changes in the name and identification to make it clear that the rule applies only to those devices that are intended to be used for medical purposes. Accordingly, the proposed regulation is being adopted with this change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions,

published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart F by adding new § 880.5045, to read as follows:

§ 880.5045 Medical recirculating air cleaner.

(a) *Identification.* A medical recirculating air cleaner is a device used to remove particles from the air for medical purposes. The device may function by electrostatic precipitation or filtration.

(b) *Classification.* Class II (performance standards).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 31555 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1287]

General Hospital and Personal Use Devices; Classification of Elastic Bandages

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying elastic bandages into class I (general controls) and exempting manufacturers of the device from premarket notification procedures and certain requirements of the good manufacturing practice regulation. The effect of this rule is to require that the device meet only the general controls applicable to all devices, except for the premarket notification procedures and certain requirements of the good manufacturing practice regulation. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49869) a proposed regulation to classify elastic bandages into class I (general controls). A period of 60 days was provided for interested persons to submit written comments to FDA.

Two comments were received. The comments agreed with the proposed classification and proposed exemption for elastic bandages. Accordingly, the proposed regulation is being adopted with only a minor editorial change.

The agency has determined that compliance with the GMP regulation, except for § 820.180 (general requirements concerning records) and § 820.198 (complaint files), is not required to assure that elastic bandages will be safe and effective and otherwise in compliance with the act. The agency has based its determination on available information about current practices used in the manufacture of the device and user experience with the device. The agency is not exempting manufacturers of elastic bandages from the requirements of §§ 820.180 or 820.198 because it has determined that compliance with these sections is in the public interest and will be unduly burdensome for device manufacturers.

There are two procedures by which FDA may exempt a manufacturer of a device from complying with any or all of the requirements of the GMP regulation. First, a manufacturer of a device subject to any requirement under the GMP regulation may petition the agency pursuant to section 520(f)(2)(A) of the act (21 U.S.C. 360j(f)(2)(A)) for an exemption or variance from the requirement. An exemption granted in response to such a petition applies only to the manufacturer who submitted the petition. Second, in classifying a medical device into class I under section 513 of the act (21 U.S.C. 360c), the agency may determine that certain of the requirements of the GMP regulation shall not apply to the device. In that instance, the exemption applies to all manufacturers of the generic type of device that is the subject of the classification regulation. The agency may grant an exemption under either procedure only if it determines that compliance with the requirement is not necessary to assure that the device will be safe and effective and otherwise in compliance with the act.

The agency previously granted a manufacturer's petition (79P–0292) for exemption of its "wraparound wrist brace" from the requirement of the GMP regulation, except § 820.180 (general requirements concerning records) and § 820.198 (complaint files). As explained above, that exemption applied only to the petitioner. In this regulation classifying elastic bandages, FDA is exempting from certain sections of the GMP regulation all manufacturers of this generic type of device. This action is consistent with the agency's policies and criteria from exemption discussed in the preamble to the proposed general provisions for this Part, published in the **Federal Register** of August 24, 1979 (44 FR 49844). Additional information regarding the procedures for petitioning for exemptions or variances from the GMP regulation is available, as described in a notice published in the **Federal Register** of January 18, 1980 (45 FR 3671).

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart F by adding new § 880.5075, to read as follows:

§ 880.5075 Elastic bandage.

(a) *Identification.* An elastic bandage is a device consisting of either a long flat strip or a tube of elasticized material that is used to support and compress a part of a patient's body.

(b) *Classification.* Class I (general controls). The device is exempt from premarket notification procedures in Subpart E of Part 807. If the device is not labeled or otherwise represented as sterile, it also is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements

concerning records, and § 820.198, with respect to complaint files.

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31556 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1288]

General Hospital and Personal Use Devices; Classification of Liquid Bandages

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying liquid bandages into class I (general controls). The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49870) a proposed regulation to classify liquid bandages into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. However, the agency has made minor changes in the identification of the device to clarify that the rule also applies to those devices that contain powder and liquid combinations. Accordingly, the proposed regulation is being adopted with these changes.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)), and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart F by adding new § 880.5090, to read as follows:

§ 880.5090 Liquid bandage.

(a) *Identification.* A liquid bandage is a sterile device that is a liquid, semiliquid, or powder and liquid combination used to cover an opening in the skin or as a dressing for burns. The device is also used as a topical skin protectant.

(b) *Classification.* Class I (general controls).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31557 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1289]

General Hospital and Personal Use Devices; Classification of AC-Powered Adjustable Hospital Beds

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying AC-powered adjustable hospital beds into class II (performance standards). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Classification Device Panel). FDA also published in that issue of the **Federal Register** (44 FR 49871) a proposed regulation to classify AC-powered adjustable hospital beds into class II (performance standards). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted with only a minor clarifying change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart F by adding new § 880.5100, to read as follows:

§ 880.5100 AC-powered adjustable hospital bed.

(a) *Identification.* An AC-powered adjustable hospital bed is a device intended for medical purposes that consists of a bed with a built-in electric motor and remote controls that can be operated by the patient to adjust the height and surface contour of the bed.

The device includes movable and latchable side rails.

(b) *Classification.* Class II (performance standards).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31558 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1290]

General Hospital and Personal Use Devices; Classification of Hydraulic Adjustable Hospital Beds

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying hydraulic adjustable hospital beds into class I (general controls). The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49871) a proposed regulation to classify hydraulic adjustable hospital beds into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted with only a minor clarifying change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart F by adding new § 880.5110, to read as follows:

§ 880.5110 Hydraulic adjustable hospital bed.

(a) *Identification.* A hydraulic adjustable hospital bed is a device intended for medical purposes that consists of a bed with a hydraulic mechanism operated by an attendant to adjust the height and surface contour of the bed. The device includes movable and latchable side rails.

(b) *Classification.* Class I (general controls).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 31559 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1291]

General Hospital and Personal Use Devices; Classification of Manual Adjustable Hospital Beds

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying manual adjustable hospital beds into class I (general controls) and exempting manufacturers of the device from certain requirements of the good manufacturing practice regulation. The effect of this rule is to require that the device meet only the general controls applicable to all devices, except for certain requirements of the good manufacturing practice regulation. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49872) a proposed regulation to classify manual adjustable hospital beds into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted with only a minor clarifying change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart F by adding new § 880.5120, to read as follows:

§ 880.5120 Manual adjustable hospital bed.

(a) *Identification.* A manual adjustable hospital bed is a device intended for medical purposes that consists of a bed with a manual mechanism operated by an attendant to adjust the height and surface contour of

the bed. The device includes movable and latchable side rails.

(b) *Classification.* Class I (general controls). The device is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31560 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1292]

General Hospital and Personal Use Devices; Classification of Infant Radiant Warmers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying infant radiant warmers into class III (premarket approval). The effect of classifying a device into class III is to require each manufacturer of the device to submit to FDA a premarket approval application that includes information concerning safety and effectiveness tests for the device. Each premarket approval application must be submitted to FDA on or before May 31, 1983, or 90 days after promulgation of a separate regulation requiring premarket approval of the device, whichever occurs later. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49873) a proposed regulation to classify infant radiant warmers into class III (premarket approval). A period of 60 days was provided for interested persons to submit comments to FDA.

A comment stated that infant radiant warmers should be classified into class II (performance standards) rather than class III (premarket approval). The comment stated that the device has been maintaining skin temperatures safely and effectively for the past 10 years. The comment stated that many of the potential hazards mentioned in the proposal are either covered by existing voluntary standards (e.g., electrical standards) or would be covered by the Association for the Advancement of Medical Instrumentation (AAMI) draft standard for radiant warmers. With respect to the risk identified by the Panel of insensible water loss associated with the use of infant radiant warmers, the comment stated that this risk is well known to the medical community and requires medical management. Users could be informed of the risk through required product labeling. The comment disagreed with the proposal's statement that insufficient information exists to assess the possibility of eye damage. The comment stated that the Panel reviewed a study which found no eye damage up to 40 days after the infant is removed from the radiant warmer.

FDA disagrees with the comment that infant radiant warmers should be classified into class II. The agency is concerned about possible long term effects of infrared radiation on the skin and eyes of infants. The agency agrees that short term studies have found no eye damage to the infant up to 40 days after removal from the warmer. The agency also agrees that most of the risks to health presented by the device can be addressed by labeling or by a standard as suggested by the comment. However, the agency is not aware of any data or information concerning long term effects of infrared radiation on the skin and eyes of infants, and the comment did not present any new data or information which were not considered by the agency prior to publication of the proposal to classify infant radiant warmers into class III. The agency has decided that the device should be classified into class III until this data or information is available. Accordingly, the proposed regulation is being adopted with only a minor clarifying change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart F by adding new § 880.5130, to read as follows:

§ 880.5130 Infant radiant warmer.

(a) *Identification.* An infant radiant warmer is a device consisting of an infrared heating element intended to be placed over an infant to maintain the infant's body temperature by means of radiant heat. The device may also contain a temperature monitoring sensor, a heat output control mechanism and an alarm to alert operators of the device's failure. The device may be placed over a pediatric hospital bed or it may be built into the bed as a complete unit.

(b) *Classification.* Class III (premarket approval).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31561 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1293]

General Hospital and Personal Use Devices; Classification of Pediatric Hospital Beds

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying pediatric hospital beds into class II (performance standards). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the

safety and effectiveness of the device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA Published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49875) a proposed regulation to classify pediatric hospital beds into class II (performance standards). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted with only a minor clarifying change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart F by adding new § 880.5140, to read as follows:

§ 880.5140 Pediatric hospital bed.

(a) *Identification.* A pediatric hospital bed is a device intended for medical purposes that consists of a bed or crib designed for the use of a pediatric patient, with fixed end rails and movable and latchable side rails. The contour of the bed surface may be adjustable.

(b) *Classification.* Class II (performance standards).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-315672 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1294]

General Hospital and Personal Use Devices; Classification of Nonpowered Flotation Therapy Mattresses

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying nonpowered flotation therapy mattresses into class I (general controls) and exempting manufacturers of the device from premarket notification procedures and certain requirements of the good manufacturing practice regulation. The effect of this rule is to require that the device meet only the general controls applicable to all devices, except for the premarket notification procedures and certain requirements of the good manufacturing practice regulation. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49876) a proposed regulation to classify nonpowered flotation therapy mattresses into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA.

One comment was received. The comment agreed with the classification and exemptions set forth in the proposed regulation. The comment also stated that there are mattresses made of foam which appear to be functionally equivalent to mattresses containing air or fluid and that other mattresses with foam and metal or plastic support structrues could be functionally equivalent.

FDA agrees with the comment and the agency has made minor changes in the identification of the device to make it clear that the rule applies to all nonpowered flotation therapy mattresses for medical purposes that are designed to support a patient and avoid excess pressure on local body areas.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart F by adding new § 880.5150, to read as follows:

§ 880.5150 Nonpowered flotation therapy mattress.

(a) *Identification.* A nonpowered flotation therapy mattress is a mattress intended for medical purposes which contains air, fluid, or other materials that have the functionally equivalent effect of supporting a patient and avoiding excess pressure on local body areas. The device is intended to treat or prevent decubitus ulcers (bed sores).

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device also is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31563 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1295]

General Hospital and Personal Use Devices; Classification of Therapeutic Medical Binders

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying therapeutic medical binders into class I (general controls) and exempting manufacturers of the device from premarket notification procedures and certain requirements of the good manufacturing practice regulation. The effect of this rule is to require that the device meet only the general controls applicable to all devices, except for the premarket notification procedures and certain requirements of the good manufacturing practice regulation. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49877) a proposed regulation to classify therapeutic medical binders into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA.

Two comments were received. The comments agreed with the proposed classification and proposed exemption for therapeutic medical binders. Accordingly, the proposed regulation is being adopted with only a minor clarifying change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart F by adding new § 880.5160, to read as follows:

§ 880.5160 Therapeutic medical binder.

(a) *Identification.* A therapeutic medical binder is a device, usually made of cloth, that is intended for medical purposes and that can be secured by ties so that it supports the underlying part of the body or holds a dressing in place. This generic type of device includes the abdominal binder, breast binder, and perineal binder.

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notifiction procedures in Subpart E of Part 807. If the device is not labeled or otherwise represented as sterile, it also is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31564 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1297]

General Hospital and Personal Use Devices; Classification of Burn Sheets

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying burn sheets into class I (general controls). The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49878) a proposed regulation to classify burn sheets into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. However, the agency has made minor changes in the identification of the device to make it clear that the rule applies to those devices that are intended to be used to provide warmth, to absorb wound exudate, and serve as a barrier against contaminants. Accordingly, the proposed regulation is being adopted with these changes.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart F by

adding new § 880.5180, to read as follows:

§ 880.5180 Burn sheet.

(a) *Identification.* A burn sheet is a device made of a porous material that is wrapped aroung a burn victim to retain body heat, to absorb wound exudate, and to serve as a barrier against contaminants.

(b) *Classification.* Class I (general Controls).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31565 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1298]

General Hospital and Personal Use Devices; Classification of Intravascular Catheters

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying intravascular catheters into class II (performance standards). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49879) a proposed regulation to classify intravascular catheters into class II (performance standards). A period of 60 days was provided for interested persons to submit comments to FDA.

1. The comment received disagreed with the recommendation of the General Medical Devices Panel that all intravascular catheters should be radiopaque. The comment stated that catheters that are not radiopaque often have superior antithrombogenic characteristics and may be more desirable in some circumstances. The comment stated further that radiopacity of a catheter was not necessarily sufficient to identify a piece of a catheter in an X-ray of the thoracic area.

FDA agrees that radiopacity may not always be desired in an intravascular catheter and that in some circumstances an X-ray would not show a radiopaque piece of catheter. However, this issue will be resolved during the standards setting process for intravascular catheters.

2. The comment also stated that the term "metal" should be removed from the definition as it was not compatible with the recommendation of the Panel that the device be flexible.

The agency recognizes that things made of metal are usually not flexible. Therefore, the agency has made minor changes in the identification of this device to clarify the reference to metal. The comment also suggested that the statement of the Panel that intravascular catheters were life supporting should be deleted because the supplemental data sheet from the General Medical Devices Panel and the Circulatory Systems Devices Panel indicated that the Panels did not consider this device to be life supporting. The agency has reviewed the supplemental data sheets of the General Medical Devices Panel and of the Circulatory Systems Devices Panel for this device. FDA finds that the intravascular catheter was designated as a life supporting device by the Circulatory Systems Devices Panel and thus the agency disagrees with the comment's suggestion to delete the statement that the intravascular catheter is a life-supporting device.

The agency has made minor changes in the identification of the device for clarity. Accordingly, the proposed regulation is being adopted with these changes.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart F by adding new § 880.5200, to read as follows:

§ 880.5200 Intravascular catheter.

(a) *Identification.* An intravascular catheter is a device that consists of a slender tube and any necessary connecting fittings and that is inserted into the patient's vascular system for short term use (less than 30 days) to sample blood, monitor blood pressure, or administer fluids intravenously. The device may be constructed of metal, rubber, plastic, or a combination of these materials.

(b) *Classification.* Class II (performance standards).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31566 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1299]

General Hospital and Personal Use Devices; Classification of Intravascular Catheter Securement Devices

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying intravascular catheter securement devices into class I (general controls). The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the Federal Register of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the Federal Register (44 FR 49880) a proposed regulation to classify intravascular catheter securement devices into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA.

No written comments have been received regarding the proposed regulation to classify this device. However, the agency has made minor changes to the name and identification for clarity. Accordingly, the proposed regulation is being adopted with these changes.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart F by adding new § 880.5210, to read as follows:

§ 880.5210 Intravascular catheter securement device.

(a) *Identification.* An intravascular catheter securement device is a device with an adhesive backing that is placed over a needle or catheter and is used to keep the hub of the needle or the catheter flat and securely anchored to the skin.

(b) *Classification.* Class I (general controls).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31567 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1301]

General Hospital and Personal Use Devices; Classification of Medical Adhesive Tapes and Adhesive Bandages

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying medical adhesive tapes and adhesive bandages into class I (general controls). The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the Federal Register of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the Federal Register (44 FR 49881) a proposed regulation to classify adhesive tapes and bandages into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA.

One comment was received. The comment disagreed with placing adhesive tapes in the same generic class as bandages, stating that the devices are dissimilar and have different applications and therefore should be separate generic classes. The comment further stated that adhesive tape is usually marketed as a nonsterile device and that experience indicates that the application of the good manufacturing practices regulation would not necessarily improve the safety or effectiveness of the device and that adhesive tape should be placed in a separate generic class and exempt from premarket notification and good manufacturing practice requirements. The comment agreed with the proposed classification for bandages.

FDA has carefully considered this comment and realizes that some confusion may have arisen. The agency has made a change in the name of the device to "medical adhesive tape and adhesive bandage" for clarification. Further the agency has decided it is not necessary to place medical adhesive tapes in a separate generic category from adhesive bandages. The agency believes that it is necessary to have control over the adhesives used in these devices and does not propose to exempt adhesive tapes and adhesive bandages from the requirements of the good manufacturing practices regulation. The agency believes that it is necessary to have knowledge of any new adhesives used in these devices and disagrees with the comment to exempt adhesive tapes or adhesive bandages from premarket notification under section 510(k) of the Federal Food, Drug, and Cosmetic Act.

Accordingly, the proposed regulation is being adopted with changes clarifying the name of the device and its use for medical purposes.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371 (a))) and under authority delegated to him (21 CFR 5.1) the Commissioner of Food and Drugs is amending Part 880 in Subpart F by adding new 880.5240, to read as follows:

§ 880.5240 Medical adhesive tape and adhesive bandage.

(a) *Identification.* A medical adhesive tape or adhesive bandage is a device intended for medical purposes that consists of a strip of fabric material or plastic, coated on one side with an adhesive, and may include a pad of surgical dressing without a disinfectant. The device is used to cover and protect

wounds, to hold together the skin edges of a wound, to support an injured part of the body, or to secure objects to the skin.

(b) *Classification.* Class I (general controls).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31568 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1302]

General Hospital and Personal Use Devices; Classification of Neonatal Eye Pads

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying neonatal eye pads into class I (general controls) and exempting manufacturers of the device from certain requirements of the good manufacturing practice regulation. The effect of this rule is to require that the device meet only the general controls applicable to all devices, except for certain requirements of the good manufacturing practice regulation. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49882) a proposed regulation to classify neonatal eye pads into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted without change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart F by adding new § 880.5270, to read as follows:

§ 880.5270 Neonatal eye pad.

(a) *Identification.* A neonatal eye pad is an opaque device used to cover and protect the eye of an infant during therapeutic procedures, such as phototherapy.

(b) *Classification.* Class I (general controls). If the device is not labeled or otherwise represented as sterile, it is exempt from the good manufacturing practice regulation Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31569 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1303]

General Hospital and Personal Use Devices; Classification of Medical Absorbent Fibers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying medical absorbent fibers into class I (general controls) and exempting manufacturers of the device from premarket notification procedures and certain requirements of the good manufacturing practice regulation. The effect of this rule is to require that the device meet only the general controls applicable to all devices, except for the premarket notification procedures and certain requirements of the good manufacturing practice regulation. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49883) a proposed regulation to classify medical absorbent fibers into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA.

1. One comment was received. The comment suggested that a distinction be made between those absorbent fibers intended for medical purposes and those absorbent fibers intended solely for cosmetic purposes.

FDA agrees that absorbent fibers that are intended solely for cosmetic purposes should not be included in this regulation, and has made minor changes in the identification of the device to distinguish absorbent fibers intended to be used for medical purposes from those intended to be used for cosmetic purposes.

2. The comment also objected to the panel recommendation that the device should meet the United States Pharmacopeia (USP) requirements for absorbency and purity of absorbent (purified) cotton. The comment stated that the identification did not require the absorbent fiber to be 100 percent cotton, and synthetic fiber also could be included.

FDA believes that it was the Panel's intention that this recommendation apply only to a device that is labeled pure cotton.

3. The comment also requested exemption from the good manufacturing practices regulation (GMP) and premarket notification requirements for those devices not labeled as sterile because it was claimed that defects relating to safety and effectiveness would be readily apparent to the user and that safety and effectiveness would not be increased by the application of the GMP regulation.

FDA agrees with this comment, and has decided that manufacturers of medical absorbent fiber be subject to registration and device listing under section 510 (a) through (j) of the act, but exempt from premarket notification under section 510(k) of the act and Subpart E of Part 807 of the regulations (21 CFR Part 807). The agency believes that it is not necessary for the protection of the public health that FDA receive premarket notification submissions concerning medical absorbent fibers. The agency does not at this time anticipate that premarket approval will be required for this device. The agency believes that the semiannual updating of device listing under section 510(j)(2) will provide FDA with adequate notice concerning new products within this generic type of device.

FDA also has decided that a manufacturer of this device who does not label or otherwise represent it as sterile be exempt, in the manufacture of the device, from all requirements in the GMP regulation except § 820.180 with respect to general requirements concerning records, and § 820.198 with respect to complaint files. The agency believes that manufacturers of a medical absorbent fiber, even when it is not labeled or otherwise represented as sterile, must still be required to comply with the complaint requirements to ensure that these manufacturers have adequate systems for complaint investigation and followup. The agency also believes that manufacturers of medical absorbent fibers must still be required to comply with the general requirements concerning records to ensure that FDA has access to complaint files, can investigate device-related injury reports and complaints about product defects, determine whether the manufacturer's corrective actions are adequate, and determine whether the exemption from other sections of the GMP regulation is still appropriate. A manufacturer of medical absorbent fibers that are labeled or otherwise represented as sterile is, in the manufacture of this device, subject to the GMP regulation in its entirety. Accordingly, the proposed regulation is being adopted with these changes.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart F by adding new § 880.5300, to read as follows:

§ 880.5300 Medical absorbent fiber.

(a) *Identification.* A medical absorbent fiber is a device intended for medical purposes that is made from cotton or synthetic fiber in the shape of a ball or a pad and that is used for applying medication to, or absorbing small amounts of body fluids from, a patient's body surface. Absorbent fibers intended solely for cosmetic purposes are not included in this generic device category.

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in Subpart E of Part 807. If the device is not labeled or otherwise represented as sterile, it also is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31570 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 880

[Docket No. 78N-1306]

General Hospital and Personal Use Devices; Classification of Neonatal Incubators

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying neonatal incubators into class II (performance standards). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49884) a proposed regulation to classify neonatal incubators into class II (performance standards). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. However, the agency has made minor changes in the identification of the device to clarify that the term "nursing" refers to care by nursing personnel and not to feeding an infant. Accordingly, the proposed regulation is being adopted with this change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their

new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart F by adding new § 880.5400, to read as follows:

§ 880.5400 Neonatal incubator.

(a) *Identification.* A neonatal incubator is a device consisting of a rigid boxlike enclosure in which an infant may be kept in a controlled environment for medical care. The device may include an AC-powered heater, a fan to circulate the warmed air, a container for water to add humidity, a control valve through which oxygen may be added, and access ports for nursing care.

(b) *Classification.* Class II (performance standards).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31571 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1307]

General Hospital and Personal Use Devices; Classification of Neonatal Transport Incubators

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying neonatal transport incubators into class II (performance standards). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Device Panel). FDA also published in that issue of the **Federal Register** (44 FR 49885) a proposed regulation to classify neonatal transport incubators into class II (performance standards). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted without change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart F by adding new § 880.5410, to read as follows:

§ 880.5410 Neonatal transport incubator.

(a) *Identification.* A neonatal transport incubator is a device consisting of a portable rigid boxlike enclosure with insulated walls in which an infant may be kept in a controlled environment while being transported for medical care. The device may include straps to secure the infant, a battery-operated heater, an AC-powered battery charger, a fan to circulate the warmed air, a container for water to add humidity, and provision for a portable oxygen bottle.

(b) *Classification.* Class II (performance standards).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31572 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1380]

General Hospital and Personal Use Devices; Classification of Pressure Infusors for I.V. Bags

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying pressure infusors for I.V. bags into class I (general controls). The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49886) a proposed regulation to classify pressure infusors for I.V. bags into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA.

A comment disagreed with the proposal to classify this device into class II (performance standards). The comment stated that the pressure indicated by the device and applied to the I.V. bag was not necessarily the pressure in the I.V. bag and was not the pressure at the injection site. Also, the comment stated that it was not normally necessary to know the pressure of fluid exiting the I.V. bag, and that the risk of air embolism was related to pressurizing

a rigid I.V. container rather than external pressure applied on an I.V. bag.

FDA agrees with the comment that a pressure infusor for I.V. bags presents minimal risk of air embolism. The agency believes that the accuracy of the pressure exerted on the bag as shown by the pressure gauge can be addressed in the labeling.

Accordingly, the agency is classifying the device into class I in the final rule instead of into class II as proposed. For the reasons stated in the general regulation on general and personal use devices, published elsewhere in this issue of the **Federal Register**, FDA does not believe that it is necessary to issue a new proposal concerning this decision. Persons who disagree with classifying pressure infusors for I.V. bags into class I may petition for reclassification of the device under Subpart C of Part 860 (21 CFR Part 860) of the classification procedures regulation. Accordingly, the proposed classification is being adopted with this change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart F by adding new § 880.5420, to read as follows:

§ 880.5420 Pressure infusor for an I.V. bag.

(a) *Identification.* A pressure infusor for an I.V. bag is a device consisting of an inflatable cuff which is placed around an I.V. bag. When the device is inflated, it increases the pressure on the I.V. bag to assist the infusion of the fluid.

(b) *Classification.* Class I (general controls).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31573 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1308]

General Hospital and Personal Use Devices; Classification of Nonelectrically Powered Fluid Injectors

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying nonelectrically powered fluid injectors into class II (performance standards). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49887) a proposed regulation to classify nonelectrically powered fluid injectors into class II (performance standards). A period of 60 days was provided for interested persons to submit comments to FDA.

No Comments have been received regarding the proposed regulation to classify this device. However, the agency has made minor changes to the identification of the device to clarify its use. Accordingly, the proposed regulation is being adopted with these changes.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart F by adding new § 880.5430, to read as follows:

§ 880.5430 Nonelectrically powered fluid injector.

(a) *Identification.* A nonelectrically powered fluid injector is a nonelectrically powered device used by a health care provider to give a hypodermic injection by means of a narrow, high velocity jet of fluid which can penetrate the surface of the skin and deliver the fluid to the body. It may be used for mass inoculations.

(b) *Classification.* Class II (performance standards).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31574 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1309]

General Hospital and Personal Use Devices; Classification of Intravascular Administration Sets

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying intravascular administration sets into class II (performance standards). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. This action is being taken

under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49888) a proposed regulation to classify intravascular administration sets into class II (performance standards). A period of 60 days was provided for interested persons to submit comments to FDA.

1. One comment recommended that infusion line filters be placed into a separate generic classification instead of grouping it in the intravascular administration set category. The comment stated that I.V. set stopcocks and intravascular catheters are also connected to the infusion line tubing of the intravascular administration set, but these products have been treated as separate generic categories. The comment also stated that no rationale was provided for including infusion line filters with intravascular administration sets.

FDA disagrees with the comment that infusion line filters should be a separate generic category. The agency believes that infusion line filters are used only with an intravascular administration set and should be treated as part of the same generic class. The agency agrees with the comment that I.V. set stopcocks (Docket No. 78N–1323 (44 FR 49904)), and fluid delivery tubing (Docket No. 78N–1328 (44 FR 49909)), both of which were proposed as separate generic categories, are also used only with intravascular administration sets. Therefore, the agency is grouping these devices into the generic category of intravascular administration sets.

2. The comment also stated that identifying an infusion line filter as "a component of an intravascular administration set" is unclear. The comment stated that the only definition of component that is available is in § 820.3 (21 CFR 820.3) of the GMP regulation.

FDA agrees that the use of the term "component" in the proposal can be confusing. In the proposal, the agency used this term to mean a part of a system. The agency has removed the term component from the final classification regulation for intravascular administration sets.

3. The comment also stated that some manufacturers of infusion line filters do not manufacture intravascular administration sets and that it would be unnecessary for them to be involved in standards deliberation on sets when their prime concern is the filter itself.

FDA believes that a performance standard for intravascular administration sets would not necessarily include a performance standard for infusion line filters. However, this issue will be resolved during the standards setting process for intravascular administration sets.

The agency has made minor changes in the name and identification of intravascular administration sets to reflect the above changes. Accordingly, the proposed regulation is being adopted with these changes.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668 and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart F by adding new § 880.5440, to read as follows:

§ 880.5440 Intravascular administration set.

(a) *Identification.* An intravascular administration set is a device used to administer fluids from a container to a patient's vascular system through a needle or catheter inserted into a vein. The device may include the needle or catheter, tubing, a flow regulator, a drip chamber, an infusion line filter, an I.V. set stopcock, fluid delivery tubing, connectors between parts of the set, a side tube with a cap to serve as an injection site, and a hollow spike to penetrate and connect the tubing to an I.V. bag or other infusion fluid container.

(b) *Classification.* Class II (performance standards).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31575 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N–1310]

General Hospital and Personal Use Devices; Classification of Patient Care Reverse Isolation Chambers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying patient care reverse isolation chambers into class II (performance standards). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulation classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49890) a proposed regulation to classify patient care reverse isolation chambers into class II (performance standards). A period of 60 days was provided for interested persons to submit comments to FDA. No comments have been received regarding the proposed regulation to classify this device.

Accordingly, the proposed regulation is being adopted without change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart F by adding new § 880.5450, to read as follows:

§ 880.5450 Patient care reverse isolation chamber.

(a) *Identification.* A patient care reverse isolation chamber is a device consisting of a roomlike enclosure designed to prevent the entry of harmful airborne material. This device protects a patient who is undergoing treatment for burns or is lacking a normal immunosuppressive defense due to therapy or congenital abnormality. The device includes fans and air filters which maintain an atmosphere of clean air at a pressure greater than the air pressure outside the enclosure.

(b) *Classification.* Class II (performance standards).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31576 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1311]

General Hospital and Personal Use Devices; Classification of Jet Lavages

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying jet lavages into class II (performance standards). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49891) a proposed regulation to classify jet lavages into class II (performance standards). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted without change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart F by adding new § 880.5475, to read as follows:

§ 880.5475 Jet lavage.

(a) *Identification.* A jet lavage is a device used to clean a wound by a pulsatile jet of sterile fluid. The device consists of the pulsing head, tubing to connect to a container of sterile fluid, and a means of propelling the fluid through the tubing, such as an electric roller pump.

(b) *Classification.* Class II (performance standards).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31577 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1312]

General Hospital and Personal Use Devices; Classification of AC-Powered Patient Lifts

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying AC-powered patient lifts into class II (performance standards). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Classification Panel. FDA also published in that issue of the **Federal Register** (44 FR 49892) a proposed regulation to classify AC-powered patient lifts into class II (performance standards). A period of 60 days was provided for interested persons to submit written comments to FDA.

No written comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted without change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart F by adding new § 880.5500, to read as follows:

§ 880.5500 AC-powered patient lift.

(a) *Identification.* An AC-powered lift is an electrically powered device either fixed or mobile, used to lift and transport patients in the horizontal or other required position from one place to another, as from a bed to a bath. The device includes straps and slings to support the patient.

(b) *Classification.* Class II (performance standards).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31578 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1313]

General Hospital and Personal Use Devices; Classification of Non-AC-Powered Patient Lifts

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying non-AC-powered patient lifts into class I (general controls). The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49893) a proposed regulation to classify non-AC-powered patient lifts into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. However, the agency has made minor changes in the name and identification of the device to clarify the range of devices included in the generic class covered by this rule. Accordingly, the proposed regulation is being adopted with these changes.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart F by adding new § 880.5510, to read as follows:

§ 880.5510 Non-AC-powered patient lifts.

(a) *Identification.* A non-AC-powered patient lift is a hydraulic, battery, or mechanically powered device, either fixed or mobile, used to lift and transport a patient in the horizontal or other required position from one place to another, as from a bed to a bath. The device includes straps and a sling to support the patient.

(b) *Classification.* Class I (general controls).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31579 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1314]

General Hospital and Personal Use Devices; Classification of Alternating Pressure Air Flotation Mattresses

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying alternating pressure air flotation mattresses into class II (performance standards).The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device.This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49893) a proposed regulation to classify alternating pressure air flotation mattresses into class II (performance standards). A period of 60 days was provided for interested persons to submit comments to FDA. No comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed

regulation is being adopted with only a minor clarifying change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart F by adding new § 880.5550, to read as follows:

§ 880.5550 Alternating pressure air flotation mattress.

(a) *Identification.* An alternating pressure air flotation mattress is a device intended for medical purposes that consists of a mattress with multiple air cells that can be filled and emptied in an alternating pattern by an associated control unit to provide regular, frequent, and automatic changes in the distribution of body pressure. The device is used to prevent and treat decubitus ulcers (bed sores).

(b) *Classification.* Class II (performance standards).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31580 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1315]

General Hospital and Personal Use Devices; Classification of Temperature Regulated Water Mattresses

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying temperature regulated water mattresses into class II (performance standards). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49894) a proposed regulation to classify heated water mattresses into class II (performance standards). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted with only minor clarifying changes.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart F by adding new § 880.5560, to read as follows:

§ 880.5560 Temperature regulated water mattress.

(a) *Identification.* A temperature regulated water mattress is a device intended for medical purposes that consists of a mattress of suitable size, filled with water which can be heated or in some cases cooled. The device includes electrical heating and water circulating components, and an optional cooling component. The temperature control may be manual or automatic.

(b) *Classification.* Class II (performance standards).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31581 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1316]

General Hospital and Personal Use Devices; Classification of Hypodermic Single Lumen Needles

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying hypodermic single lumen needles into class II (performance standards). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49895) a proposed regulation to classify hypodermic single lumen needles into class II (performance standards). A period of 60 days was provided for

interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. However, the agency has made minor changes in the identification of the device to make it clear that the tube is hollow and constructed of metal, and that the tube is joined to a female connector (hub) which fits the male connector (nozzle) of a piston syringe or an intravascular administration set. Accordingly, the proposed regulation is being adopted with these and other minor clarifying changes.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart F by adding new § 880.5570, to read as follows:

§ 880.5570 Hypodermic single lumen needle.

(a) *Identification.* A hypodermic single lumen needle is a device intended to inject fluids into, or withdraw fluids from, parts of the body below the surface of the skin. The device consists of a metal tube that is sharpened at one end and at the other end joined to a female connector (hub) designed to mate with a male connector (nozzle) of a piston syringe or an intravascular administration set.

(b) *Classification.* Class II (performance standards).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31582 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 880

[Docket No. 78N-1317]

General Hospital and Personal Use Devices; Classification of Nipple Shields

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying nipple shields into class I (general controls). The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49896) a proposed regulation to classify nipple shields into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA.

One comment was received. The comment suggested that the identification of the device be changed to clarify that nursing pads, which are disposable absorbent pads intended to protect a lactating woman's clothing from being stained with milk, are not included in this proposed rule. The comment also requested confirmation that nursing pads are not considered by FDA to be medical devices.

FDA agrees with this comment and has made minor changes to the identification of the device to make it clear that nursing pads are not included in this generic device. FDA does not consider nursing pads that are intended solely to protect a lactating woman's clothing from being stained with milk to be medical devices. Accordingly, the proposed regulation is being adopted with these changes.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart F by adding new § 880.5630, to read as follows:

§ 880.5630 Nipple shield.

(a) *Identification.* A nipple shield is a device consisting of a cover used to protect the nipple of a nursing woman. This generic device does not include nursing pads intended solely to protect the clothing of a nursing woman from milk.

(b) *Classification.* Class I (general controls).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31583 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 880

[Docket No. 78N-1318]

General Hospital and Personal Use Devices; Classification of Lamb Feeding Nipples

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying lamb feeding nipples into class I (general controls) and exempting manufacturers of the device from premarket notification procedures and certain requirements of the good manufacturing practice regulation. The effect of this rule is to require that the device meet only the general controls applicable to all devices, except for the premarket notification procedures and

certain requirements of the good manufacturing practice regulation. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49897) a proposed regulation to classify lamb feeding nipples into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. However, the agency has made minor changes in the identification of the device to make it clear that the rule applies only to those devices that are intended for use as a feeding nipple for infants with oral or facial abnormalities. Accordingly, the proposed regulation is being adopted with these changes.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart F by adding new § 880.5640, to read as follows:

§ 880.5640 Lamb feeding nipple.

(a) *Identification.* A lamb feeding nipple is a device intended for use as a feeding nipple for infants with oral or facial abnormalities.

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in Subpart E of Part 807. If the device is not labeled or otherwise represented as sterile, it also is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31584 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N–1319]

General Hospital and Personal Use Devices; Classification of Pediatric Position Holders

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying pediatric position holders into class I (general controls) and exempting manufacturers of the device from certain requirements of the good manufacturing practice regulation. The effect of this rule is to require that the device meet only the general controls applicable to all devices, except for certain requirements of the good manufacturing practice regulation. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49898) a proposed regulation to classify infant position holders into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. However, the agency has made minor changes in the name and identification of the device to make it clear that the rule applies to those devices that are used to hold children as well as those used to hold infants. Accordingly, the proposed regulation is being adopted with these changes.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart F by adding new § 880.5680, to read as follows:

§ 880.5680 Pediatric position holder.

(a) *Identification.* A pediatric position holder is a device used to hold an infant or a child in a desired position for therapeutic or diagnostic purposes, e.g., in a crib under a radiant warmer, or to restrain a child while an intravascular injection is administered.

(b) *Classification.* Class I (general controls). The device is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31585 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1320]

General Hospital and Personal Use Devices; Classification of Neonatal Phototherapy Units

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying neonatal phototherapy units into class II (performance standards). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49899) a proposed regulation to classify neonatal phototherapy units into class II (performance standards). A period of 60 days was provided for interested persons to submit comments to FDA. No comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted without change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart F by adding new § 880.5700, to read as follows:

§ 880.5700 Neonatal phototherapy unit.

(a) *Identification.* A neonatal phototherapy unit is a device used to treat or prevent hyperbilirubinemia (elevated serum bilirubin level). The device consists of one or more lamps that emit a specific spectral band of light, under which an infant is placed for therapy. This generic type of device may include supports for the patient and equipment and component parts.

(b) *Classification.* Class II (performance standards).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31586 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1321]

General Hospital and Personal Use Devices; Classification of Infusion Pumps

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying infusion pumps into class II (performance standards). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49900) a proposed regulation to classify infusion pumps into class II (performance standards). A period of 60 days was provided for interested persons to submit comments to FDA.

A comment agreed with classifying infusion pumps into class II. A manufacturer's comment expressed concern that its device, although functioning to infuse fluids into the body, did not fit the identification statement for infusion pumps. The manufacturer's device uses elastomeric force to drive the fluid into the body and was a complete system not requiring additional components. The comment suggested that a new device category should be established for such integrated infusion systems.

FDA disagrees with the suggestion that a new category for integrated infusion systems using an elastomeric pump be established. However, the agency has made minor changes in the identification of the device to include such integrated infusion systems. Further, different performance standards may be required for the different categories of infusion pumps included in the rule. This issue will be resolved during the standards setting process for infusion pumps.

The agency has made minor changes in the identification of the device to clarify the use and the range of devices included in this generic class. Accordingly, the proposed regulation is being adopted with these changes.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 212668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions,

published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart F by adding new § 880.5725, to read as follows:

§ 880.5725 Infusion pump.

(a) *Identification.* An infusion pump is a device used in a health care facility to pump fluids into a patient in a controlled manner. The device may use a piston pump, a roller pump, or a peristaltic pump and may be powered electrically or mechanically. The device may also operate using a constant force to propel the fluid through a narrow tube which determines the flow rate. The device may include means to detect a fault condition, such as air in, or blockage of, the infusion line and to activate an alarm.

(b) *Classification.* Class II (performance standards).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31587 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1381]

General Hospital and Personal Use Devices; Classification of Suction Snakebite Kits

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying suction snakebite kits into class I (general controls). The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the Federal Register of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the Federal Register (44 FR 49901) a proposed regulation to classify suction snakebite kits into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA. No comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted without change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart F by adding new § 880.5740, to read as follows:

§ 880.5740 Suction snakebite kit.

(a) *Identification.* A suction snakebite kit is a device consisting of a knife, suction device, and tourniquet used for first-aid treatment of snakebites by removing venom from the wound.

(b) *Classification.* Class I (general controls.).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31558 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1382]

General Hospital and Personal Use Devices; Classification of Chemical Cold Pack Snakebite Kits

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying chemical cold pack snakebite kits into class III (premarket approval). The effect of classifying a devic 'nto class III is to require each manufacturer of the device to submit to FDA a premarket approval application that includes information concerning safety and effectiveness tests for the device. Each application must be submitted to FDA on or before May 31, 1983 or 90 days after promulgation of a separate regulation requiring premarket approval of the device, whichever occurs later. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the Federal Register of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the Federal Register (44 FR 49902) a proposed regulation to classify chemical cold pack snakebite kits into class III (premarket approval). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted without change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart F by adding new § 880.5760, to read as follows:

§ 880.5760 Chemical cold pack snakebite kit.

(a) *Identification.* A chemical cold pack snakebit kit is a device consisting of a chemical cold pack and tourniquet used for first-aid treatment of snakebites.

(b) *Classification.* Class III (premarket approval).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31589 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1322]

General Hospital and Personal Use Devices; Classification of Medical Support Stockings

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying into class II (performance standards) medical support stockings intended to prevent the pooling of blood in the legs and classifying into class I (general controls) medical support stockings intended for general medical purposes and exempting manufacturers of the class I device from certain requirements of the good manufacturing practice regulation. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices, except for certain requirements of the good manufacturing practice regulation. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49903) a proposed regulation to classify medical support stockings into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA.

1. One comment suggested that the Cardiovascular Device Classification Panel (now the Circulatory System Devices Panel) and the General Hospital and Personal Use Device Classification Panel had considered two different types of medical support stockings. The comment agreed with the recommendation of the Cardiovascular Device Classification Panel that medical support stockings intended to prevent pooling of blood in the legs should be classified into class II. The comment further stated that improper compression, due to poor stocking design or a failure to fit and apply stockings correctly, could produce adverse effects on the patient due to excessive blood flow restriction. The comment suggested that the General Hospital and Personal Use Device Classification Panel had considered a different type of device, perhaps a nonprescription stocking, as the Panel had not identified any risks to health.

FDA agrees with the comment that there are some differences between the medical support stockings discussed by the two classification panels. FDA has made changes in the identification of the device to distinguish medical support stockings that are specifically designed and fitted to a patient to prevent pooling of blood in the legs, medical support stockings for other therapeutic purposes, and those general purpose support stockings that are not intended for medical purposes. The last category of stockings is not considered to consist of medical devices. The agency also agrees with the comment that medical support stockings that are intended to be used in the prevention of the pooling of blood in the legs should be classified into class II. Medical support for medical purposes should be classified into class I. The final regulation so provides.

2. Two comments agreed with the proposal to classify medical support stockings into class I. One of them requested that the device be exempt from premarket notification and the good manufacturing practices regulation (GMP) if it is not used for the prevention of pooling of blood in the lower limbs because the General Hospital Panel did not identify any risk to health of the device and, therefore, it is not necessary to subject it to the requirements of premarket notification and the GMP regulation.

The agency disagrees with the comment that medial support stockings be exempt from premarket notification, but agrees with the comment that manufacturers of medical support stockings that are not labeled or otherwise intended for use in the prevention of pooling of blood in the legs should be exempt from the device GMP regulation under section 520(f) of the act (21 U.S.C. 360j(f)). The agency has decided that a manufacturer of this device be exempt, in the manufacture of the device, from all requirements in the GMP regulation except § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Accordingly, the proposed regulation is being adopted with these changes.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority

delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart F by adding new § 880.5780, to read as follows:

§ 880.5780 Medical support stocking.

(a) *Medical support stocking to prevent the pooling of blood in the legs*—(1) *Identification.* A medical support stocking to prevent the pooling of blood in the legs is a device that is constructed of elastic material and designed to apply controlled pressure to the leg and that is intended for use in the prevention of pooling of blood in the leg.

(2) *Classification.* Class II (performance standards).

(b) *Medical support stocking for general medical purposes*—(1) *Identification.* A medical support stocking for general medical purposes is a device that is constructed of elastic material and designed to apply controlled pressure to the leg and that is intended for medical purposes other than the prevention of pooling of blood in the leg.

(2) *Classification.* Class I (general controls). The device is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31590 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1324]

General Hospital and Personal Use Devices; Classification of Therapeutic Scrotal Supports

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying therapeutic scrotal supports into class I (general controls) and exempting manufacturers of the device from premarket notification procedures and certain requirements of the good manufacturing practice regulation. The effect of this rule is to require that the device meet only the general controls applicable to all devices, except for the premarket notification procedures and certain requirements of the good manufacturing practice regulation. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49905) a proposed regulation to classify therapeutic scrotal supports into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA.

Two comments were received. Both agreed with the classification for this device. One comment suggested that the identification clearly state that supports worn for comfort and during physical activity and not associated with any medical use are not included in this generic device.

FDA agrees with these comments and has made minor changes in the name and the identification of the device to clarify that the rule applies only to those devices that are intended for medical purposes. Accordingly, the proposed regulation is being adopted with these changes.

The agency has determined that compliance with the GMP regulation, except for § 820.180 (general requirements concerning records) and § 820.198 (complaint files), is not required to assure that therapeutic scrotal supports will be safe and effective and otherwise in compliance with the act. The agency has based its determination on available information about current practices used in the manufacture of the device. The agency is not exempting manufacturers of therapeutic scrotal supports from the requirements of §§ 820.180 or 820.198 because it has determined that compliance with these sections is in the public interest and will not be unduly burdensome for device manufacturers.

There are two procedures by which FDA may exempt a manufacturer of a device from complying with any or all of the requirements of the GMP regulation. First, a manufacturer of a device subject to any requirement under the GMP regulation may petition the agency pursuant to section 520(f)(2)(A) of the act (21 U.S.C. 360j(f)(2)(A)) for an exemption or variance from the requirement. An exemption granted in response to such a petition applies only to the manufacturer who submitted the petition. Second, in classifying a medical device into class I under section 513 of the act (21 U.S.C. 360c), the agency may determine that certain of the requirements of the GMP regulation shall not apply to the device. In that instance, the exemption applies to all manufacturers of the generic type of device that is the subject of the classification regulation. The agency may grant an exemption under either procedure only if it determines that compliance with the requirement is not necessary to assure that the device will be safe and effective and otherwise in compliance with the act.

The agency previously granted a manufacturer's petition (79P–0294) for exemption of its "scrotal support" from the requirement of the GMP regulation, except § 820.180 (general requirements concerning records) and § 820.198 (complaint files). As explained above, that exemption applies only to the petitioner. In this regulation classifying therapeutic scrotal supports, FDA is exempting from certain sections of the GMP regulation all manufacturers of this generic type of device. This action is consistent with the agency's policies and criteria for exemption discussed in the preamble to the proposed general provisions for this Part, published in the **Federal Register** of August 24, 1979 (44 FR 49844). Additional information regarding the procedures for petitioning for exemptions or variances from the GMP regulation is available, as described in a notice published in the **Federal Register** of January 18, 1980 (45 FR 3671).

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions,

published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart F by adding new § 880.5820, to read as follows:

§ 880.5820 Therapeutic scrotal support.

(a) *Identification.* A therapeutic scrotal support is a device intended for medical purposes that consist of a pouch attached to an elastic waistband and that is used to support the scrotum (the sac that contains the testicles).

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device also is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31591 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1325]

General Hospital and Personal Use Devices; Classification of Piston Syringes

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying piston syringes into class II (performance standards). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the Federal Register of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the Federal Register (44 FR 49906) a proposed regulation to classify piston syringes into class II (performance standards). A period of 60 days was provided for interested persons to submit comments to FDA. No comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted with minor editorial changes only.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart F by adding new § 880.5860, to read as follows:

§ 880.5860 Piston syringe.

(a) *Identification.* A piston syringe is a device intended for medical purposes that consists of a calibrated hollow barrel and a movable plunger. At one end of the barrel there is a male connector (nozzle) for fitting the female connector (hub) of a hypodermic single lumen needle. The device is used to inject fluids into, or withdraw fluids from, the body.

(b) *Classification.* Class II (performance standards).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31592 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1329]

General Hospital and Personal Use Devices; Classification of Umbilical Occlusion Devices

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying umbilical occlusion devices into class I (general controls). The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the Federal Register of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the Federal Register (44 FR 49909) a proposed regulation to classify umbilical occlusion devices into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted without change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further

information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart F by adding new § 880.5950, to read as follows:

§ 880.5950 Umbilical occlusion device.

(a) *Identification.* An umbilical occlusion device is a clip, tie, tape, or other article used to close the blood vessels in the umbilical cord of a newborn infant.

(b) *Classification.* Class I (general controls).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31593 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1330]

General Hospital and Personal Use Devices; Classification of Absorbent Tipped Applicators

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying absorbent tipped applicators into class I (general controls) and exempting manufacturers of the device from premarket notification procedures and certain requirements of the good manufacturing practice regulation. The effect of this rule is to require that the device meet only the general controls applicable to all devices, except for the premarket notification procedures and certain requirements of the good manufacturing practice regulation. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49910) a proposed regulation to classify absorbent tipped applicators into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted with only a minor clarifying change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 by adding new Subpart G and new § 880.6025, to read as follows:

Subpart G—General Hospital and Personal Use Miscellaneous Devices

§ 880.6025 Absorbent tipped applicator.

(a) *Identification.* An absorbent tipped applicator is a device intended for medical purposes that consists of an absorbent swab on a wooden, paper, or plastic stick. The device is used to apply medications to, or to take specimens from, a patient.

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in Subpart E of Part 807. If the device is not labeled or otherwise represented as sterile, it also is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31594 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1332]

General Hospital and Personal Use Devices; Classification of Ice Bags

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying ice bags into class I (general controls) and exempting manufacturers of the device from premarket notification procedures and certain requirements of the good manufacturing practice regulation. The effect of this rule is to require that the device meet only the general controls applicable to all devices, except for the premarket notification procedures and certain requirements of the good manufacturing practice regulation. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49912) a proposed regulation to classify ice bags

into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted with only a minor clarifying change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart G by adding new § 880.6050, to read as follows:

§ 880.6050 Ice bag.

(a) *Identification.* An ice bag is a device intended for medical purposes that is in the form of a container intended to be filled with ice that is used to apply dry cold therapy to an area of the body. The device may include a holder that keeps the bag in place against an external area of the patient.

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in Subpart E of Part 807. If the device is not labeled or otherwise represented as sterile, it also is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31595 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 880

[Docket No. 78N-1333]

General Hospital and Personal Use Devices; Classification of Medical Disposable Bedding

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying medical disposable bedding into class I (general controls) and exempting manufacturers of the device from certain requirements of the good manufacturing practice regulation. The effect of this rule is to require that the device meet only the general controls applicable to all devices, except for certain requirements of the good manufacture in practice regulation. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, Department of Health, Education, and Welfare, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49913) a proposed regulation to classify disposable bedding into class I (general controls). A period of 60 days was provided for interested persons to submit written comments to FDA.

One comment was received. The comment suggested that disposable bedding should not be considered a medical device. The comment said that disposable bedding is not recognized in the National Formulary (NF) or the United States Pharmacopeia (USP) and that it does not meet the definition of "device" in the Federal Food, Drug, and Cosmetic Act. The comment also stated that non-disposable bedding and other articles such as face cloths and towels are not considered devices.

FDA agrees with the comment that not all disposable bedding are devices. FDA points out, however, that inclusion in the NF or the USP is only one of three criteria for treatment as a "device." See section 201(h) of the act (21 U.S.C. 321(h)), the agency has made minor changes in the name and the identification of the device to make clear that the rule applies only to disposable bedding that is intended to be used for medical purposes. Accordingly, the proposed regulation is being adopted with these changes.

The agency has determined that compliance with the GMP regulation, except for § 820.180 (general requirements concerning records) and § 820.198 (complaint files), is not required to assure that medical disposable bedding will be safe and effective and otherwise in compliance with the act. The agency has based its determination on available information about current practices used in the manufacture of the device. the agency is not exempting manufacturers of medical disposable bedding from the requirements of §§ 820.180 or 820.198 because it has determined that compliance with these sections is in the public interest and will not be unduly burdensome for device manufacturers.

There are two procedures by which FDA may exempt a manufacturer of a device from complying with any or all of the requirements of the GMP regulation. First, manufacturer of a device subject to any requirement under the GMP regulation may petition the agency pursuant to section 520(f)(2)(A) of the act (21 U.S.C. 360j(f)(2)(A)) for an exemption or variance from the requirement. An exemption granted in response to such a petition applies only to the manufacturer who submitted the petition. Second, in classifying a medical device into class I under section 513 of the Act (21 U.S.C. 360c), the agency may determine that certain of the requirements of the GMP regulation shall not apply to the device. In that instance, the exemption applies to all manufacturers of the generic type of device that is the subject of the classification regulation. The agency may grant an exemption under either procedure only if it determines that compliance with the requirement is not necessary to assure that the device will be safe and effective and otherwise in compliance with the act.

The agency previously granted a manufacturer's petition (79P–0290) for exemption of its "waterproof sheeting" from the requirement of the GMP regulation, except § 280.180 (general requirements concerning records) and § 820.198 (complaint files). As explained above, that exemption applies only to the petitioner. In this regulation

classifying medical disposable bedding, FDA is exempting from certain sections of the GMP regulation all manufacturers of this generic type of device. This action is consistent with the agency's policies and criteria for exemption discussed in the preamble to the proposed general provisions for this Part, published in the **Federal Register** of August 24, 1979 (44 FR 49844). Additional information regarding the procedures for petitioning for exemptions or variances from the GMP regulation is available, as described in a notice published in the **Federal Register** of January 18, 1980 (45 FR 3671).

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a) 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart G by adding new § 880.6060, to read as follows:

§ 880.6060 Medical disposable bedding.

(a) *Identification.* Medical disposable bedding is a device intended for medical purposes to be used by one patent for a period of time and then discarded. This generic type of device may include disposable bedsheets, bedpads, pillows and pillowcases, blankets, emergency rescue blankets, or waterproof sheets.

(b) *Classification.* Class I (general controls). If the device is not labeled or otherwise represented as sterile, it is exempt from the good manufacturing practice regulation in Part 820, with exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31596 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1334]

General Hospital and Personal Use Devices; Classification of Bed Boards

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying bed boards into class I (general controls) and exempting manufacturers of the device from premarket notification procedures and certain requirements of the good manufacturing practice regulation. The effect of this rule is to require that the device meet only the general controls applicable to all devices, except for the premarket notification procedures and certain requirements of the good manufacturing practice regulation. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49914) a proposed regulation to classify bed boards into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted with only a minor clarifying change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart G by adding new § 880.6070, to read as follows:

§ 880.6070 Bed board.

(a) *Identification.* A bed board is a device intended for medical purposes that consists of a stiff board used to increase the firmness of a bed.

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device also is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31597 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR PART 880

[Docket No. 78N-1335]

General Hospital and Personal Use Devices; Classification of Cardiopulmonary Resuscitation Boards

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying cardiopulmonary resuscitation boards into class I (general controls) and exempting manufacturers of the device from premarket notification procedures and certain requirements of the good manufacturing practice regulation. The effect of this rule is to require that the device meet

only the general controls applicable to all devices, except for the premarket notification procedures and certain requirements of the good manufacturing practice regulation. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49915) a proposed regulation to classify cardiopulmonary resuscitation boards into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA. No comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted without change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart G by adding new § 880.6080 to read as follows:

§ 880.6080 Cardiopulmonary resuscitation board.

(a) *Identification.* A cardiopulmonary resuscitation board is a device consisting of a rigid board which is placed under a patient to act as a support during cardiopulmonary resuscitation.

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device also is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31598 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1336]

General Hospital and Personal Use Devices; Classification of Hot/Cold Water Bottles

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying hot/cold water bottles into class I (general controls) and exempting manufacturers of the device from premarket notification procedures and certain requirements of the good manufacturing practice regulation. The effect of this rule is to require that the device meet only the general controls applicable to all devices, except for the premarket notification procedures and certain requirements of the good manufacturing practice regulation. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49916) a proposed regulation to classify hot/cold water bottles into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted with only a minor clarifying change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart G by adding new § 880.6085, to read as follows:

§ 880.6085 Hot/cold water bottle.

(a) *Identification.* A hot/cold water bottle is a device intended for medical purposes that is in the form of a container intended to be filled with hot or cold water to apply heat or cold to an area of the body.

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device also is exempt from the good manufacturing practice regulation in part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31599 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 880

[Docket No. 78N-1338]

General Hospital and Personal Use Devices; Classification of Ethylene Oxide Gas Aerator Cabinets

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying ethylene oxide gas aerator cabinets into class II performance standards). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49917) a proposed regulation to classify aerator cabinets into class II (performance standards). A period of 60 days was provided for interested persons to submit written comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. However, the agency has made minor changes in the name and identification of the device to clarify that the device is intended for use by a health care provider to remove ethylene oxide gas and that this generic class of device may include a heater to warm the circulating air. Accordingly, the proposed regulation is being adopted with these changes.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart G by adding new § 880.6100, to read as follows:

§ 880.6100 Ethylene oxide gas aerator cabinet.

(a) *Identification.* An ethyene oxide gas aerator cabinet is a device that is intended for use by a health care provider and consists of a cabinet with a ventilation system designed to circulate and exchange the air in the cabinet to shorten the time required to remove residual ethylene oxide (ETO) from wrapped medical devices that have undergone ETO sterilization. The device may include a heater to warm the circulating air.

(b) *Classification.* Class II (performance standards).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31600 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1340]

General Hospital and Personal Use Devices; Classification of Medical Chairs and Tables

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying medical chairs and tables into class I (general controls) and exempting manufacturers of the device from premarket notification procedures and certain requirements of the good manufacturing practice regulation. The effect of this rule is to require that the device meet only the general controls applicable to all devices, except for the premarket notification procedures and certain requirements of the good manufacturing practice regulation. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49918) a proposed regulation to classify medical chairs and tables into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted with only minor clarifying changes.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart G by adding new § 880.6140, to read as follows:

§ 880.6140 Medical chair and table.

(a) *Identification.* A medical chair or table is a device intended for medical purposes that consists of a chair or table without wheels and not electrically powered which, by reason of special shape or attachments, such as food trays or headrests, or special features such as a built-in raising and lowering mechanism or removable arms, is

intended for use of blood donors, geriatric patients, or patients undergoing treatment or examination.

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device also is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31601 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1341]

General Hospital and Personal Use Devices; Classification of Ultrasonic Cleaners for Medical Instruments

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying ultrasonic cleaners for medical instruments into class I (general controls). The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49919) a proposed regulation to classify ultrasonic cleaners for medical instruments into class I. A period of 60 days was provided for interested persons to submit comments to FDA.

1. Four comments disagreed with the treatment of ultrasonic cleaners as medical devices. The comments stated that the manufacturers of ultrasonic cleaners often do not know and cannot control the ultimate use of these products, and that the majority of them are used in industrial situations and are without medical claims.

FDA agrees with these comments. The agency considers only those ultrasonic cleaners that are intended for cleaning medical instruments to be medical devices.

2. Two comments stated that FDA had previously removed ultrasonic cleaners from the list of medical devices.

FDA confirms that ultrasonic cleaners that are not intended for cleaning medical instruments have been removed from the list of medical devices.

3. One comment suggested that ultrasonic cleaners for medical instruments should be exempt from premarket notification because ultrasonic cleaners have been manufactured for more than thirty years and a premarket notification of a manufacturer's intent to market the device is unnecessary. The comment also suggested that the device be exempt from the good manufacturing practice regulation because the quality of the device is easily discernible and defects are readily apparent to the user.

FDA disagrees with this comment. The agency believes that it is necessary for the protection of the public health that FDA receive premarket notification submissions concerning ultrasonic cleaners medical instruments. The agency also believes that manufacturers of the device must comply with the good manufacturing practice regulation to assure safety and effectiveness of the device.

4. One comment objected to the panel recommendation that the device be labeled advising the user to check periodically the level of energy emitted by the device, maintaining that this was unnecessary because it could be readily observed if the device was functioning and that any failure would probably be so catastrophic that the device would cease to function.

FDA believes that it is prudent to check all electronic medical devices periodically even if many failures are readily apparent.

5. A comment stated that the cleaning ability of an ultrasonic cleaner was in large measure dependent on the particular cleaning solution used and that health hazards are more likely from the solution than the device.

FDA agrees that the cleaning solution used in an ultrasonic cleaner for medical instruments is important in the cleaning process but believes the cleaning power of the solution is also dependent upon the proper operation of the ultrasonic cleaner.

The agency has made minor changes in the identification of the device to clarify that the rule applies only to those devices that are intended for cleaning medical instruments. Accordingly, the proposed regulation is being adopted with these changes.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52, Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart G by adding new § 880.6150, to read as follows:

§ 880.6150 Ultrasonic cleaner for medical instruments.

(a) *Identification.* An ultrasonic cleaner for medical instruments is a device intended for cleaning medical instruments by the emission of high frequency soundwaves.

(b) *Classification.* Class I (general controls).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31602 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1342]

General Hospital and Personal Use Devices; Classification of Specimen Containers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying specimen containers into class I (general controls) and exempting manufacturers of the device from premarket notification procedures and certain requirements of the good manufacturing practice regulation. The effect of this rule is to require that the device meet only the general controls applicable to all devices, except for the premarket notification procedures and certain requirements of the good manufacturing practice regulation. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49920) a proposed regulation to classify specimen containers into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA.

One comment agreed with the proposal that specimen containers be classified into class I, and suggested that nonsterile specimen containers, but not sterile specimen containers, be exempted from premarket notificaiton requirements and the good manufacturing practice (GMP) regulation. The comment stated that the safety and effectiveness of a nonsterile specimen container is not improved by manufacture in accordance with the GMP regulation and that all defects occurring in a nonsterile specimen container are readily discernible to the user. The comment further stated that because there is not much risk in the use of nonsterile specimen containers, there is no need to require premarket notifications under section 510(k) prior to their introduction into the market. The comment also stated that FDA could protect the public health by requiring registration and listing information for manufacturers of nonsterile specimen containers.

FDA agrees with the comment and has also decided that it is not necessary for the protection of the public health to receive premarket notification submissions concerning sterile specimen containers. The agency believes that the semiannual updating of device listing under section 510(j)(2) will provide FDA with adequate notice concerning new products within this generic type of device. Therefore, the agency has decided to exempt manufacturers of specimen containers from premarket notification under section 510(k) of the act and Subpart E of Part 807 of the regulations (21 CFR Part 807). The agency does not at this time anticipate that premarket approval will be required for this device.

The agency has also decided that a manufacturer of a specimen container who does not label or otherwise represent it as sterile be exempt, in the manufacture of the device, from all requirements in the GMP regulation except § 820.180 with respect to general requirements concerning records, and § 820.198 with respect to complaint files. The agency believes that a manufacturer of a specimen container, even when it is not labeled or otherwise represented as sterile, must still be required to comply with the complaint file requirements to ensure that these manufacturers have adequate systems for complaint investigation and followup. The agency also believes that manufacturers of specimen containers also must still be required to comply with the general requirements concerning records to ensure that FDA has access to complaint files, can investigate device-related injury reports and complaints about product defects, and determine whether the exemption from other sections of the GMP regulation is still appropriate. A manufacturer of a specimen container that is labeled or otherwise represented as sterile is, in the manufacture of this device, subject to the GMP regulation in its entirety. Accordingly, the proposed regulation is being adopted with these changes.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Part 880 is amended in Subpart G by adding new § 880.6175, to read as follows:

§ 880.6175 Specimen container.

(a) *Identification.* A specimen container is a device intended for medical purposes, that may be labeled or otherwise represented as sterile and that is used for the collection and transport of body waste, body exudate, or tissue samples.

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in Subpart E of Part 807. If the device is not labeled or otherwise represented as sterile, it is also exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31603 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1343]

General Hospital and Personal Use Devices; Classification of Cast Covers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying cast covers into class I (general controls) and exempting manufacturers of the device from premarket notification procedures and certain requirements of the good manufacturing practice regulation. The effect of this rule is to require that the device meet only the general controls applicable to all devices, except for the premarket notification procedures and certain requirements of the good manufacturing practice regulation. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel

(formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49921) a proposed regulation to classify cast covers into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA.

One comment was received. The comment agreed with the proposed classification and proposed exemption for cast covers. Accordingly, the proposed regulation is being adopted with only a minor clarifying change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart G by adding new § 880.6185, to read as follows:

§ 880.6185 Cast cover.

(a) *Identification.* A cast cover is a device intended for medical purposes that is made of waterproof material and placed over a cast to protect it from getting wet during a shower or a bath.

(b) *Classification.* Class I (general controls). The device is exempt from premarket notification procedures in Subpart 807. If the device is not labeled or otherwise represented as sterile it is also exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31604 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 880

[Docket No. 78N-1344]

General Hospital and Personal Use Devices; Classification of Mattress Covers for Medical Purposes

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying mattress covers for medical purposes into class I (general controls) and exempting manufacturers of the device from certain requirements of the good manufacturing practice regulation. The effect of this rule is to require that the device meet only the general controls applicable to all devices, except for certain requirements of the good manufacturing practice regulation. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49922) a proposed regulation to classify mattress covers into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA.

One comment was received. The comment stated that the device is usually used to protect a mattress and that for this intended use it does not fit the definition of "device" in the Federal Food, Drug, and Cosmetic Act. The comment recommended that the classification name of the device be changed to a name more descriptive of the products that may fit this definition and that the identification of the device be clarified to eliminate those mattress covers that do not fall within this definition.

FDA has carefully considered this comment and agrees that the majority of mattress covers are intended solely to protect the mattress and are not intended for medical purposes. Therefore, the agency has made minor changes in the name and the identification of the device to clarify that the rule applies only to those devices that are intended for medical purposes. Accordingly, the proposed regulation is being adopted with these changes.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart G by adding new § 880.6190, to read as follows:

§ 880.6190 Mattress cover for medical purposes.

(a) *Identification.* A mattress cover for medical purposes is a device intended for medical purposes that is used to protect a mattress. It may be electrically conductive or contain a germicide.

(b) *Classification.* Class I (general controls). If the device is not labeled or otherwise represented as sterile, it is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31605 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 880

[Docket No. 78N-1345]

General Hospital and Personal Use Devices; Classification of Ring Cutters

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying ring cutters to class I (general controls) and exempting manufacturers of the device from premarket notification procedures and certain requirements of the good manufacturing practice regulation. The effect of this rule is to require that the device meet only the general controls appplicable to all devices, except for the premarket notification procedures and certain requirements of the good manufacturing practice regulation. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49923) a proposed regulation to classify ring cutters into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted with only a minor clarifying change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart G by adding new § 880.6200, to read as follows:

§ 880.6200 Ring cutter.

(a) *Identification.* A ring cutter is a device intended for medical purposes that is used to cut a ring on a patient's finger so that the ring can be removed. The device incorporates a guard to prevent injury to the patient's finger.

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device also is exempt from the good manufacturing practice regulation in Part 820 with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31606 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 880

[Docket No. 78N-1346]

General Hospital and Personal Use Devices; Classification of Tongue Depressors

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying tongue depressors into class I (general controls) and exempting manufacturers of the device from premarket notification procedures and certain requirements of the good manufacturing practice regulation. The effect of this rule is to require that the device meet only the general controls applicable to all devices, except for the premarket notification procedures and certain requirements of the good manufacturing practice regulation. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49924) a proposed regulation to classify tongue depressors into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA. No comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted with only a minor clarifying change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart G by adding new § 880.6230, to read as follows:

§ 880.6230 Tongue depressor.

(a) *Identification.* A tongue depressor is a device intended to displace the tongue to facilitate examination of the surrounding organs and tissues.

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in Subpart E of Part 807. If the device is not labeled or otherwise represented as sterile, it also is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180,

with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31607 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1347]

General Hospital and Personal Use Devices; Classification of Patient Examination Gloves

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying patient examination gloves into class I (general controls) and exempting manufacturers of the device from premarket notification procedures and certain requirements of the good manufacturing practice regulation. The effect of this rule is to require that the device meet only the general controls applicable to all devices, except for the premarket notification procedures and certain requirements of the good manufacturing practice regulation. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49926) a proposed regulation to classify patient examination gloves into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted with only a minor clarifying change.

The agency has determined that compliance with the GMP regulation, except for § 820.180 (general requirements concerning records) and § 820.198 (complaint files), is not required to assure that patient examination gloves will be safe and effective and otherwise in compliance with the act. The agency has based its determination on available information about current practices used in the manufacture of the device and user experience with the device. The agency is not exempting manufacturers of patient examination gloves from the requirements of §§ 820.180 or 820.198 because it has determined that compliance with these sections is in the public interest and will not be unduly burdensome for device manufacturers. Accordingly, the proposed regulation is being adopted with these changes.

There are two procedures by which FDA may exempt a manufacturer of a device from complying with any or all of the requirements of the GMP regulation. First, a manufacturer of a device subject to any requirement under the GMP regulation may petition the agency pursuant to section 520(f)(2)(A) of the act (21 U.S.C. 360j(f)(2)(A)) for an exemption or variance from the requirement. An exemption granted in response to such a petition applies only to the manufacturer who submitted the petition. Second, in classifying a medical device into class I under section 513 of the act (21 U.S.C. 360c), the agency may determine that certain of the requirements of the GMP regulation shall not apply to the device. In that instance, the exemption applies to all manufacturers of the generic type of device that is the subject of the classification regulation. The agency may grant an exemption under either procedure only if it determines that compliance with the requirement is not necessary to assure that the device will be safe and effective and otherwise in compliance with the act.

The agency previously granted a manufacturer's petition (79P-0320) for exemption of its "nonsterile patient examination gloves" from the requirement of the GMP regulation, except § 820.180 (general requirements concerning records) and § 820.198 (complaint files). As explained above, that exemption applied only to the petitioner. In this regulation classifying patient examination gloves, FDA is exempting from certain sections of the GMP regulation all manufacturers of this generic type of device. This action is consistent with the agency's policies and criteria for exemption discussed in the preamble to the proposed general provisions for this Part, published in the **Federal Register** of August 24, 1979 (44 FR 49844). Additional information regarding the procedures for petitioning for exemptions or variances from the GMP regulation is available, as described in a notice published in the **Federal Register** of January 18, 1980 (45 FR 3671).

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart G by adding new § 880.6250, to read as follows:

§ 880.6250 Patient examination glove.

(a) *Identification.* A patient examination glove is a disposable device intended for medical purposes that is worn on the examiner's hand or finger to prevent contamination between patient and examiner.

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in Subpart E of Part 807. If the device is not labeled or otherwise represented as sterile, it is also exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning records and § 820.198, with respect to complaint files.

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31608 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 880

[Docket No. 78N-1348]

General Hospital and Personal Use Devices; Classification of Examination Gowns

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying examination gowns into class I (general control) and exempting manufacturers of the device from premarket notification procedures and certain requirements of the good manufacturing practice regulation. The effect of this rule is to require that the device meet only the general controls applicable to all devices, except for the premarket notification procedures and certain requirements of the good manufacturing practice regulation. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49927) a proposed regulation to classify examination gowns into class I (general controls). A period of 60 days was provided for interested persons to submit written comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted with only a minor clarifying change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart G by adding new § 880.6265, to read as follows:

§ 880.6265 Examination gown.

(a) *Identification.* An examination gown is a device intended for medical purposes that is made of cloth, paper, or other material that is draped over or worn by a patient as a body covering during a medical examination.

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in Subpart E of Part 807. If the device is not labeled or otherwise represented as sterile, it also is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31609 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1383]

General Hospital and Personal Use Devices; Classification of Medical Insoles

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying Medical insoles into class I (general controls). The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49928) a proposed regulation to classify medical insoles into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted with only a minor clarifying change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart G by adding new § 880.6280, to read as follows:

§ 880.6280 Medical insole.

(a) *Identification.* A medical insole is a device intended for medical purposes that is placed inside a shoe to relieve the symptoms of athlete's foot infection by absorbing moisture.

(b) Classification. Class I (general controls).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31610 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1384]

General Hospital and Personal Use Devices; Classification of AC-Powered Medical Examination Lights

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying AC-powered medical examination lights into class II (performance standards). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49929) a proposed regulation to classify AC-powered examination lights into class II (performance standards). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. However, the agency has made minor changes in the name and identification of the device to clarify that the rule applies only to those devices that are intended to be used for medical purposes. Accordingly, the proposed regulation is being adopted with these changes.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register**.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 890 in Subpart G by adding new § 890.6320, to read as follows:

§ 890.6320 AC-powered medical examination light.

(a) *Identification.* An AC-powered medical examination light is an AC-powered device intended for medical purposes that is used to illuminate body surfaces and cavities during a medical examination.

(b) *Classification.* Class II (performance standards).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31611 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1350]

General Hospital and Personal Use Devices; Classification of Battery-Powered Medical Examination Lights

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying battery-powered medical examination lights into class I (general controls) and exempting manufacturers of the device from premarket notification procedures and certain requirements of the good manufacturing practice regulation. The effect of this rule is to require that the device meet only the general controls applicable to all devices, except for the premarket notification procedures and certain requirements of the good manufacturing practice regulation. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the develpment of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49930) a proposed regulation to classify battery-powered examination lights into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. However, the agency has made minor changes to the name and identification of the device to make it clear that the rule applies only to those devices that are intended to be used for medical purposes. Accordingly, the proposed regulation is being adopted with these changes.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register**.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Part 880 is amended in Subpart G by adding new § 880.6350, to read as follows:

§ 880.6350 Battery-powered medical examination light.

(a) *Identification.* A battery-powered medical examination light is a battery-powered device intended for medical

purposes that is used to illuminate body surfaces and cavities during a medical examination.

(b) *Classification.* Class I (general controls). The device is exempt from premarket notification procedures in Subpart E of Part 807. The device also is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31612 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1351]

General Hospital and Personal Use Devices; Classification of Patient Lubricants

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying patient lubricants into class I (general controls). The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49931) a proposed regulation to classify patient lubricants into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA. No comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted with only a minor clarifying change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart G by adding new § 880.6375, to read as follows:

§ 880.6375 Patient lubricant.

(a) *Identification.* A patient lubricant is a device intended for medical purposes that is used to lubricate a body orifice to facilitate entry of a diagnostic or therapeutic device.

(b) *Classification.* Class I (general controls).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31613 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1386]

General Hospital and Personal Use Devices; Classification of Liquid Medication Dispensers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying liquid medication dispensers into class I (general controls) and exempting manufacturers of the device from premarket notification procedures and certain requirements of the good manufacturing practice regulation. The effect of this rule is to require that the device meet only the general controls applicable to all devices, except for the premarket notification procedures and certain requirements of the good manufacturing practice regulation. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49932) a proposed regulation to classify liquid medication dispensers into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted with only a minor clarifying change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart G by adding new § 880.6430, to read as follows:

§ 880.6430 Liquid medication dispenser.

(a) *Identification.* A Liquid medication dispenser is a device intended for medical purposes that is used to issue a measured amount of liquid medication.

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device also is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31614 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1353]

General Hospital and Personal Use Devices; Classification of Skin Pressure Protectors

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying skin pressure protectors into class I (general controls) and exempting manufacturers of the device from premarket notification procedures and certain requirements of the good manufacturing practice regulation. The effect of this rule is to require that the device meet only the general controls applicable to all devices, except for the premarket notification procedures and certain requirements of the good manufacturing practice regulation. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49933) a proposed regulation to classify skin pressure protectors into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA. Two comments were received. The comments agreed with the proposed classification and proposed exemption for skin pressure protectors. Accordingly, the proposed regulation is being adopted with only a minor clarifying change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart G by adding new § 880.6450, to read as follows:

§ 880.6450 Skin pressure protectors.

(a) *Identification.* A skin pressure protector is a device intended for medical purposes that is used to reduce pressure on the skin over a bony prominence to reduce the likelihood of the patient's developing decubitus ulcers (bedsores).

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device also is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31615 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1354]

General Hospital and Personal Use Devices; Classification of Medical Ultraviolet Air Purifiers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying medical ultraviolet air purifiers into class II (performance standards). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49935) a proposed regulation to classify medical ultraviolet air purifiers into class II (performance standards). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. However, the agency has made changes in the name and the identification of the device to clarify that the rule applies only to those devices that are intended for medical purposes. Accordingly, the proposed regulation is being adopted with these changes.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished

them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart G by adding new § 880.6500, to read as follows:

§ 880.6500 Medical ultraviolet air purifier.

(a) *Identification.* A medical ultraviolet air purifier is a device intended for medical purposes that is used to destroy bacteria in the air by exposure to ultraviolet radiation.

(b) *Classification.* Class II (performance standards).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31616 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1355]

General Hospital and Personal Use Devices; Classification of Medical Ultraviolet Water Purifiers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying medical ultraviolet water purifiers into class II (performance standards). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49935) a proposed regulation to classify ultraviolet water purifiers into class II (performance standards). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. However, the agency has made minor changes in the name and identification of the device to clarify the rule applies only to those devices that are intended for medical purposes. Accordingly, the proposed regulation is being adopted with these changes.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart G by adding new § 880.6710, to read as follows:

§ 880.6710 Medical ultraviolet water purifier.

(a) *Identification.* A medical ultraviolet water purifier is a device intended for medical purposes that is used to destroy bacteria in water by exposure to ultraviolet radiation.

(b) *Classification.* Class II (performance standards).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31617 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1356]

General Hospital and Personal Use Devices; Classification of Body Waste Receptacles

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying body waste receptacles into class I (general controls) and exempting manufacturers of the device from premarket notification procedures and certain requirements of the good manufacturing practice regulation. The effect of this rule is to require that the device meet only the general controls applicable to all devices, except for the premarket notification procedures and certain requirements of the good manufacturing practice regulation. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49936) a proposed regulation to classify body waste receptacles into class I (general controls). A period of 60 days was provided for interested persons to submit written comments to FDA.

No written comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted with only minor clarifying changes.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provision, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart G by adding new § 880.6730, to read as follows:

§ 880.6730 Body waste receptacle.

(a) *Identification.* A body waste receptacle is a device intended for medical purposes tht is not attached to the body and that is used to collect the body wastes of a bed patient.

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device also is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31618 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1357]

General Hospital and Personal Use Devices; Classification of Vaccuum-Powered Body Fluid Suction Apparatus

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying vacuum-powered body fluid suction apparatus into class II (performance standards). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49938) a proposed regulation to classify vacuum-powered body fluid suction apparatus into class II (performance standards). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted with only a minor editorial change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart G by adding new § 880.6740, to read as follows:

§ 880.6740 Vacuum-powered body fluid suction apparatus.

(a) *Identification.* A vacuum-powered body fluid suction apparatus is a device used to aspirate, remove, or sample body fluids. The device is powered by an external source of vacuum. This generic type of device includes vacuum regulators, vacuum collection bottles, suction catheters and tips, connecting flexible aspirating tubes, rigid suction tips, specimen traps, noninvasive tubing, and suction regulators (with gauge).

(b) *Classification.* Class II (performance standards).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31619 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1358]

General Hospital and Personal Use Devices; Classification of Protective Restraints

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying protective restraints into class I (general controls) and exempting manufacturers of the device from premarket notification procedures and certain requirements of the good manufacturing practice regulation. The effect of this rule is to require that the device meet only the general controls applicable to all devices, except for the premarket notification procedures and certain requirements of the good manufacturing practice regulation. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification

Panel). FDA also published in that issue of the **Federal Register** (44 FR 49939) a proposed regulation to classify protective restraints into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA.

Two comments were received. The comments agreed with the proposed classification and proposed exemption for protective restraints. Accordingly, the proposed regulation is being adopted with a minor clarifying change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart G by adding new § 880.6760, to read as follows:

§ 880.6760 Protective Restraint.

(a) *Identification.* A protective restraint is a device, usually a wristlet, anklet, or other type of strap, that is intended for medical purposes and that limits a patient's movements to the extent necessary for treatment, examination, or protection of the patient.

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is also exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31620 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 880

[Docket No. 78N-1359]

General Hospital and Personal Use Devices; Classification of Powered Patient Transfer Devices

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying powered patient transfer devices into class II (performance standards). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49941) a proposed regulation to classify AC-powered patient transfer devices into class II (performance standards). A period of 60 days was provided for interested persons to submit written comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. However, the agency has made minor changes in the name and identification of the device to clarify the range of devices included in the generic class covered by this rule. Accordingly, the proposed regulation is being adopted with these changes.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19,1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart G by adding new § 880.6775, to read as follows:

§ 880.6775 Powered patient transfer device.

(a) *Identification.* A powered patient transfer device is a device consisting of a wheeled stretcher and a powered mechanism that has a broad, flexible band stretched over long rollers that can advance itself under a patient and transfer the patient with minimal disturbance in a horizontal position to the stretcher.

(b) *Classification.* Class II (performance standards).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31621 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 880

[Docket No. 78N-1360]

General Hospital and Personal Use Devices; Classification of Manual Patient Transfer Devices

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying manual patient transfer devices into class I (general controls) and exempting manufacturers of the device from premarket notification procedures and certain requirements of the good manufacturing practice regulation. The effect of this rule is to require that the device meet only the general controls applicable to all devices, except for the premarket notification procedures and certain requirements of the good manufacturing practice regulation. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49941) a proposed regulation to classify manual patient transfer devices into class I (general controls). A period of 60 days was provided for interested persons to submit written comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted without change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart G by adding new § 880.6785, to read as follows:

§ 880.6785 Manual patient transfer device.

(a) *Identification.* A manual patient transfer device is a device consisting of a wheeled stretcher and a mechanism on which a patient can be placed so that the patient can be transferred with minimal disturbance in a horizontal position to the stretcher.

(b) *Classification.* Class I (general controls). The device is exempt from premarket notification procedures in Subpart E of Part 807. The divice also is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80–31622 Filed 10–20–80; 8:45 am]

BILLING CODE 4110–03–M

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21 CFR Part 880

[Docket No. 78N–1361]

General Hospital and Personal Use Devices; Classification of Washers for Body Waste Receptacles

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying washers for body waste receptacles into class I (general controls) and exempting manufacturers of the device from premarket notification procedures and certain requirements of the good manufacturing practice regulation. The effect of this rule is to require that the device meet only the general controls applicable to all devices, except for the premarket notification procedures and certain requirements of the good manufacturing practice regulation. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, Department of Health, Education, and Welfare, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49942) a proposed regulation to classify washers for body waste receptacles into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA.

No written comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted with only minor clarifying changes.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart G by adding new § 880.6800, to read as follows:

§ 880.6800 Washers for body waste receptacles.

(a) *Identification.* A washer for body waste receptacles is a device intended for medical purposes that is used to clean and sanitize a body waste receptacle, such as a bedpan. The device consists of a wall-mounted plumbing fixture with a door through which a body waste receptacle is inserted. When the door is closed the body waste receptacle is cleaned by hot water, steam, or germicide.

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device also is exempt from the good manufacturing practice regulation in Part 820 with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80–31623 Filed 10–20–80; 8:45 am]

BILLING CODE 4110–03–M

21 CFR Part 880

[Docket No. 78N-1362]

General Hospital and Personal Use Devices; Classification of Medical Disposable Scissors

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying medical disposable scissors into class I (general controls) and exempting manufacturers of the device from premarket notification procedures. The effect of this rule is to require that the device meet only the general controls applicable to all devices, except for the premarket notification procedures. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49944) a proposed regulation to classify medical disposable scissors into class I (general controls). A period of 60 days was provided for comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. However, the agency has made minor changes in the name and identification of the device to make it clear that the rule applies only to those devices that are intended for medical purposes. Accordingly, the proposed regulation is being adopted with these changes.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to the commissioner of Food and Drugs (21 CFR 5.1), Part 880 is amended in Subpart G by adding new § 880.6820, to read as follows:

§ 880.6820 Medical disposable scissors.

(a) *Identification.* Medical disposable scissors are disposable type general cutting devices intended for medical purposes. This generic type of device does not include surgical scissors.

(b) *Classification.* Class I (general controls). The device is exempt from premarket notification procedures in Subpart E of Part 807.

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31624 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1363]

General Hospital and Personal Use Devices; Classification of Sterilization Wraps

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying sterilization wraps into class II (performance standards). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (4 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49945) a proposed regulation to classify sterilization wraps into class II (performance standards). A period of 60 days was provided for interested persons to submit comments to FDA.

One comment was received. The comment agreed with the proposal to classify sterilization wraps into class II.

The agency has made minor changes to the identification of the device to clarify that the rule applies only to those sterilization wraps that are intended for use by health care providers, such as hospitals and physicians. Accordingly, the proposed regulation is being adopted with these changes.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart G by adding new § 880.6850, to read as follows:

§ 880.6850 Sterilization wrap.

(a) *Identification.* A sterilization wrap (pack, sterilization wrapper, bag, or accessories, is a device intended to be used to enclose another medical device that is to be sterilized by a health care provider. It is intended to allow sterilization of the enclosed medical device and also to maintain sterility of the enclosed device until used.

(b) *Classification.* Class II (performance standards).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31625 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1364]

General Hospital and Personal Use Devices; Classification of Ethylene Oxide Gas Sterilizers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying ethylene oxide gas sterilizers into class II (performance standards). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49946) a proposed regulation to classify ethylene oxide gas sterilizers into class II (performance standards). A period of 60 days was provided for interested persons to submit comments to FDA.

A comment from the United States Environmental Protection Agency (EPA) stated that ethylene oxide gas (ETO) sterilant is currently regulated by EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The EPA regulates self-contained portable ETO gas sterilizers and these portable sterilizers are registered with EPA. This registration involves a preregistration efficacy evaluation and a hazard evaluation with respect to the operation of the device. EPA believes that FDA's regulation delineate clearly the responsibilities of the two agencies.

FDA and EPA are currently discussing the regulation of this device and its accessories and will develop and publish in the **Federal Register** a Memorandum of Understanding concerning each agency's responsibility for the regulation of this device. Until the Memorandum of Understanding is published, EPA will continue to be principally responsible for regulating ETO sterilants and self-contained portable ETO gas sterilizers. FDA will be principally responsible for regulating nonportable ETO gas sterilizers which are intended for use by health care providers, such as hospitals and physicians, for sterilizing medical products. In the **Federal Register** of June 23, 1978, FDA published a proposed rule that would impose restrictions on the continued use of ETO as a sterilant for certain drug products and medical devices for human use. Accordingly, the proposed regulation is being adopted with these changes.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), to the Commissioner of Food and Drugs is amending Part 880 in Subpart G by adding new § 880.6860, to read as follows:

§ 880.6860 Ethylene oxide gas sterilizer.

(a) *Identification.* An ethylene gas sterilizer is a nonportable device intended for use by a health care provider that uses ethylene oxide (ETO) to sterilize medical products.

(b) *Classification.* Class II (performance standards).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31626 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1365]

General Hospital and Personal Use Devices; Classification of Dry-Heat Sterilizers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying dry-heat sterilizers into class II (performance standards). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49947) a proposed regulation to classify dry-heat sterilizers into class II (performance standards). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. However, the agency has made minor changes in the identification of the device to clarify that the rule applies only to those dry-heat sterilizers that are intended for use by a health care provider. Accordingly, the proposed regulation is being adopted with these changes.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished

them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart G by adding new § 880.6870, to read as follows:

§ 880.6870 Dry-heat sterilizer.

(a) *Identification.* A dry-heat sterilizer is a device that is intended for use by a health care provider to sterilize medical products by means of dry heat.

(b) *Classification.* Class II (performance standards).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31627 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1366]

General Hospital and Personal Use Devices; Classification of Steam Sterilizers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying steam sterilizers into class II (performance standards). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49948) a proposed regulation to classify steam sterilizers into class II (performance standards). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. However, the agency has made minor changes in the identification of the device to clarify that the rule applies only to those devices that are intended for use by a health care provider. Accordingly, the proposed regulation is being adopted with these changes.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart G by adding new § 880.6880, to read as follows:

§ 880.6880 Steam sterilizer.

(a) *Identification.* A steam sterilizer (autoclave) is a device that is intended for use by a health care provider to sterilize medical products by means of pressurized steam.

(b) *Classification.* Class II (performance standards).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31628 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1367]

General Hospital and Personal Use Devices; Classification of Hand-Carried Stretchers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying hand-carried stretchers into class I (general controls) and exempting manufacturers of the device from certain requirements of the good manufacturing practice regulation. The effect of this rule is to require that the device meet only the general controls applicable to all devices, except for certain requirements of the good manufacturing practice regulation. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49949) a proposed regulation to classify hand-carried stretchers into class I (general controls). A period of 60 days was provided for interested persons to submit written comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted without change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure.

FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart F by adding new § 880.6900, to read as follows:

§880.6900 Hand-carried stretcher.

(a) *Identification.* A hand-carried stretcher is a device consisting of a lightweight frame, or of two poles with a cloth or metal platform, on which a patient can be carried.

(b) *Classification.* Class I (general controls). The device is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and §820.198, with respect to complaint files.

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31629 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1368]

General Hospital and Personal Use Devices; Classification of Wheeled Stretchers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying wheeled stretchers into class II (performance standards). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49949) a proposed regulation to classify wheeled stretchers into class II (performance standards). A period of 60 days was provided for interested persons to submit comments to FDA. No comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted without change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart G by adding new § 880.6910, to read as follows:

§ 880.6910 Wheeled stretcher.

(a) *Identification.* A wheeled stretcher is a device consisting of a platform mounted on a wheeled frame that is designed to transport patients in a horizontal position. The device may have side rails, supports for fluid infusion equipment, and patient securement straps. The frame may be fixed or collapsible for use in an ambulance.

(b) *Classification.* Class II (performance standards).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31630 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1369]

General Hospital and Personal Use Devices; Classification of Syringe Needle Introducers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying syringe needle introducers into class II (performance standards). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49951) a proposed regulation to classify syringe needle introducers into class II (performance standards). A period of 60 days was provided for interested persons to submit comments to FDA. No comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted without change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes

in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart G by adding new § 880.6920, to read as follows:

§ 880.6920 Syringe needle introducer.

(a) *Identification.* A syringe needle introducer is a device that uses a spring-loaded mechanism to drive a hypodermic needle into a patient to a predetermined depth below the skin surface.

(b) *Classification.* Class II (performance standards).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31631 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1388]

General Hospital and Personal Use Devices; Classification of Irrigating Syringes

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying irrigating syringes into class I (general controls) and exempting manufacturers of the device from premarket notification procedures and certain requirements of the good manufacturing practice regulation. The effect of this rule is to require that the device meet only the general controls applicable to all devices, except for the premarket notification procedures and certain requirements of the good manufacturing practice regulation. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the Federal Register of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the Federal Register (44 FR 49951) a proposed regulation to classify irrigating syringes into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted with only minor editorial changes.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart G by adding new § 880.6960, to read as follows:

§ 880.6960 Irrigating syringe.

(a) *Identification.* An irrigating syringe is a device intended for medical purposes that consists of a bulb or a piston syringe with an integral or a detachable tube. The device is used to irrigate, withdraw fluid from, or instill fluid into, a body cavity or wound.

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in Subpart E of Part 807. If the device is not labeled or otherwise represented as sterile, it also is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31632 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1371]

General Hospital and Personal Use Devices; Classification of Liquid Crystal Vein Locators

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying liquid crystal vein locators into class I (general controls). The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the Federal Register of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the Federal Register (44 FR 49953) a proposed regulation to classify liquid crystal vein locators into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA. No comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted without change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart G by adding new § 880.6970, to read as follows:

§ 880.6970 Liquid crystal vein locator.

(a) *Identification.* A liquid crystal vein locator is a device used to indicate the location of a vein by revealing variations in the surface temperature of the skin by displaying the color changes of heat sensitive liquid crystals (cholesteric esters).

(b) *Classification.* Class I (general controls).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31633 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1372]

General Hospital and Personal Use Devices; Classification of Vein Stabilizers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying vein stabilizers into class I (general controls) and exempting manufacturers of the device from premarket notification procedures and certain requirements of the good manufacturing practice regulation. The effect of this rule is to require that the device meet only the general controls applicable to all devices, except for the premarket notification procedures and certain requirements of the good manufacturing practice regulation. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49953) a proposed regulation to classify vein stabilizers into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted without change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart G by adding new § 880.6980, to read as follows:

§ 880.6980 Vein stabilizer.

(a) *Identification.* A vein stabilizer is a device consisting of a flat piece of plastic with two noninvasive prongs. The device is placed on the skin so that the prongs are on either side of a vein and hold it stable while a hypodermic needle is inserted into the vein.

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in Subpart E of Part 807. If the device is not labeled or otherwise represented as sterile, it is also exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, general requirements concerning records, and § 820.198, with respect to complaint files.

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31634 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

federal register

Tuesday
October 21, 1980

Part III

Department of Health and Human Services

Public Health Service

Health Systems Agency and State Health Planning and Development Agency Reviews; Certificate of Need Programs

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Parts 122 and 123

Health Systems Agency and State Health Planning and Development Agency Reviews; Certificate of Need Programs

AGENCY: Public Health Service, HHS.

ACTION: Final regulations.

SUMMARY: These rules amend the Public Health Service regulations on health systems agency and State health planning and development agency (State Agency) certificate of need reviews. These final regulations implement changes to Title XV of the Public Health Service Act made by the Health Planning and Resources Development Amendments of 1979 (Pub. L. 96–79). Under the amended provisions of the Public Health Service Act, the planning agencies are required to review and determine the need for proposed capital expenditures, institutional health services and major medical equipment. These regulations set forth the minimum requirements for satisfactory certificate of need programs.

EFFECTIVE DATE: These regulations are effective on October 21, 1980, subject to the discussion set forth under the "Supplementary Information" heading below.

FOR FURTHER INFORMATION CONTACT: Carol M. Larson, Chief, Certification Programs Branch, Division of Regulatory Activities, Bureau of Health Planning, 3700 East-West Highway, Room 6–50, Hyattsville, Maryland 20782, (301) 436–6140.

SUPPLEMENTARY INFORMATION: On March 26, 1980, the Department published in the **Federal Register** (45 FR 20026) a Notice of Proposed Rulemaking to revise the regulations governing certificate of need programs (42 CFR 122.301 et seq. and 123.401 et seq.). These changes are required to implement recent changes to Title XV of the Public Health Service Act ("the Act") enacted by the Health Planning and Resources Development Amendments of 1979 (Pub. L. 96–79). The Department gave interested persons 60 days to submit comments on the proposed amendments to the regulations. The Secretary has revised the rules in response to those comments.

Under section 1523(a)(4)(B) of the Act, State Agencies are required to administer certificate of need programs which (1) apply to the obligation of capital expenditures, the offering of new institutional health services, and the acquisition of major medical equipment, and (2) are consistent with standards established by the Secretary by regulation. Under section 1513(f) of the Act, health systems agencies are to review and make recommendations to the State Agency concerning the need for a proposed project subject to certificate of need review. Because of the changes to the statutory requirements for these certificate of need programs under Title XV of the Act, it has been necessary for the Secretary to revise existing regulations to permit States to comply with the amended statute.

The changes made by Pub. L. 96–79 to the existing certificate of need program are primarily technical in nature. The basic requirements for satisfactory certificate of need programs, which were established by the National Health Planning and Resources Development Act of 1974, have been retained. Building on the structure of the existing certificate of need program, these statutory amendments (1) expand the procedural requirements, by adding, for example, a requirement for judicial review, (2) add several criteria to those that health planning agencies must consider in their review of applications, and (3) clarify, with some changes, the projects for which certificate of need approval must be obtained. Accordingly, the Secretary believes the economic impact of the regulations implementing these statutory changes will be minimal.

More than 350 comments were received in response to the Notice of Proposed Rulemaking and have been considered in drafting this final rule. A number of these offered changes to the proposed rules that could not be accepted because they would contravene specific provisions of the Act. For example, a commenter suggested that all bed changes be subject to certificate of need review, not just those associated with the obligation of a capital expenditure. This suggestion would require coverage of certain activities not required by the Act (see sections 1527(a)(1)(B) and 1531(6) of the Act) and cannot be accepted. Other commenters opposed the exemption of certain health maintenance organizations (HMOs) from certificate of need review. The regulations have retained this exemption because it is expressly required by section 1527(b)(1)(A).

A number of comments were also received on sections of the existing regulations which were not proposed to be modified. The Secretary, nevertheless, has responded to these comments as well, in order to clarify any confusion in the meaning of these regulations.

In revising these regulations the Secretary has intended to give each State substantial flexibility in determining how its certificate of need program will be implemented. For this reason, the Secretary has rejected many suggestions that additional program requirements be imposed on the States. In these areas, the Secretary believes States are better able to decide the manner in which the basic requirements of the regulations should be carried out in their States. As a further general observation, the Secretary notes that the States are free to exceed the minimum requirements of these regulations, except in the few cases where this is prohibited (see, for example, the provisions regarding the coverage of HMOs, in § 123.405).

In addition to the regulations themselves, this document contains a summary below of the major issues raised in their development, and an Appendix which includes a section-by-section analysis of the comments received. The major issues which were raised in the development of the rules are as follows:

Substantial Change in Services

These regulations require that under certain circumstances, terminations of existing services, as well as the additions of new health services, be subject to certificate of need reviews. This conforms to the Department's interpretation of section 1531(6)(B)(ii)(III) that a capital expenditure is required to be reviewed if it "substantially changes the services of a facility." This provision, in conjunction with the requirement that a new service which entails an annual operating cost of at least $75,000 also be subject to review, results in certificate of need coverage of health services as follows:

(1) The addition of a health service must be reviewed if it is either associated with a capital expenditure (in

any amount) or entails an annual operating cost of at least $75,000.

(2) The termination of a health service must be reviewed if it is associated with a capital expenditure (in any amount).

Subsequent Reviews

These regulations slightly revise the requirement at § 123.404(d)(1) for reviews of changes to an approved capital expenditure. The proposed regulations required that these "changes" include not only changes to the bed capacity and the addition or termination of a health service, but also expansions and reductions of health services as well as any other substantial change to the project. Although most commenters agreed that there is a need for subsequent reviews where substantial changes in an approved project take place, they also argued that the proposed language was too broad and presented implementation problems. Accordingly, the Department has revised the language of the proposed regulations to require subsequent reviews of approved capital expenditures only where there are changes in the bed capacity of the facility (by ten beds or ten percent, whichever is less) or there is an addition or termination of a health service.

Research Activities

The extent to which research activities are subject to certificate of need reviews has caused some confusion. The Secretary reiterates that certificate of need programs are required to cover only the obligation of a capital expenditure by or on behalf of a health care facility, the offering of a new institutional health service and the acquisition of major medical equipment. Only clinically related services are included in the definition of institutional health services; consequently, research services *per se* are not required to be subject to review. Capital expenditures are required to be reviewed only if they are made by or on behalf of a health care facility. Major medical equipment acquired for research purposes need not be subject to review if the equipment will not be used to provide services to inpatients of a hospital. (See the discussion of these points in the Appendix.)

Health Maintenance Organizations (HMOs)

A large number of comments dealt with the limitations which the regulations imposed on planning agency reviews of HMO proposals. The authority of the planning agencies to review HMO proposals is limited by the statute. Consequently, the final regulations continue to follow the statute closely and have been revised only to clarify provisions which appeared in the proposed rule.

Access

The responsibility of the planning agencies for considering the needs of underserved populations was emphasized in the proposed regulations. The public's response to those proposed provisions was largely positive, pointing out that, with this specific direction in regulation, the planning agencies could now better address the needs of the medically underserved. However, many other commenters argued that the Department had exceeded its authority in detailing the access considerations. The Secretary has concluded that the Act authorizes this emphasis and has retained in these final regulations detailed considerations regarding access contained in the proposed rule and the requirement for written findings on approved projects. The final regulations have been changed to require that the State Agency take into account the accessibility of the facility as a whole in making its written findings on the accessibility of the proposed project. The Department continues to be concerned about the needs of the medically underserved, and believes that the certificate of need program can contribute to improved accessibility to health care of the medically underserved. Accordingly, the Department will be monitoring planning agency performance in implementing the access provisions to determine whether changes to these regulations are warranted.

Effective Date Provisions

State Agencies are required, among other things, to administer satisfactory certificate of need programs in order to be fully designated under section 1521(b)(3) of the Act. There have been, over time, several statutory and regulatory amendments modifying the requirements for satisfactory certificate of need programs, each amendment with its own effective date. Because of the confusion which this may engender, the Department has briefly outlined below the requirements, discussed how they are related to each other and explained how these requirements relate to the requirements for designation of State Agencies under section 1521 of the Act. (For a detailed discussion of these requirements, see the Appendix to the March 26 Notice of Proposed Rulemaking, 45 FR 20043–20044.)

The continued eligibility of the State and of entities within the State for certain Federal health funding depends on there being a fully designated State Agency by a date determined by the State's legislative schedule. This date, hereinafter referred to as the "effective date," is determined as follows: (1) If the legislature of the State was in regular session on October 4, 1979, and continued in session for at least twelve months from that date, the effective date is October 4, 1980; (2) for all other States, the effective date is twelve months from the date of the beginning of the first regular session of the legislature commencing after October 4, 1979. Each State is required to enact, by whichever effective date is applicable, all legislation necessary to implement the requirements of the amended Act.

In the Notice published in the **Federal Register** on February 22, 1980, the Secretary asked each State Agency to identify those portions of Title XV of the amended Act pertaining to certificate of need which did not require legislative change by their respective States (section 129 of Pub. L. 96–79). In addition to a list identifying those sections not requiring legislative change, State Agencies were asked to submit a timetable showing how they would implement these changes within the six months following publication of these final regulations (i.e., by (six months from publication date)).

The Secretary is requiring, with respect to the provisions requiring State legislative action, that each State complete the administrative action necessary to implement its legislation (i.e., have a functioning certificate of need program meeting the new requirements) within six months of the date of enactment of its legislative amendments, or by the effective date (as described in the preceding paragraph) applicable to that State, whichever is later. This deadline is referred to below as the "implementation date."

In the Notice published February 22, 1980, and in the Appendix to the proposed regulations published March 26, 1980, the Secretary delineated four options with respect to certificate of need programs from which States could

choose to satisfy the certificate of need portion of the requirements for full designation of their State Agencies. They were satisfying (1) the Federal regulatory requirements effective prior to the April 1979 amendments to the certificate of need regulations; (2) the certificate of need requirements, as amended by the April 2 and April 25, 1979 regulations; (3) the statutory requirements of the Act, as amended by Pub. L. 96–79; or (4) the requirements of these final regulations as soon after their publication as possible. At that time, the Secretary strongly urged States to choose option 3 and amend existing certificate of need legislation or enact new legislation to satisfy the requirements of the Act as amended by Pub. L. 96–79.

The Secretary urges those States without conforming programs to bring their programs into compliance with these regulations as soon as possible. While it is possible that the Congress will postpone the effective date of that portion of Pub. L. 96–79 pertaining to certificate of need, until that time States with non-conforming certificate of need programs may be subject to a reduction of Federal funds under section 1521(d) of the Act. Moreover, regardless of any new time limit Congress may establish with respect to provisions requiring State legislative action, States will still be required, as a condition of obtaining or maintaining their full designation status, to implement those changes not requiring legislative amendments within six months of publication of these final regulations.

Section 1122 of the Social Security Act

The Secretary is revising the regulations formerly at 42 CFR Part 100, (to be recodified at 42 CFR Part 125) implementing section 1122 of the Social Security Act, "Limitation on Federal Participation for Capital Expenditures," to conform as closely as possible to the applicable portions of the certificate of need program. The revised section 1122 regulations will soon be published in the **Federal Register**. The coverage portions of the two programs differ in some respects because the statutes themselves have different requirements. The procedural and criteria-related requirements for section 1122 reviews are, to the extent possible, consistent with the minimum Federal requirements for State certificate of need programs. Thus, the administration of the section 1122 program will not interfere with a State's development or operation of a certificate of need program complying with Federal requirements. The Department is revising the procedures section of the regulations governing section 1122 reviews to meet this objective. Moreover, the regulations will provide that the Secretary may approve a request for an exception to any procedure required under those regulations if the exception is for the purpose of obtaining consistency with a State certificate of need program. In addition, the State designated planning agency (which is the State Agency for those States having both section 1122 review programs and certificate of need programs) will be required, in conducting its reviews under the section 1122 review program, to use, among others, the standards and criteria developed under the Act for its certificate of need program.

Accordingly, 42 CFR Part 122, Subpart D, and 42 CFR Part 123, Subpart E, are amended in the manner set forth below.

Dated: September 30, 1980.

Julius B. Richmond,

Assistant Secretary for Health.

Approved: October 10, 1980.

Patricia Roberts Harris,

Secretary.

PART 122—HEALTH SYSTEMS AGENCIES

1. Part 122 of Title 42 CFR, is amended by revising Subpart D to read as follows:

Subpart D—Certificate of Need Reviews

Sec.

122.301 Definitions.
122.302 Purpose and applicability.
122.303 General.
122.304 Scope of certificate of need review programs.
122.305 Health maintenance organizations.
122.306 Required recommendations.
122.307 Adoption and public notice of review procedures and criteria.
122.308 Procedures for health systems agency review.
122.309 Exceptions to use of procedures.
122.310 Criteria for health systems agency review.
122.311 Required findings on access.

Authority: Section 215 of the Public Health Service Act, 58 Stat. 690 (42 U.S.C. 216); sections 1501–1532 of the Public Health Service Act, 93 Stat. 592–630 (42 U.S.C. 300k–1—300n–1).

Subpart D—Certificate of Need Reviews

§ 122.301 Definitions.

Terms used in this subpart shall have the meanings given them in Subpart A of this Part and § 123.401 of this title.

§ 122.302 Purpose and applicability.

(a) Section 1513(f) of the Act requires each health systems agency to assist State Agencies in carrying out certificate of need programs under section 1523(a)(4)(B) of the Act. In doing so, health systems agencies are required to review and make recommendations to the appropriate State Agency respecting the need within the health service area for capital expenditures, new institutional health services, and major medical equipment.

(b) Section 1532(a) of the Act requires that in performing its review functions under section 1513(f) of the Act, each health systems agency shall (except to the extent approved by the Secretary) follow procedures and apply criteria developed and published by the health systems agency in accordance with regulations of the Secretary. This subpart sets forth requirements respecting these procedures and criteria.

§ 122.303 General.

Each recommendation by the health systems agency to a State Agency to issue or not to issue a certificate of need or to withdraw a certificate of need must be based solely (a) on the review by the health systems agency conducted in accordance with procedures and criteria it has adopted under this subpart and (b) on the record of the administrative proceedings held on the application for the certificate or the State Agency proposal to withdraw the certificate.

§ 122.304 Scope of certificate of need review programs.

Each health systems agency shall conduct reviews of projects located or proposed to be located within its health service area and which are subject to review under the State certificate of need program under Subpart E of Part 123 of this title.

§ 122.305 Health maintenance organizations (HMOs).

(a) *Inclusion in health plans.* If an HMO or a health care facility which is controlled, directly or indirectly, by an HMO applies for a certificate of need, the health systems agency shall not recommend denial of the certificate of need (or otherwise make a finding under this subpart that the project is not needed) solely because the proposal is not discussed in the applicable health systems plan, annual implementation plan, or State health plan.

(b) *Required recommendation to approve.* Notwithstanding general review criteria established in accordance with § 123.412 of this title, if an HMO or a health care facility which is controlled, directly or indirectly, by an HMO applies for a certificate of need, the health systems agency shall recommend issuance of the certificate of need if it finds (in accordance with § 123.412(a)(13) of this title) that

(1) Issuance of the certificate of need is required to meet the needs of the members of the HMO and of the new members which the HMO can reasonably be expected to enroll, and

(2) The HMO is unable to provide, through services or facilities which can reasonably be expected to be available to the HMO, its institutional health services in a reasonable and cost-effective manner which is consistent with the basic method of operation of the HMO and which makes these services available on a long-term basis through physicians and other health professionals associated with it.

§ 122.306 Required recommendations.

Under § 123.407 of this title, if an application is made for a certificate of need for a capital expenditure, a certificate of need must be issued if

(a) The capital expenditure is required to eliminate or prevent safety hazards, or to comply with licensure, certification, or accreditation standards, and

(b) If the State Agency determines (1) that the facility or service for which the capital expenditure is proposed is needed, and (2) that the obligation of the capital expenditure is consistent with the State health plan. For those applications for which approval is sought under § 123.407 of this title, the health systems agency is required to make recommendations to the State Agency on whether the project meets the conditions in § 123.407(a).

Explanatory note.—For applications which meet the requirements of § 123.407(a), the health systems agency shall use procedures and apply criteria (to the extent applicable to enable it to make a recommendation on need) as required by this subpart. Health systems agencies may wish to expedite the reviews of applications intended to correct deficiencies which pose a threat to the public health. In so doing, health systems agencies may use any exceptions to the required review procedures which have been approved under § 122.309. See also the explanatory note which follows § 123.407.

§ 122.307 Adoption and public notice of review procedures and criteria.

(a) Each health systems agency shall adopt, and review and revise as necessary, review procedures and criteria in accordance with the requirements of this subpart prior to conducting reviews.

(b) Before adopting the review procedures and criteria required by this subpart or any revisions of the procedures and criteria, the health systems agency shall give interested persons an opportunity to offer written comments on the procedures and criteria, or any revisions thereof, which it proposes to adopt.

(1) The health systems agency shall distribute copies of its proposed review procedures and criteria, and proposed revisions to them, to the agencies and other entities with which the health systems agency must coordinate its activities under section 1513(d) of the Act and its Designation Agreement; to units of general purpose local government within its health service area; to the State Agency and Statewide Health Coordinating Council of each State in which all or any part of the agency's health service area is located; to health systems agencies in contiguous health service areas; and to any agency which establishes rates for health care facilities or HMOs in its health service area.

(2) The health system agency shall publish, in one or more newspapers of general circulation in its health service area, a notice stating that review procedures and criteria, or revisions to them, have been proposed for adoption and are available at specified addresses for inspection and copying.

(3) A health system agency may request from the Secretary an exception to the requirement of paragraph (b)(2) of this section. The request must be in writing and must contain a detailed explanation of the reasons for the request and of the substitute publication procedures that the agency intends to follow if the exception is approved. The Secretary may grant an exception if the Secretary determines that the proposed substitute procedures do not adversely and substantially affect the rights of affected persons.

(c) Each health systems agency shall distribute copies of its adopted review procedures and criteria, and any revisions to them, to the agencies and other entities specified in paragraph (b)(1) of this section, to the Secretary, and to other persons upon request.

§ 122.308 Procedures for health systems agency review.

(a) The procedures adopted and used by a health systems agency for conducting the reviews covered by this subpart must include at least the following:

(1) *Review schedule.* Review of applications in accordance with a schedule established by the State Agency under § 123.410(a)(1) of this title, including the consideration together of applications that have been batched (see § 123.410(a)(1)) under the State Agency schedule.

(2) *Notification of the beginning of a review.* Timely written notification to affected persons and to the State Agency of the beginning of a review, and, if a person has asked the health systems agency to place the person's name on a miling list maintained by the health systems agency, notification to the person. Notification must include the proposed schedule for the review, the period within which a public hearing held by the health systems agency under paragraph (a)(8) of this section may be requested by affected persons (as defined in § 123.401 of this title), and the manner in which notification will be provided of the time and place of any hearing so requested.

(i) For purposes of this paragraph, the date of notification is the date on which the notice is sent or the date on which the notice appears in a newpaper of general circulation, whichever is later.

(ii) Written notification to members of the public and third party payers may be provided through newspapers of general circulation in the health service area and public information channels; notification to all other affected persons must be by mail (which may be as part of a newsletter).

(3) *Review period.* Schedules which provide that no review shall take longer than the period specified by the appropriate State Agency under § 123.410(a)(3) of this title. If, after a review has begun, the health systems agency requires the applicant to submit additional information, it shall give the applicant at least fifteen days to submit the information. The health systems agency shall notify the applicant that the applicant may request that the State Agency extend the review period at least fifteen days.

(4) *Information requirements.* Provision for persons subject to a review to submit to the health systems agency, in the form and manner and containing the information which the health systems agency shall prescribe and publish, and information that the health systems agency may require concerning the subject of the review.

(i) The information requirements may vary according to the purpose for which a particular review is being conducted or the type of health service being reviewed.

(ii) The health systems agency may require no information of a person subject to review which is not prescribed and published as being required.

(iii) The health systems agency shall develop procedures to ensure that requests for information in connection with a review under this subpart are limited to only that information which is necessary for the health systems agency to perform the review.

(5) *Periodic reports.* Submission of periodic reports by providers of health services and other persons subject to review respecting the development of proposals subject to review.

(6) *Written findings.* Provision for written findings (including, as applicable, the required findings under § 122.305(b)) which state the basis for any recommendation made by the health systems agency. The health systems agency shall send written findings to the applicant and to the State Agency for the State in which the project is proposed, and to others upon request. In the case of a projet proposed by an HMO, the health systems agency shall also send these written findings to the appropriate regional office of the Department of Health and Human Services at the time they are sent to the applicant.

(7) *Notification of the status of a review.* Timely notification, upon request, of providers of health services and other persons subject to review under this subpart of the status of the health systems agency review, findings made in the course of the review, and other appropriate information respecting the review.

(8) *Public hearing in the course of review.* Provision for a public hearing in the course of review (and before the health systems agency makes its recommendation to the State Agency) if requested by an affected person.

(i) Health systems agencies shall provide at least 15 days from the date of written notification of the beginning of a review (see paragraph (a)(2) of this section) within which a public hearing during the course of the review may be requested by affected persons.

(ii) The health systems agency may not impose fees for the hearing.

(iii) When a hearing is requested, the health systems agency shall, prior to the hearing, provide notice of the hearing, in accordance with its procedure adopted under paragraph (a)(2) of this section.

(iv) The health systems agency shall provide an opportunity for any person to present oral or written arguments and evidence relevant to the matter which is the subject of the hearing.

(v) In cases where a State Agency has delegated to the health systems agency the authority to hold hearings under § 123.410(a)(8) of this title, the health systems agency shall follow the procedures of that paragraph.

(9) *Annual reports of the health systems agency.* Preparation and publication, at least annually, of reports by the health systems agency of the reviews being conducted (including a statement concerning the status of each review) and of the reviews completed by the agency since the publication of the last report and a general statement of the findings and recommendations made in the course of those reviews.

(10) *Public access.* Access by the general public to all applications reviewed by the health systems agency and to all other written materials essential to any health systems agency review.

(11) *Conflicts of interest.* In the exercise of any reviews under this subpart, no member of a governing body, executive committee, or any entity appointed by a governing body or executive committee may vote on any matter respecting an applicant with which the member has (or within the twelve months preceding the vote, had) any substantial ownership, employment, medical staff, fiduciary, contractual, creditor, or consultative relationship. A governing body, executive committee, and any entity appointed by a governing body or executive committee shall require each of its members who has or has had such a relationship to make a written disclosure of the relationship before any action is taken by the body, committee, or entity with respect to the applicant and to make the relationship public at any meeting in which action is to be taken with respect to the applicant.

(12) *Coordination within an SMSA.* Each health systems agency whose health service area includes part of a standard metropolitan statistical area (as determined by the Office of Management and Budget) shall coordinate its certificate of need review activities with all other health systems agencies whose health service areas include part of the standard metropolitan statistical area. This coordination shall include at least an opportunity to offer written comments on the procedures and criteria, or any revisions thereof, which it proposes to adopt in accordance with § 122.307.

(b) Procedures adopted for reviews in accordance with paragraph (a) of this section may vary according to the purpose for which a particular review is being conducted or the type of health service being reviewed.

(c) The procedures may provide that the requirements of paragraph (a)(2) of this section shall be considered satisfied if the appropriate State Agency, in providing notice of the beginning of the review under § 123.410(a)(2) of this title, provides the information described in paragraph (a)(2) of this section.

(d) The procedures may provide that the requirements of paragraph (a) (4) or (5) of this section shall be considered satisfied if the appropriate State Agency has provided for the corresponding procedure found at § 123.410(a) (4) or (5) of this title.

§ 122.309 Exceptions to use of procedures.

(a) The Secretary may approve an exception to any of the required review procedures under § 122.308 either in response to a written request from the health systems agency or as a general exception of which any health systems agency may avail itself. In approving a general exception the Secretary will establish substitute procedures where appropriate. Before availing itself of a general exception approved by the Secretary, the health systems agency shall follow the notice and comment procedures of § 122.307(b).

(b) Before submitting a written request for an exception under this section, the health systems agency shall follow the notice and comment procedures of § 122.307(b) and shall submit to the Secretary with its request copies of all comments which it receives. Before approving the request, the Secretary will (1) review copies of the comments submitted by the health systems agency and, (2) determine that the procedures to be used are consistent with the purposes of the Act and will not adversely and substantially affect the rights of affected persons.

(c) The health systems agency shall, in accordance with the requirements of § 122.307(c), distribute a notice of the approved exceptions and of any substitute procedures established under this section.

§ 122.310 Criteria for health systems agency review.

(a) The health systems agency shall adopt, and use as applicable, specific criteria for conducting the reviews covered by this subpart. The criteria must be based at least on the general considerations listed under § 123.412(a) of this title, except that in the case of an HMO or an ambulatory care facility or health care facility controlled, directly or indirectly, by an HMO or combination of HMOs, the criteria must be based only on the considerations set forth in § 123.412(a)(13) of this title. The health systems agency may not adopt any additional criteria which are inconsistent with those criteria based on the general considerations listed under § 123.412(a).

(b) Health systems agencies shall apply all applicable criteria based on the considerations listed at § 123.412. Criteria adopted for reviews in accordance with paragraph (a) of this section may vary according to the purpose for which a particular review is

being conducted or the type of health service reviewed.

§ 122.311 Required findings on access.

(a) For each project described in § 123.413(a) of this title for which the health systems agency recommends issuance of a certificate of need, the health systems agency shall make a written finding (which must take into account the current accessibility of the facility as a whole) on the extent to which the project will meet the health systems agency's criteria based on the considerations in § 123.412(a) (5) and (6).

PART 123—STATE HEALTH PLANNING AND DEVELOPMENT AGENCIES

2. Part 123 of Title 42 CFR, is amended by revising Subpart E to read as follows:

Subpart E—Certificate of Need Reviews

Sec.

123.401 Definitions.
123.402 Purpose and applicability.
123.403 General.
123.404 Scope of certificate of need review programs.
123.405 Health maintenance organizations.
123.406 Notice of intent.
123.407 Required approvals.
123.408 Enforcement.
123.409 Adoption and public notice of review procedures and criteria.
123.410 Procedures for State Agency review.
123.411 Exceptions to use of procedures.
123.412 Criteria for State Agency review.
123.413 Required findings on access.

Authority: Section 215 of the Public Health Service Act, 58 Stat. 690 (42 U.S.C. 216); sections 1501–1532 of the Public Health Service Act, 93 Stat. 592–630 (42 U.S.C. 300k–1—300n–1).

Subpart E—Certificate of Need Reviews

§ 123.401 Definitions.

In addition to the terms defined in Subpart A of this Part, as used in this subpart:

The term "affected persons" includes, at a minimum, the applicant; the health systems agency for the health service area in which the proposed project is to be located; health systems agencies serving contiguous health service areas or located within the same standard metropolitan statistical area; any person residing within the geographic area served or to be served by the applicant; any person who regularly uses health care facilities within that geographic area; health care facilities and health maintenance organizations (HMOs) located in the health service area in which the project is proposed to be located which provide services similar to the services of the facility under review; health care facilities and HMOs which, prior to receipt by the agency of the proposal being reviewed, have formally indicated an intention to provide similar services in the future; third party payers who reimburse health care facilities for services in the health service area in which the project is proposed to be located; and any agency which establishes rates for health care facilities or HMOs located in the health service area in which the project is proposed to be located.

The term "capital expenditure" means an expenditure made by or on behalf of a health care facility which under generally accepted accounting principles is not properly chargeable as an expense of operation and maintenance.

The term "expenditure minimum for capital expenditures" means $150,000 for the twelve-month period beginning October 1, 1979, and for each twelve-month period thereafter, $150,000 or, at the discretion of the State, the figure in effect for the preceding twelve-month period, adjusted to reflect the change in the preceding twelve-month period in the Department of Commerce Composite Construction Cost Index.

The term "expenditure minimum for annual operating costs" means $75,000 for the twelve-month period beginning October 1, 1979, and for each twelve-month period thereafter, $75,000 or, at the discretion of the State, the figure in effect for the preceding twelve-month period, adjusted to reflect the change in the preceding twelve-month period in the Department of Commerce Composite Construction Cost Index.

The term "health" includes physical and mental health.

The term "health care facility" means hospitals, skilled nursing facilities, kidney disease treatment centers (including freestanding hemodialysis units), intermediate care facilities, rehabilitation facilities, and ambulatory surgical facilities, but does not include Christian Science sanatoriums operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts. Further:

(1) The term "hospital" means an institution which primarily provides to inpatients, by or under the supervision of physicians, diagnostic services and therapeutic services for medical diagnosis, treatment and care of injured, disabled, or sick persons, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons. This term also includes psychiatric and tuberculosis hospitals.

(2) The term "psychiatric hospital" means an institution which primarily provides to inpatients, by or under the supervision of a physician, specialized services for the diagnosis, treatment and rehabilitation of mentally ill and emotionally disturbed persons.

(3) The term "tuberculosis hospital" means an institution which primarily provides to inpatients, by or under the supervision of a physician, medical services for the diagnosis and treatment of tuberculosis.

(4) The term "skilled nursing facility" means an institution or a distinct part of an institution which primarily provides to inpatients skilled nursing care and related services for patients who require medical or nursing care, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons.

(5) The term "intermediate care facility" means an institution which provides, on a regular basis, health-related care and services to individuals who do not require the degree of care and treatment which a hospital or skilled nursing facility provides, but who because of their mental or physical condition require health related care and services (above the level of room and board).

(6) The term "rehabilitation facility" means an inpatient facility which is operated for the primary purpose of assisting in the rehabilitation of disabled persons through an integrated program of medical and other services which are provided under competent professional supervision.

(7) The term "ambulatory surgical facility" means a facility, not a part of a hospital, which provides surgical treatment to patients not requiring hospitalization. The term does not include the offices of private physicians or dentists, whether for individual or group practice.

Explanatory note.—Where a hospital is part of a larger institution, such as a university, the components of the larger institution (e.g., a component conducting medical research) not related to the hospital need not be considered part of the hospital, whether or not the hospital is a distinct legal entity. Similarly, where there is a legal entity, the primary activity of which is operating a hospital, but which also operates a distinct research component, the research component need not be considered part of the hospital. In these cases the component conducting medical research that is distinct from the hospital and that neither provides inpatient services nor uses revenues derived from patient charges at the hospital to finance its operations need not be considered part of the hospital. (Also see the explanatory note following § 123.404(a)(1) for a discussion of circumstances in which capital expenditures by the non-hospital components are subject to review.)

The term "health maintenance organization" or "HMO" means a public or private organization organized under

the laws of any State, (1) which is a qualified health maintenance organization under section 1310(d) of the Act, or (2) which:

(i) Provides or otherwise makes available to enrolled participants health care services, including at least the following basic health care services: usual physician services, hospitalization, laboratory, x-ray, emergency and preventive services, and out of area coverage; and

(ii) Is compensated (except for copayments) for the provision of the basic health care services listed in paragraph (2)(i) of this definition to enrolled participants by a payment which is paid on a periodic basis without regard to the date the health care services are provided and which is fixed without regard to the frequency, extent, or kind of health service actually provided; and

(iii) Provides physicians' services primarily (A) directly through physicians who are either employees or partners of the organization, or (B) through arrangements with individual physicians or one or more groups of physicians (organized on a group practice or individual practice basis).

The term "health services" means clinically related (i.e., diagnostic, treatment, or rehabilitative) services, and includes alcohol, drug abuse, and mental health services.

The term "major medical equipment" means a single unit of medical equipment or a single system of components with related functions which is used to provide medical and other health services and which costs more than $150,000. This term does not include medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory services, if the clinical laboratory is independent of a physician's office and a hospital and has been determined under title XVIII of the Social Security Act to meet the requirements of paragraphs (10) and (11) of section 1861(s) of that Act. In determining whether medical equipment costs more than $150,000, the cost of studies, surveys, designs, plans, working drawings, specifications, and other activities essential to acquiring the equipment shall be included. If the equipment is acquired for less than fair market value, the term "cost" includes the fair market value.

Note.—The acquisition of equipment which does not meet the definition of major medical equipment and thus is not subject to review under § 123.404(a)(4), will be subject to review if it meets any other requirement under § 123.404(a).

The term "person" means an individual, a trust or estate, a partnership, a corporation (including associations, joint stock companies, and insurance companies), a State, a political subdivision or an instrumentality (including a municipal corporation) of a State, or any legal entity recognized by the State.

The term "physician" means a doctor of medicine or osteopathy legally authorized to practice medicine and surgery by a State.

§ 123.402 Purpose and applicability.

(a) Section 1523(a)(4)(B) of the Act requires each State health planning and development agency (State Agency) to administer a State certificate of need program which (1) applies to the obligation of capital expenditures within the State, the offering within the State of new institutional health services, and the acquisition of major medical equipment, and (2) is consistent with regulations of the Secretary. This subpart sets forth the requirements and standards that a State certificate of need program must meet. A State certificate of need program may include additional provisions not inconsistent with the requirements of this subpart.

(b) Section 1532(a) of the Act requires that in performing its review functions under section 1523(a)(4)(B) of the Act, each State Agency shall (except to the extent approved by the Secretary) follow procedures, and apply criteria, developed and published by the State Agency in accordance with regulations of the Secretary. This subpart sets forth requirements respecting these procedures and criteria.

§ 123.403 General.

(a) Each State Agency shall administer within the State a certificate of need program meeting the requirements of this subpart.

(b) Only the State Agency (or the appropriate administrative or judicial review body) may issue, deny or withdraw certificates of need, grant exemptions from certificate of need reviews, or determine that certificate of need reviews are not required.

(c) In issuing or denying certificates of need or in withdrawing certificates of need, the State Agency shall take into account recommendations made by health systems agencies under Subpart D of Part 122 of this title.

(d) Each decision of the State Agency (or the appropriate administrative or judicial review body) to issue a certificate of need must be consistent with the State health plan, except in emergency circumstances that pose an imminent threat to public health.

(e) Each decision of a State Agency to issue, deny, or withdraw a certificate of need must be based (1) on the review by the State Agency conducted in accordance with procedures and criteria it has adopted under this subpart, and (2) on the record of the administrative proceedings held on the application for the certificate or the State Agency's proposal to withdraw the certificate. Each decision of a State Agency to grant or deny an exemption under § 123.405 (HMOs) must be made in accordance with the State Agency's procedures for reviewing applications for exemptions and must be based solely on the record of the administrative proceedings held on the application.

§ 123.404 Scope of certificate of need review programs.

(a) *Required coverage.* The State certificate of need program must apply to the obligation of capital expenditures, the offering of new institutional health services, and the acquisition of major medical equipment. For purposes of this subpart, "the obligation of capital expenditures, offering of new institutional health services, and acquisition of major medical equipment" means the following:

(1) *Capital expenditures that exceed the expenditure minimum.* The obligation by or on behalf of a health care facility of any capital expenditure (other than to acquire an existing health care facility) that exceeds the expenditure minimum for capital expenditures (or any lesser amount the State may specify). The cost of any studies, surveys, designs, plans, working drawings, specifications, and other activities (including staff effort and consulting and other services) essential to the acquisition, improvement, expansion, or replacement of any plant or equipment with respect to which an expenditure is made shall be included in determining if the expenditure exceeds the expenditure minimum. As to the obligation of a capital expenditure to acquire an existing health care facility, see paragraph (a)(5) of this section.

Explanatory note.—Expenditures by a component of a larger institution, such as a university, which is distinct from a separate health care facility component, such as the university's hospital, need not be viewed as being "by a health care facility" for purposes of this section. Thus, a capital expenditure by a university medical school that is a distinct component of the university need not be considered to be "by" the hospital of the university. In finding that the medical school is distinct, the State Agency should find at least that the revenues derived from patient charges at the hospital of the university are not used for operating expenses of the medical school. If a capital expenditure

exceeds the expenditure minimum, for it to be required to be subject to review, the State Agency must find that it is "on behalf of" a health care facility. Such an expenditure is also required to be subject to review if it is for the acquisition of major medical equipment and meets the conditions set forth in § 123.404(a)(4) of this subpart. The same analysis would apply to a distinct research component of a legal entity, the primary activity of which is operating a hospital.

(2) *Bed capacity.* The obligation of any capital expenditure by or on behalf of a health care facility which—(i) increases or decreases the total number of beds, (ii) redistributes beds among various categories, or (iii) relocates beds from one physical facility or site to another—by ten beds or ten percent, whichever is less, in any two-year period.

(3) *Health services.* (i) The obligation of any capital expenditure by or on behalf of a health care facility which is associated with (A) the addition of a health service which was not offered by or on behalf of the facility within the previous twelve months, or (B) the termination of a health service which was offered in or through the facility; or

(ii) The addition of a health service which is offered by or on behalf of the health care facility which was not offered by or on behalf of the facility within the twelve-month period before the month in which the service would be offered, and which entails annual operating costs of at least the expenditure minimum for annual operating costs.

(4) *Major medical equipment.* (i) The acquisition by any person of major medical equipment that will be owned by or located in a health care facility; or

(ii) The acquisition by any person of major medical equipment not owned by or located in a health care facility, if (A) the notice of intent required by § 123.406(a) is not filed in accordance with that paragraph, or (B) the State Agency finds, within 30 days after the date it receives a notice in accordance with § 123.406(a), that the equipment will be used to provide services for inpatients of a hospital.

(iii) An acquisition of major medical equipment need not be reviewed if it will be used to provide services to inpatients of a hospital only on a temporary basis in the case of (A) a natural disaster, (B) a major accident, or (C) equipment failure.

(iv) A State program may cover major medical equipment not owned by or located in a health care facility beyond the minimum coverage required by this subparagraph; however, after September 30, 1982, the certificate of need program of a State may not be changed to include additional requirements for coverage of this equipment.

(5) *Acquisitions of health care facilities.* (i) Except as provided in § 123.405(b) (HMOs), the obligation of a capital expenditure by any person to acquire an existing health care facility (A) if the notice of intent required at § 123.406(b) is not filed in accordance with that paragraph, or (B) if the State Agency finds, within 30 days after the date it receives a notice in accordance with § 123.406(b), that the services or bed capacity of the facility will be changed in being acquired.

(ii) Each State Agency shall specify, for purposes of the preceding sentence, what activities result in a change in the services or bed capacity of a health care facility; however, these activities must include at least (A) a change in bed capacity as described in paragraph (a)(2) of this section, (B) the addition of a health service which was not offered by or on behalf of the facility within the previous twelve months, and (C) the termination of a health service which was offered by or on behalf of the facility.

(b) *Leases, donations, and transfers.* An acquisition by donation, lease, transfer, or comparable arrangement must be reviewed if the acquisition would be subject to review under paragraph (a) of this section if made by purchase. An acquisition for less than fair market value must be reviewed if the acquisition at fair market value would be subject to review under paragraph (a) of this section.

(c) *Incurring an obligation.* No person may incur an obligation for a capital expenditure that is subject to review under paragraphs (a)(1), (a)(2), (a)(3)(i), or (a)(5) of this section without obtaining a certificate of need for the capital expenditure. An obligation for a capital expenditure is considered to be incurred by or on behalf of a health care facility: (1) When a contract, enforceable under State law, is entered into by or on behalf of the health care facility for the construction, acquisition, lease or financing of a capital asset; or (2) When the governing board of the health care facility takes formal action to commit its own funds for a construction project undertaken by the health care facility as its own contractor; or (3) In the case of donated property, on the date on which the gift is completed under applicable State law.

Note.—A State may consider an obligation for a capital expenditure which is contingent upon issuance of a certificate of need not to be incurred until the certificate of need is issued.

(d) *Subsequent reviews.*—(1) *Capital expenditures.* The State program must provide as follows: A proposed change in a project associated with a capital expenditure for which the State Agency has previously issued a certificate of need will require review if the change is proposed within one year (or any longer period established under the State Program) after the date the activity for which the expenditure was approved is undertaken. (As an illustration, where a hospital receives approval to construct a new wing for its facility, the hospital will "undertake the activity" when it begins to provide services in the wing.) This subparagraph applies to changes associated with capital expenditures that were subject to review under paragraph (a)(1), (a)(2) or (a)(3)(i) of this section. A review is required under this subparagraph whether or not a capital expenditure is associated with the proposed change. A "change in a project" shall include, at a minimum, any change in the bed capacity of a facility as described in paragraph (a)(2) of this section, and the addition or termination of a health service.

Explanatory note.—Examples that illustrate coverage required by this paragraph are as follows: (1) A certificate of need is obtained for the obligation of a capital expenditure which results in the addition of ten psychiatric beds. Within one year, those beds are proposed to be converted to pediatric beds. Certificate of need review is required for the conversion, regardless of whether this later activity is associated with a capital expenditure. (2) A certificate of need is obtained for the obligation of a capital expenditure which results in the addition of a new psychiatric service. Within one year, this service is proposed to be converted to a new pediatric service. Certificate of need review is required, regardless of whether a capital expenditure associated with the new service will be incurred or annual operating costs of at least the expenditure minimum will result.

(2) *Major medical equipment.* If a person acquires major medical equipment not located in a health care facility without a certificate of need and proposes at any time to use that equipment to serve inpatients of a hospital the proposed new use must be reviewed unless the use is one described in paragraph (a)(4)(iii) of this section.

(3) *Existing facilities.* If a person acquires an existing health care facility without a certificate of need and proposes to change within one year after the acquisition (or any longer period of time established under the State program) the services or bed capacity of the facility, the proposed change must be reviewed if it would have required review under paragraph (a)(5) of this section originally.

(e) *Dissemination of scope of coverage.* Before reviewing any project not previously within the scope of the State program's coverage, each State Agency shall disseminate to all health systems agencies, health care facilities, and HMOs within the State, and shall publish in one or more newspapers of general circulation in the State, a description of the scope of coverage of its program. The description must include at least the coverage required by § 123.404 and § 123.405 of this subpart. Whenever the scope of coverage is revised, the State Agency shall disseminate and publish a revised description of it.

§ 123.405 Health maintenance organizations (HMOs).

(a) *Required coverage.* With respect to an HMO or a health care facility controlled, directly or indirectly, by an HMO or combination of HMOs, the State Agency shall review any activity specified in § 123.404 which is undertaken by or on behalf of an inpatient health care facility (unless these activities are exempt under paragraph (b)(1) of this section). In addition, the State Agency shall review the acquisition of major medical equipment by an ambulatory care facility of an HMO to the extent required by § 123.404(a)(4) and § 123.404(d)(2) (unless the acquisition is exempt under paragraph (b)(1) of this section). A State program may not exceed the coverage specified in this paragraph.

Explanatory note.—A list of examples illustrating this coverage follows: (1) Major medical equipment acquired by HMOs which is not owned by or located in a health care facility and which is used primarily for inpatients of a hospital must be reviewed (unless the project is exempt); further, major medical equipment acquired by an HMO and located in a health care facility must be reviewed (unless the project is exempt). (2) A capital expenditure for an ambulatory clinic proposed by an HMO which expenditure is not proposed by or on behalf of an inpatient health care facility is not subject to review. (3) The establishment of an HMO is not subject to certificate of need review. (4) Any capital expenditure exceeding the expenditure minimum by or on behalf of an HMO's inpatient health care facility must be reviewed (unless the project is exempt). (5) A capital expenditure for the addition of ten beds to an HMO's hospital must be reviewed (unless the project is exempt).

(b) *Exemptions.*—(1) *Exemptions from review.* (b)(1) The State Agency shall exempt from review any activity described in paragraph (a) of this section if the applicant meets the requirements of paragraph (b)(2) of this section and if the activity is proposed to be undertaken by:

(i) An HMO or a combination of HMOs if (A) the HMO or combination of HMOs has, in the service area of the HMO or the service areas of the HMOs in the combination, an enrollment of at least 50,000 individuals, (B) the facility in which the service will be provided is or will be geographically located so that the service will be reasonably accessible to the enrolled individuals, and (C) at least 75 percent of the patients who can reasonably be expected to receive the health service will be individuals enrolled with the HMO or HMOs in the combination; or

(ii) A health care facility if (A) the facility primarily provides or will provide inpatient health services, (B) the facility is or will be controlled, directly or indirectly, by an HMO or a combination of HMOs which has, in the service area of the HMO or service areas of the HMOs in the combination, an enrollment of at least 50,000 individuals, (C) the facility is or will be geographically located so that the service will be reasonably accessible to the enrolled individuals, and (D) at least 75 percent of the patients who can reasonably be expected to receive the health service will be individuals enrolled with the HMO or HMOs in the combination; or

(iii) A health care facility (or portion thereof) if (A) the facility is or will be leased by an HMO or combination of HMOs which has, in the service area of the HMO or the service areas of the HMOs in the combination, an enrollment of at least 50,000 individuals and, on the date the application is submitted under paragraph (b)(2) of this section, at least fifteen years remain in the term of the lease, (B) the facility is or will be geographically located so that the service will be reasonably accessible to the enrolled individuals, and (C) at least 75 percent of the patients who can reasonably be expected to receive the health service will be individuals enrolled with the HMO.

(2) *Application for exemption.* (i) An activity of an HMO, combination of HMOs, or health care facility shall not be exempt under paragraph (b)(1) of this section unless—

(A) The applicant has submitted, at the time and in the form and manner prescribed by the State Agency, an application for an exemption to the State Agency and the appropriate health systems agency,

(B) The application contains the information respecting the HMO, combination, or facility and the proposed offering, acquisition, or obligation that the State Agency may require to determine if the HMO or combination meets the requirements of paragraph (b)(1) of this section or the facility meets or will meet those requirements, and

(C) The State Agency approves the application.

(ii) The State Agency shall approve an application submitted under this paragraph if the applicable requirements of paragraph (b)(1) of this section have been met or will be met on the date the proposed activity for which an exemption was requested will be undertaken.

(3) *Sale, lease, acquisition, or use of exempt facilities or equipment.* The State program must provide that a health care facility (or portion thereof) or medical equipment for which an exemption was granted under paragraph (b)(1) of this section may not be sold or leased, a controlling interest in the facility or equipment or in a lease of the facility or equipment may not be acquired, and a health care facility described in paragraph (b)(1)(iii) of this section which was exempted under paragraph (b)(1) of this section may not be used by any person other than the lessee described in paragraph (b)(1)(iii), unless,

(i) The State Agency issues a certificate of need for the sale, lease, acquisition, or use, or

(ii) The State Agency determines, upon application, that (A) the entity which intends to buy or lease the facility or equipment, or acquire the controlling interest in it, or which intends to use it, is an HMO or a combination of HMOs which meets the requirements of paragraph (b)(1)(i)(A) of this section; and (B) with respect to the facility or equipment, the entity meets the requirements of paragraph (b)(1)(i) (B) and (C) of this section or of paragraph (b)(1)(ii) (A) and (B) of this section.

(4) *Method of payment.* The method of payment for services (i.e., prepaid or fee-for-service) is not relevant in determining whether an activity is subject to review under this subpart.

(c) *Inclusion in health plans.* If an HMO or a health care facility which is controlled, directly or indirectly, by an HMO applies for a certificate of need, a State Agency may not disapprove the application solely because the proposal is not discussed in the applicable health systems plan, annual implementation plan, or State health plan.

(d) *Required approval.* Notwithstanding general review criteria established in accordance with § 123.412, if an HMO or a health care facility which is controlled, directly or indirectly, by an HMO applies for a

certificate of need, the State Agency shall approve the application if it finds (in accordance with § 123.412(a)(13)) that (1) approval of the application is required to meet the needs of the members of the HMO and of the new members which the HMO can reasonably be expected to enroll, and (2) the HMO is unable to provide, through services or facilities which can reasonably be expected to be available to the HMO, its health services in a reasonable and cost-effective manner which is consistent with the basic method of operations of the HMO and which makes these services available on a long-term basis through physicians and other health professionals associated with it.

(e) *Sale, acquisition, or lease of approved facilities or equipment.* The State program must provide that except as provided in paragraph (b)(2) of this section and notwithstanding § 123.406, a health care facility (or portion thereof) or medical equipment for which a certificate of need was issued under this section may not be sold or leased, and a controlling interest in the facility or equipment or in a lease of the facility or equipment may not be acquired, unless the State Agency issues a certificate of need for the sale, acquisition, or lease.

§ 123.406 Notice of intent.

The State program must provide as follows: (a) *Major medical equipment.* At least 30 days before any person enters into a contract to acquire major medical equipment which will not be owned by or located in a health care facility, the person shall notify the State Agency of the State in which the equipment will be located and the appropriate health systems agency of the person's intent to acquire the equipment and of the use that will be made of the equipment (see § 123.404(a)(4)(ii)). The notice must be in writing and contain all information the State Agency requires in accordance with § 123.410(a)(4).

(b) *Acquisition of health care facilities.* At least 30 days before any person acquires or enters into a contract to acquire an existing health care facility, the person shall notify the State Agency of the State in which the facility is located and the appropriate health systems agency of the person's intent to acquire the facility and of the services to be offered in the facility and its bed capacity (see § 123.404(a)(5)). The notice must be made in writing and must contain all information the State Agency requires in accordance with § 123.410(a)(4).

(c) *Construction projects.* The State Agency shall have procedures for persons proposing construction projects to submit to the State Agency and the appropriate health systems agency, as early as possible in the course of planning the project, a notice of intent in as much detail as may be necessary to inform the agencies of the scope and the nature of the project.

§ 123.407 Required approvals.

(a) Except as provided in paragraph (b) of this section, the State Agency shall issue a certificate of need for a proposed capital expenditure if (1) the capital expenditure is required (i) to eliminate or prevent imminent safety hazards as defined by Federal, State, or local fire, building, or life safety codes or regulations, or (ii) to comply with State licensure standards, or (iii) to comply with accreditation or certification standards which must be met to receive reimbursement under Title XVIII of the Social Security Act or payments under a State plan for medical assistance approved under Title XIX of that Act, and (2) the State Agency has determined that (i) the facility or service for which the capital expenditure is proposed is needed, and (ii) the obligation of the capital expenditure is consistent with the State health plan.

Explanatory note.—For applications which meet the requirements of § 123.407(a), the State Agency shall use procedures and apply criteria (to the extent they are appropriate to determine need) as required by this subpart. If the State Agency determines that the facility or service for which the expenditure is proposed is not needed (and thus that the expenditure to correct the deficiency is not needed), it must deny the certificate of need as required by § 123.408(a). If the State Agency determines that the expenditure is not consistent with the State health plan, it must deny the certificate of need unless there is an emergency that poses an imminent threat to public health (see § 123.403(d)). Even in such a case, there is no requirement that the State Agency issue a certificate of need. The State Agency should consider alternative means of dealing with the threat to public health. State Agencies may wish to expedite the review of applications intended to correct deficiencies which pose a threat to the public health. In so doing, State Agencies may use any exceptions to the required review procedures which have been approved under § 123.411.

(b) Those portions of a proposed project which are not required to eliminate or prevent safety hazards or to comply with certain licensure, certification, or accreditation standards are subject to review using the criteria developed under § 123.412.

§ 123.408 Enforcement.

(a) The State certificate of need program must provide that (1) State Agencies may only issue a certificate of need for those obligations of capital expenditures, offerings of institutional health services, and acquisitions of major medical equipment which are found to be needed; and (2) persons may only obligate capital expenditures, offer institutional health services or acquire major medical equipment after a certificate of need is issued or an exemption under § 123.405(b) is obtained; and (3) persons may not obligate capital expenditures, offer institutional health services, or acquire major medical equipment if a certificate of need authorizing that obligation, offering, or acquisition has been withdrawn by the State Agency.

(b) The State certificate of need program must provide sanctions, such as the denial or revocation of a license to operate, civil or criminal penalties, or injunctive relief, which the Secretary finds sufficient to ensure compliance with paragraph (a) of this section.

§ 123.409 Adoption and public notice of review procedures and criteria.

(a) Each State Agency shall adopt, and review and revise as necessary, review procedures and criteria in accordance with the requirements of this subpart prior to conducting reviews.

(b) The State Agency, the Statewide Health Coordinating Council, and the health systems agencies within the State shall cooperate in the development of procedures and criteria under this subpart to the extent appropriate to achieve efficient reviews and consistent criteria for reviews.

(c) Before adopting the review procedures and criteria required by this subpart or any revisions of the procedures and criteria, the State Agency shall give interested persons an opportunity to offer written comments on the procedures and criteria, or any revisions thereof, which it proposes to adopt.

(1) The State Agency shall distribute copies of its proposed review procedures and criteria, and proposed revisions thereof, to Statewide health agencies and organizations, the Statewide Health Coordinating Council, each health systems agency for a health service area located in the State, and any agency which establishes rates for health care facilities or HMOs in the State.

(2) The State Agency shall publish, in one or more newspapers of general circulation in the State, a notice stating that review procedures and criteria, or revisions thereof, have been proposed for adoption and are available at specified addresses for inspection and copying.

(3) A State Agency may request from the Secretary an exception to the requirement of paragraph (c)(2) of this section. The request must be in writing and must contain a detailed explanation of the reasons for the request and of the substitute publication procedures that the agency intends to follow if the exception is approved. The Secretary may grant an exception if the Secretary determines that the proposed substitute procedures do not adversely and substantially affect the rights of affected persons.

(d) Each State Agency shall distribute copies of its adopted review procedures and criteria, and any revisions thereof, to the agencies and organizations specified in paragraph (c)(1) of this section and to the Secretary, and shall provide copies to other persons upon request.

§ 123.410 Procedures for State Agency review.

(a) The procedures adopted and used by a State Agency for conducting the reviews covered by this subpart must include at least the following:

(1) *Schedules for submitting applications.* Establishment of a schedule for submission of applications to the State Agency. The schedule must provide for the review of all completed applications pertaining to similar types of services, facilities, or equipment affecting the same health service area to be considered in relation to each other ("batched") at least twice a year.

(i) Applications which satisfy the requirements of § 123.407(a) for required approval are not required to be batched.

(ii) With respect to health services, the State Agency shall, unless the State establishes other categories satisfactory to the Secretary, batch applications at least according to the following categories: general medical-surgical, psychiatric, obstetric, pediatric, skilled nursing, and intermediate care. State Agencies may subdivide these categories and may establish additional categories.

(2) *Notification of the beginning of a review.* Timely written notification to affected persons of the beginning of a review, and, if a person has asked the State Agency to place the person's name on a mailing list maintained by the State Agency, notification to the person. Notification must include the proposed schedule for the review, the period within which a public hearing during the course of the review may be requested by affected persons, and the manner in which notification will be provided of the time and place of any hearing so requested.

(i) For purposes of this subparagraph, the date of notification is the date on which the notice is sent or the date on which the notice appears in a newspaper of general circulation, whichever is later.

(ii) Written notification to members of the public and third party payers may be provided through newspapers of general circulation in the health service area and public information channels; notification to all other affected persons must be by mail (which may be as part of a newsletter).

(3) *Review period.* Schedules which provide for starting reviews in a timely fashion and which establish the period within which the State Agency will approve or disapprove applications for certificates of need and for exemptions under § 123.405(b).

(i) If, after a review has begun, the State Agency or the health systems agency requires the applicant to submit additional information, that agency shall give the applicant at least fifteen days to submit the information, and upon request of the applicant, the State Agency shall extend its review period at least fifteen days. This extension must apply to all other applications which have been batched with the application for which additional information is required.

(ii) The schedule must provide that no certificate of need review shall, to the extent practicable, take longer than 90 days from the date that notification is sent to all affected persons under paragraph (a)(2) of this section to the date of the written findings made under paragraph (a)(6) of this section. The State Agency shall adopt criteria acceptable to the Secretary for determining when it would not be practicable to complete a review within 90 days.

(iii) The schedule must set forth the period within which the appropriate health systems agency shall complete its review under § 122.308(a)(3) of this title, and provide its recommendation with respect to the project to the State Agency. However, the period allotted by the State Agency to the health systems agency for completion of its review and submission of its recommendation may not be less than 60 days, except with the written consent of the health systems agency.

(4) *Information requirements.* Provision for persons subject to a review to submit to the State Agency, in the form and manner and containing the information which the State Agency shall prescribe and publish, any information that the State Agency may require concerning the subject of the review.

(i) The information requirements may vary according to the purpose for which a particular review is being conducted or the type of health service being reviewed.

(ii) The State Agency may require no information of a person subject to review which is not prescribed and published as being required.

(iii) The State Agency shall develop procedures to ensure that requests for information in connection with a review under this subpart are limited to only that information which is necessary for the State Agency to perform the review.

(5) *Periodic reports.* Submission of periodic reports by providers of health services and other persons subject to review respecting the development of proposals subject to review.

(6) *Written findings and conditions.* Provision for written findings (including, as appropriate, the required findings under § 123.405(d) and § 123.413(a)) which state the basis for any final decision made by the State Agency. When a certificate of need is to be issued, these findings must include the finding of need required by § 123.408(a)(1). The State Agency may not make its final decision subject to any condition unless the condition directly relates to criteria established under § 123.412 or criteria prescribed by regulation by the State Agency in accordance with an authorization under State law. The State Agency shall send written findings to the applicant and to the health systems agency for the health service area in which the project is proposed, and shall make them available to others upon request. In the case of a project proposed by an HMO, the State Agency shall also send these written findings to the appropriate regional office of the Department of Health and Human Services at the time these are sent to the applicant.

(7) *Notification of the status of a review.* Timely notification, upon request, of providers of health services and other persons subject to review under this subpart of the status of the State Agency review, findings made in the course of the review, and other appropriate information respecting the review.

(8) *Public hearing in the course of review.* Provision for a public hearing in the course of agency review (and before the State Agency makes its decision) if requested by any affected person.

(i) The State Agency shall provide at least 30 days from the date of written notification of the beginning of a review (see paragraph (a)(2) of this section) within which a public hearing during the course of the review may be requested. The State Agency shall, prior to the

hearing, provide notice of the hearing, in accordance with its procedure adopted under paragraph (a)(2) of this section.

(ii) In a hearing, any person shall have the right to be represented by counsel and to present oral or written arguments and evidence relevant to the matter which is the subject of the hearing. Any person affected by the matter may conduct reasonable questioning of persons who make relevant factual allegations.

(iii) The agency shall maintain a verbatim record of the hearing.

(iv) The agency may not impose fees for the hearing.

(v) Paragraph (c) of this section provides that the requirement for a public hearing in the course of review is satisfied if the State Agency delegates the hearing responsibility to the appropriate health systems agency and the health systems agency follows the procedures required by this subsection. In the event that a person qualifying under the State Agency definition of "affected person" is not provided an opportunity for a public hearing by the health systems agency, due to a difference in that agency's definition of "affected persons," the State Agency must provide that person an opportunity for a public hearing.

(9) *Ex parte contacts.* Provision that, after the commencement of a hearing under paragraphs (a)(8) and (a)(11) of this section and before a decision is made, there shall be no ex parte contacts between (i) any person acting on behalf of the applicant or holder of a certificate of need, or any person opposed to the issuance or in favor of withdrawal of a certificate of need and (ii) any person in the State Agency who exercises any responsibility respecting the application or withdrawal.

(10) *Statement of reasons.* Provision that if the State Agency makes a decision which is inconsistent with a recommendation made by the health systems agency, the goals of the applicable health systems plan, or the priorities of the applicable annual implementation plan, the State Agency shall submit to the health systems agency and to the applicant a written, detailed statement of the reasons for the inconsistency.

(11) *Public hearings for reconsideration of a State Agency decision.* Provision that any person may, for good cause shown, request in writing a public hearing for purposes of reconsideration by the State Agency of its decision.

(i) The agency may not impose fees for the hearing.

(ii) For purposes of this subparagraph, a request for a public hearing shows good cause if it (A) presents significant relevant information not previously considered by the State Agency which, with reasonable diligence, could not have been presented before the State Agency made its decision, (B) demonstrates that there have been significant changes in factors or circumstances relied upon by the State Agency in reaching its decision, (C) demonstrates that the State Agency has materially failed to follow its adopted procedures in reaching its decision, or (D) provides any other basis which the State Agency determines constitutes good cause.

(iii) To be effective, a request for a hearing must be received within 30 days of the State Agency decision, and the hearing must commence within 30 days of receipt of the request, except that where any different time periods for these procedures are established under State law, the latter shall govern.

(iv) The State Agency shall send notification of the public hearing, prior to the date of the hearing, to the person requesting the hearing, the person proposing the project and the health systems agency for the health service area in which the project is proposed, and to others upon request.

(v) The State Agency shall make written findings which state the basis for its decision within 45 days after the conclusion of the hearing, except that where any different time period is established under State law, the latter shall govern.

(vi) A decision of the State Agency following a public hearing under this subparagraph shall be considered a decision of the State Agency for purposes of paragraphs (a)(6), (7), (10), (13), (14), and (15) of this section.

Note.—Nothing in these regulations requires that a person must request a public hearing for reconsideration of a State Agency decision before obtaining administrative review (see paragraph (a)(13) of this section) or judicial review (see paragraph (a)(14) of this section). However, it is possible that applicable State law imposes such a requirement.

(12) *Maximums on capital expenditures.* Provision that, in issuing a certificate of need, the State Agency shall specify the maximum capital expenditure which may be obligated under the certificate. The State Agency shall (i) prescribe the method used to determine capital expenditure maximums, (ii) establish procedures to monitor capital expenditures obligated under certificates, and (iii) establish procedures to review projects for which the capital expenditure maximum is exceeded or expected to be exceeded.

(13) *Administrative review.* Provision that upon request of any affected person, the decision of the State Agency to issue, deny, or withdraw a certificate of need or to grant or deny an exemption shall be administratively reviewed, under an appeals mechanism consistent with State law governing the practices and procedures of administrative agencies, or, if there is no such State law, by an entity (other than the State Agency) designated by the Governor.

(i) To be effective, the request must be received within 30 days of the State Agency decision, and the review must commence within 30 days of receipt of the request, except that where any different time periods for these procedures are established under State law governing the practices and procedures of administrative agencies, the latter shall govern.

(ii) The decision of the reviewing agency must be made in writing within 45 days after the conclusion of the review, except that where any different time period is required under State law governing the practices and procedures of administrative agencies, the latter shall govern. The State Agency shall send these written findings to the person proposing the project, the person requesting the review, the appropriate health systems agency, and to others upon request.

(iii) The decision of the reviewing agency shall be considered the final decision of the State Agency. However, if permitted by applicable State law, the reviewing agency may remand the matter to the State Agency for further action or consideration.

Note.—Nothing in these regulations requires that a person must request administrative review before obtaining judicial review (see paragraph (a)(14) of this section). However, it is possible that applicable State law imposes such a requirement.

(14) *Judicial review.* Provision that any person adversely affected by a final decision of a State Agency with respect to a certificate of need or an application for an exemption may, within a reasonable period of time after the decision is made (and any administrative review of it completed), obtain judicial review of it in an appropriate State court.

(i) The State court shall affirm the decision of the State Agency unless it finds it to be arbitrary or capricious or not made in compliance with applicable law.

(ii) For purposes of this subparagraph, "person adversely affected" shall include the State Agency, any person who meets the definition of "affected person" in § 123.401, and any person

who participated in the proceeding before the State Agency.

(15) *Annual reports of the State Agency.* Preparation and publication, at least annually, of reports by the State Agency of the reviews being conducted (including a statement concerning the status of each review) and of the reviews completed by the agency since the publication of the last report and a general statement of the findings and decisions made in the course of those reviews.

(16) *Public access.* Access by the general public to all applications reviewed by the State Agency and to all other written materials essential to any State Agency review.

(17) *Failure to act on an application within the required time.* Provision that if the State Agency fails to approve or disapprove an application for a certificate of need or an exemption under § 123.405(b) within the applicable period, the applicant may, within a reasonable period of time following the expiration of that period, bring an action in an appropriate State court to require the State Agency to approve or disapprove the application. A certificate of need or an exemption may not be issued or denied solely because the State Agency failed to reach a decision.

(18) *Withdrawal of a certificate of need.* Provision that an application for a certificate of need shall specify the time the applicant will require to make the service or equipment available or to complete the project and a timetable for making the service or equipment available or to complete the project. After the issuance of a certificate of need, the State Agency shall periodically review the progress of the holder of the certificate in meeting the timetable specified in the approved application. If on the basis of this review the State Agency determines that the holder of a certificate is not meeting the timetable and is not making a good faith effort to meet it, the State Agency may, after considering any recommendation made by the appropriate health systems agency, withdraw the certificate. In withdrawing a certificate of need, the State Agency shall follow the procedures at paragraph (a)(2), (6), (7), (8), (9), (10), (11), (13), (14), and (15) of this section.

(b) Procedures adopted for reviews in accordance with paragraph (a) of this section may vary according to the purpose for which a particular review is being conducted or the type of health service being reviewed.

(c) The procedures may provide that the requirements of paragraph (a) (4) or (5) of this section shall be considered satisfied if the appropriate health systems agency has provided for the corresponding procedure found at § 122.308(a) (4) or (5) of this title. The procedures of paragraph (a)(8) of this section shall be considered satisfied if the State Agency delegates the hearing responsibility to the appropriate health systems agency and the health systems agency follows the procedures at paragraph (a)(8) of this section.

§ 123.411 Exceptions to use of procedures.

(a) The Secretary may approve an exception to any of the required review procedures under § 123.410 either in response to a written request from a State Agency or as a general exception of which any State Agency may avail itself. In approving a general exception, the Secretary will establish substitute procedures where appropriate.

(b) Before availing itself of a general exception approved by the Secretary, the State Agency shall follow the notice and comment procedures of § 123.409(c). Before submitting a written request for an exception under this section, the State Agency shall follow the notice and comment procedures of § 123.409(c) and shall submit to the Secretary with its request copies of all comments which it receives. Before approving the request, the Secretary will (1) review copies of the comments submitted by the State Agency and (2) determine that the procedures which will be used are consistent with the purposes of the Act and will not adversely and substantially affect the rights of affected persons.

(c) The State Agency shall, in accordance with the requirements of § 123.409(d), distribute a notice of the approved exceptions and of any substitute procedures established under this section.

§ 123.412 Criteria for State Agency review.

(a) The State Agency shall adopt, and use as applicable, specific criteria for conducting the reviews covered by this subpart. The criteria must be based only on the following general considerations, except that the State Agency may include any additional criteria which it prescribes by regulation in accordance with an authorization under State law. In the case of an HMO or an ambulatory care facility or health care facility controlled, directly or indirectly, by an HMO or combination of HMOs, the criteria must be based only on the considerations set forth in paragraph (a)(13) of this section.

(1) The relationship of the health services being reviewed to the applicable health systems plan, annual implementation plan, and State health plan.

(2) The relationship of services reviewed to the long-range development plan (if any) of the person providing or proposing the services.

(3) The availability of less costly or more effective alternative methods of providing the services to be offered, expanded, reduced, relocated, or eliminated.

(4) The immediate and long-term financial feasibility of the proposal, as well as the probable effect of the proposal on the costs of and charges for providing health services by the person proposing the service.

(5)(i) The need that the population served or to be served has for the services proposed to be offered or expanded, and the extent to which all residents of the area, and in particular low income persons, racial and ethnic minorities, women, handicapped persons, and other underserved groups, and the elderly, are likely to have access to those services.

(ii) In the case of a reduction or elimination of a service, including the relocation of a facility or a service, the need that the population presently served has for the service, the extent to which that need will be met adequately by the proposed relocation or by alternative arrangements, and the effect of the reduction, elimination or relocation of the service on the ability of low income persons, racial and ethnic minorities, women, handicapped persons, and other underserved groups, and the elderly, to obtain needed health care.

(6) The contribution of the proposed service in meeting the health related needs of members of medically underserved groups which have traditionally experienced difficulties in obtaining equal access to health services (for example, low income persons, racial and ethnic minorities, women, and handicapped persons), particularly those needs identified in the applicable health systems plan, annual implementation plan, and State health plan as deserving of priority. For the purpose of determining the extent to which the proposed service will be accessible, the State Agency shall consider:

(i) The extent to which medically underserved populations currently use the applicant's services in comparison to the percentage of the population in the applicant's service area which is medically underserved, and the extent to which medically underserved populations are expected to use the proposed services if approved;

(ii) The performance of the applicant in meeting its obligation, if any, under any applicable Federal regulations

requiring provision of uncompensated care, community service, or access by minorities and handicapped persons to programs receiving Federal financial assistance (including the existence of any civil rights access complaints against the applicant);

(iii) The extent to which Medicare, Medicaid and medically indigent patients are served by the applicant; and

(iv) The extent to which the applicant offers a range of means by which a person will have access to its services (e.g., outpatient services, admission by house staff, admission by personal physician).

Note.—Where appropriate, the State Agency may also consider other access issues, such as: (1) the extent to which the applicant grants medical staff privileges to physicians who serve the medically underserved; and (2) the extent to which the applicant takes action necessary to remove barriers that limit access to the health services of the applicant. These barriers may include unavailability of public transportation; absence of translation services where a substantial portion of the population of the health service area does not speak English as its primary language; building designs that substantially hinder use of the facility; and financial barriers (e.g., pre-admission deposits).

(7) The relationship of the services proposed to be provided to the existing health care system of the area in which the services are proposed to be provided.

(8) The availability of resources (including health personnel, management personnel, and funds for capital and operating needs) for the provision of the services proposed to be provided and the need for alternative uses of these resources as identified by the applicable health systems plan, annual implementation plan or State health plan.

(9) The relationship, including the organizational relationship, of the health services proposed to be provided to ancillary or support services.

(10) The effect of the means proposed for the delivery of health services on the clinical needs of health professional training programs in the area in which the services are to be provided.

(11) If proposed health services are to be available in a limited number of facilities, the extent to which the health professions schools in the area will have access to the services for training purposes.

(12) Special needs and circumstances of those entities which provide a substantial portion of their services or resources, or both, to individuals not residing in the health service areas in which the entities are located or in adjacent health service areas. These entities may include medical and other health professions schools, multidisciplinary clinics and specialty centers.

(13) The special needs and circumstances of HMOs. These needs and circumstances shall be limited to:

(i) The needs of enrolled members and reasonably anticipated new members of the HMO for the health services proposed to be provided by the organization; and

(ii) The availability of the new health services from non-HMO providers or other HMOs in a reasonable and cost-effective manner which is consistent with the basic method of operation of the HMO. In assessing the availability of these health services from these providers, the agency shall consider only whether the services from these providers:

(A) Would be available under a contract of at least five years duration;

(B) Would be available and conveniently accessible through physicians and other health professionals associated with the HMO. (For example—whether physicians associated with the HMO have or will have full staff privileges at a non-HMO hospital);

(C) Would cost no more than if the services were provided by the HMO; and

(D) Would be available in a manner which is administratively feasible to the HMO.

(14) The special needs and circumstances of biomedical and behavioral research projects which are designed to meet a national need and for which local conditions offer special advantages.

(15) In the case of a construction project—

(i) The costs and methods of the proposed construction, including the costs and methods of energy provision, and

(ii) The probable impact of the construction project reviewed on the costs of providing health services by the person proposing the construction project and on the costs and charges to the public of providing health services by other persons.

(16) The special circumstances of health care facilities with respect to the need for conserving energy.

(17) In accordance with section 1502(b) of the Act, the factors which affect the effect of competition on the supply of the health services being reviewed.

(18) Improvements or innovations in the financing and delivery of health services which foster competition, in accordance with section 1502(b) of the Act, and serve to promote quality assurance and cost effectiveness.

(19) In the case of health services or facilities proposed to be provided, the efficiency and appropriateness of the use of existing services and facilities similar to those proposed.

(20) In the case of existing services or facilities, the quality of care provided by those facilities in the past.

(21) When an application is made by an osteopathic or allopathic facility for a certificate of need to construct, expand, or modernize a health care facility, acquire major medical equipment, or add services, the need for that construction, expansion, modernization, acquisition of equipment, or addition of services shall be considered on the basis of the need for and the availability in the community of services and facilities for osteopathic and allopathic physicians and their patients. The State Agency shall consider the application in terms of its impact on existing and proposed institutional training programs for doctors of osteopathy and medicine at the student, internship, and residency training levels.

Explanatory note.—This provision seeks to ensure that the need for and availability of services and facilities for osteopathic physicians and patients will be considered.

(b) State Agencies shall apply all applicable criteria based on the considerations listed at § 123.412. Criteria adopted for reviews in accordance with paragraph (a) of this section may vary according to the purpose for which a particular review is being conducted or the type of health service reviewed.

§ 123.413 Required findings on access.

(a) Under § 123.412(a) (5) and (6), the State Agency is required to develop criteria based on considerations relating to the need of the population to be served for the proposed project and the extent to which the residents of the area will have access to the project. For each project it approves, the State Agency shall make a written finding (which shall take into account the current accessibility of the facility as a whole) on the extent to which the project will meet the State Agency's criteria developed based on the considerations in § 123.412(a) (5) and (6), except in the following cases:

(1) Where the project is one described in § 123.407(a) (projects to eliminate or prevent certain imminent safety hazards or to comply with certain licensure or accreditation standards); or

(2) Where the project is a proposed capital expenditure not directly related

to the provision of health services or to beds or major medical equipment; or

(3) Where the project is proposed by or on behalf of an HMO or a health care facility which is controlled, directly or indirectly, by an HMO.

Explanatory note.—When a project is approved, then in addition to the written findings required by § 123.410(a)(6), to the extent that a project does not fall within one of these exceptions, a written finding under § 123.413 regarding the criteria on need and access developed under § 123.412(a) (5) and (6) is required. Examples of when the written finding is required as to whether a project satisfies the State Agency's criteria for need and access are as follows: (1) The applicant proposes to make a capital expenditure of $400,000 required solely to comply with State licensure standards. The written finding is not required. (2) The applicant proposes to provide a new coronary care service with annual operating costs of more than the expenditure minimum. The written finding is required if the project is approved. (3) The applicant proposes to make a capital expenditure of $200,000 to repave its parking lot, or to acquire computerized data processing equipment, or to repair or upgrade its heating or air conditioning equipment. The written finding is not required. (4) The applicant proposes to make a capital expenditure to add fifteen beds to its obstetrical ward. The written finding is required if the project is approved. (5) The applicant proposes to make a capital expenditure to renovate the pediatric ward of its facility. If the project is approved, a written finding is required because the project is directly related to the provision of health services.

(b) In any case where the State Agency finds that an approved project does not satisfy the State Agency's criteria based on the considerations in § 123.412(a) (5) or (6), it may, if it approves the application, impose the condition that the applicant take affirmative steps to meet those criteria.

(c) When this written finding is required, the State Agency, in evaluating the accessibility of the project, must take into account the current accessibility of the facility as a whole. If the State Agency disapproves a project for failure to meet the need and access criteria, it must so state in its written findings under § 123.410(a)(6).

(d) In any case where the State Agency finds that a project does not satisfy the State Agency's criteria based on the considerations in § 123.412(a) (5) or (6), it shall so notify in writing the applicant and the appropriate Regional Office of the Department of Health and Human Services.

Appendix—Section-by-Section Analysis of Comments and Changes

Editorial Note.—The following appendix will not appear in the Code of Federal Regulations.

§ 123.401 Definitions.

Many commenters suggested that the Department define a number of additional terms used in the regulations. The Secretary believes that the list of terms currently defined in § 123.401 is sufficient. Where necessary State Agencies may define additional terms or amplify the existing definitions.

Many persons commented on the definition of "affected persons." Some commenters suggested that the Secretary allow States to define this term, and other commenters said this term should be more limited, e.g., limited to persons in the same health service area as the project. Most commenters, however, supported the term as defined because a broad definition will provide a sufficient opportunity for consumers of health care to participate in certificate of need reviews. The Secretary has rejected the suggestions to limit this definition. The broad definition in the proposed regulations follows the definition suggested in the Report of the Senate Committee on Labor and Human Resources (See S. Rep. No. 96, 96th Cong., 1st Sess., p. 72 (1979).). However, in these final regulations the definition of "affected person" has been revised to accommodate two concerns raised by the commenters. First, health systems agencies located within the same standard metropolitan statistical area as the proposed project are now included within the definition to ensure that all health systems agencies within a standard metropolitan statistical area coordinate their activities (see section 1513(d)(2) of the Act). Second, the language in the proposed rule effectively limited affected persons to, among others, members of the public to be served by the proposed project. Thus, where a proposed project involves a service closure or where the applicant intends to serve only a limited population, some parties at interest would not technically be "affected persons." Accordingly, the definition now includes other health systems agencies in a standard metropolitan statistical area as well as persons in the geographic area served or to be served by the project and persons who regularly use health care facilities in the geographic area.

Several commenters suggested that third party payers be included in the definition of "affected persons." The Secretary has accepted this suggestion and has added "third party payers who reimburse health care facilities for services in the health service area in which the project is proposed to be located" to the definition of affected persons.

Several commenters noted that "annual operating costs" had not been defined. The Secretary has decided that "annual operating costs" should be calculated on the basis of generally accepted accounting principles and suggests that States apply these principles in determining annual operating costs.

Most commenters supported the Department of Commerce Composite Construction Cost Index as an index that would reflect the rate of inflation for capital expenditures in the health care industry. However, a number of respondents wrote that this Index does not specifically reflect hospital or health care-related construction. Although the Index is not specifically designed for construction in the health care industry, it is a reasonably accurate gauge of the inflation of construction rates in general. Other commenters said that this Index is not applicable or useful for estimating price changes to major medical equipment. The Secretary will not designate an index for purchases of major medical equipment because the statute has established a fixed minimum expenditure threshold for major medical equipment at $150,000. A number of others were concerned that the Composite Construction Cost Index would be applied to non-construction related applications. This is correct; however, the Secretary believes the Index will still be useful as a general economic indicator in adjusting the expenditure minimum. In addition, no more precise index permitted by the Act exists.

The Department received several suggestions on the index to be used in adjusting the $75,000 baseline figure for annual operating costs, including the National Hospital Input Price Index and the American Hospital Association Market Basket Index. The Secretary is unable to accept these suggestions because section 1531(5) of the Act requires that this Index be one that is developed or maintained by the Department of Commerce. The Secretary recognizes that the Department of Commerce does not maintain an index for adjusting operating costs. However, the Secretary has decided to use the Department of Commerce Composite Construction Cost Index until section 1531(5) is amended to eliminate this requirement or until a more appropriate Department of Commerce index is available. If section 1531(5) is amended to delete the requirement that the index be from the Department of Commerce, the Secretary intends to adopt the Department of Health and Human Services' National Hospital Input Price

Index because the Secretary believes it best reflects the rate of change for hospital operating costs.

One commenter questioned the exclusion of Christian Science sanatoriums under certificate of need. The Secretary has chosen to retain this exclusion, which has been a program requirement since certificate of need regulations were first published in 1977. Although Christian Science sanatoriums are excluded from the definition of a "health care facility", States are free to exceed the minimum coverage in this area, and to require the review of activities of Christian Science sanatoriums.

A number of commenters suggested that the definition of "health care facility" be expanded to include any facility that provides specialized health services, such as home health agencies; freestanding emergency rooms; mental health, alcoholism, and drug abuse facilities; birthing centers; hospices; medically-oriented day care centers; and primary care clinics. The Secretary has decided to include only those facilities specified in section 1531(5) of the Act and in the previous certificate of need regulation dated April 2, 1979. The Secretary notes that some of these facilities may be included under the definition of one of the health care facilities defined in the regulations, such as an intermediate care facility or an ambulatory surgical facility. States may require reviews of proposals by other facilities if they wish to do so (with limitations on reviews of HMOs, as specified in § 123.405).

One commenter suggested that the definitions of "skilled nursing facility" and "intermediate care facility" be made consistent with sections 1861(j) and 1905(c) of the Social Security Act. To ensure comprehensive coverage of all skilled nursing facilities, the Secretary has decided not to accept this recommendation because Section 1861(j) limits its definition to an institution "which has in effect a transfer agreement with one or more hospitals." The Secretary notes that the definition of intermediate care facilities in this regulation is substantially the same as the definition in section 1905(c). The Secretary has not accepted the proposed limitation because it would exclude from coverage facilities that are not licensed by the State.

Another commenter questioned whether inpatient intermediate care facilities for the developmentally disabled were subject to review. In general, facilities for the developmentally disabled and the mentally retarded are subject to certificate of need review only if they fall within the definition of "health care facility" listed in §123.401. Thus, an inpatient rehabilitation facility for the developmentally disabled would be subject to review, whereas a day care center which serves developmentally disabled persons would not be subject to review.

One commenter noted that the definition of rehabilitation facility in the proposed regulations differed from the definition in the Act. The Secretary has deleted the word "health" from the proposed definition, thus making it the same as the statutory definition.

Many commenters suggested that the definition of "ambulatory surgical facility" be clarified to specify that all ambulatory surgical facilities are subject to review, whether or not these facilities are associated with a hospital. The Secretary has not accepted this change because it is unnecessary. Any reviewable activity of an ambulatory surgical facility that is part of a hospital would be subject to review as a capital expenditure or as a new health service offered by or on behalf of the hospital.

Several commenters requested the rationale for covering freestanding surgical facilities. Because surgical costs are a major component of health care costs, the Secretary believes that certain activities undertaken by any entity offering surgical services (whether on an ambulatory or inpatient basis) should be subject to review. To cover surgical services in one setting and not the other would substantially diminish a State's ability to limit the offering of surgical services to those that are needed.

A number of other commenters suggested that the offering of surgery in a physician's office should be subject to certificate of need review if that physician extends surgical privileges in his office to other physicians in the community. To review these activities for every physician's office that meets this condition would be unreasonable given that only a small portion of the services offered by the office may be surgical. For this reason, the Secretary has not adopted this suggestion. States may, of course, exceed the minimum requirements of these regulations and cover physicians' offices if they believe there is reason to do so.

In reference to the definition of the term "health maintenance organization" (HMO), one respondent suggested that HMOs not qualified under section 1310(d) of the amended Act ought to apply to the appropriate State Agency to determine if they meet the proposed definition of an HMO. The Secretary believes that this is unnecessary. Each State Agency is responsible for deciding which entities are subject to review under its certificate of need program and which entities are entitled to review under the special provisions of these regulations regarding HMOs.

Although most respondents supported the basic definition of "health services," several said the definition was too vague because the specific clinical services that, if added or deleted, would result in a "substantial change in services" are not named. The Secretary has decided to leave the determination of specific clinical services to the States because each State should have the flexibility to specify these services.

Many persons commented on the specific inclusion of diagnostic radiological health services. Some argued that the distinction between fixed and mobile head and body computerized tomographic (CT) scanning equipment is artificial. The Secretary has decided that specific reference to one service, such as diagnostic radiological health services, need not be included in the general definition of a health service and has deleted all reference to this service in the definition. Thus, each State may determine whether fixed and mobile or head and body CT scanners provide different services. The Secretary points out that the acquisition of most CT scanning equipment will be subject to certificate of need review as an obligation of a capital expenditure which exceeds the expenditure maximum, the offering of a new institutional health service, or the acquisition of major medical equipment.

One commenter suggested that the Department clarify the definition of "major medical equipment" so that single pieces of totally unrelated diagnostic or therapeutic equipment which individually are valued at less than $150,000 not be subject to certificate of need review. The Secretary agrees that only single units or functionally-related units of equipment costing more than $150,000 should be included under the definition of major medical equipment and has accordingly revised this definition.

§§ *122.303 and 123.403 General.*

Several commenters were concerned with the requirement at § 123.403(d) that each decision to issue a certificate of need be consistent with the State health plan; some suggested that under the current language an application not covered in the State health plan would have to be denied and that the use of the term "must not be inconsistent with" would allow more flexibility for consideration of an application on its individual merit even though it is not specifically identified in the plan. Others

pointed out that the State health plan could conflict with health systems plans, which are updated or revised more often and tend to be more specific.

The language in the regulation does not require that a proposed project which is not discussed in the applicable State health plan be considered inconsistent with the State health plan. Thus, a certificate of need application need not be denied solely because the service or equipment under review is not specifically referred to in the plan; rather, the issue is whether the proposal is consistent with what the State health plan does provide.

The Department recognizes that there may at times be inconsistencies between the State health plan and health systems plans. Some time may pass between the adoption or revision of a health systems plan and adoption or revision of a State health plan, and also between the adoption or revision of a State health plan and conforming revisions in a health systems plan. During these times, the two plans may be inconsistent. However, under section 1527(a)(5) of the Act, certificate of need decisions are required to be consistent with the State health plan.

Under § 123.403(d), a certificate of need decision need not be consistent with the State health plan in "emergency circumstances that pose an imminent threat to public health." The Secretary notes that emergency circumstances that pose a threat to the public health are situations which threaten the safety of patients or impair the ability of the facility to operate. Examples include situations in which the facility has been substantially damaged by a fire, storm or other disaster, or in which the services of the facility have been impaired as a result of the breakdown of vital equipment (such as a boiler).

Section 123.403(e) requires that the State Agency's decision be based on the record of administrative proceedings held on the application. Several commenters asked that this provision be clarified. Administrative proceedings include the public hearing of § 123.410(a)(8) and the reconsideration hearing of § 123.410(a)(11), if requested. Further, health systems agency recommendations and any other documents submitted in connection with the application are part of the record of administrative proceedings. If the health systems agency holds a hearing on behalf of the State Agency, the records of this proceeding are also part of the administrative record.

§ 123.404 Scope of certificate of need review programs.

One commenter stated that the proposed regulations leave too much discretionary power to the States, and recommended that State discretion be limited to the maximum extent possible. The Secretary has not accepted this recommendation. The focus of certificate of need programs has always been and should continue to be at the State level. The appropriate Federal role is to establish basic minimum requirements for State certificate of need programs and to leave to States the discretion to exceed these requirements where they conclude it is appropriate.

The Secretary notes that the Act specifies two areas where States may not exceed the requirements of the statute. First, section 1527(e)(1)(B) of the Act provides that States may not expand their coverage of major medical equipment after September 30, 1982 (see § 123.404(a)(4)(ii)). Second, with respect to certain HMOs and certain HMO facilities, section 1527(b) limits this coverage and section 1527(b)(1) states conditions which, if met, require the State to exempt a project from review (see § 123.405). In all other areas, States may exceed the minimum requirements established by the Department in the amended certificate of need regulations.

Research and Training Activities. Based on the comments submitted, the Department has clarified the coverage of research and training activities. It has done so by revising the definition of "major medical equipment" and by adding two explanatory notes to the text of the regulations.

The Secretary notes that three basic activities are subject to certificate of need review: (1) acquistion of major medical equipment (§ 123.404(a)(4)), (2) the offering of a new health service (§ 123.404(a)(3)(ii)) by or on behalf of a health care facility, and (3) obligations for certain capital expenditures by or on behalf of a health care facility (§ 123.404(a) (1), (2), and (3)(i)). Research activities that do not involve the provision of services would not involve major medical equipment or new health services. Therefore, these activities would be reviewable only if they satisfy the capital expenditure threshold, which states that the capital expenditure must be "by or on behalf of" a health care facility. If these research activities are undertaken by an entity which is legally separate from a health care facility and which does not meet the definition of a health care facility, these activities would not be considered "by" a health care facility. As long as these research activities are not considered to be "on behalf of" a health care facility, the activities by this distinct entity would not be subject to review.

A separate question arises, however, when the research and training activities are carried out within the same legal entity as the hospital. In one case, there may be a situation in which one legal entity, such as a university, includes, for example, three distinct health-related components: a hospital, a medical school, and a biomedical research component. In a second case, there may be a legal entity whose primary activity is operating a hospital, but which also operates a research component and a physicians' office building as distinct components. In these cases, States are not required to regard all of the activities of the larger entity and its various components as being subject to review in accordance with these regulations. Rather, it is the responsibility of State Agencies to decide whether the activities of the larger entity or its components are considered to be "by" a health care facility. If a research component is not engaged in providing health services to inpatients, and does not use revenues derived from patient charges to finance its operations, a State Agency might conclude that the activities of the research component are not "by" a health care facility.

For example, in the first case described, if the medical school were to make a capital expenditure for renovations, the expenditure would not have to be considered "by" a health care facility. If this expenditure is not "on behalf of" the hospital, the capital expenditure would not be subject to review under the capital expenditure threshold (§ 123.404(a)(1)). In the second case, should the legal entity make a capital expenditure to expand the power plant of the physicians' office building, it need not be reviewable. Both of these examples assume that the component at issue does not provide health services to inpatients and that the revenues derived from patient charges do not subsidize the component's operations.

The acquistion of major medical equipment, however, may involve a more complex analysis. However, it should be noted, first, that the definition of "major medical equipment" in § 123.401 states that the equipment must be "* * * used to provide medical and other health services. * * *" Thus, equipment used solely for research with non-humans, or equipment used, for example, to conduct research on human tissues with no provision of medical care as part of the research, need not be required to be subject to review under § 123.404(a)(4), although if it were

acquired by the hospital component of the institution through a capital expenditure exceeding the expenditure minimum, it would be required to be subject to review under § 123.404(a)(1). The Department has revised the definition of this term accordingly. However, if the equipment meets the definition of "major medical equipment" and is to be used to provide services to inpatients of the hospital, then it is required to be subject to review even if it is being acquired by the medical school or research facility component.

State Agencies should also be alert to changes in the use of major medical equipment the acquisition of which previously was not subject to review. Should that equipment later be converted to be used for providing services to inpatients of a hospital, that new use would be subject to review under § 123.404(d), "Subsequent reviews."

The Secretary emphasizes that the Department will closely monitor and evaluate the planning agencies' determinations of which activities of components of a health-related institution or larger legal entity are not being reviewed. Should the Department conclude that the agencies are inappropriately exempting from review activities which should be reviewed, this will be a factor in the assessment of the agencies' performance for purposes of renewing their designation agreements under section 1521 of the Act.

To the extent that any research or training activity is required to be subject to review under § 123.404, it would, of course, be reviewed under criteria developed in accordance with these regulations. These criteria would include criteria based on the considerations in § 123.412, and in particular those at § 123.412(a)(10) relating to the clinical needs of health professional training programs, § 123.412(a)(12) relating to the special needs and circumstances of entities serving individuals outside of the health service area, and § 123.412(a)(14) relating to the special needs and circumstances of biomedical and behavioral research projects.

One commenter recommended that mergers, management transfers and relocations of health care facilities be required to be subject to certificate of need review. The Secretary has determined that these activities are required to be reviewed only to the extent that they are covered under § 123.404(a).

Another commentor suggested that the Secretary clarify in the regulations that the construction, development or other establishment of a new health care facility is required to be subject to certificate of need review. These suggestions cannot be accepted because there is no basis in the statute for covering these activities unless they result in an activity which is described at § 123.404 of the Federal regulations. The Secretary notes that in most cases, the establishment of a new health care facility or relocation of an existing health care facility will be associated with a capital expenditure which exceeds the expenditure minimum, or which results in the addition of a new service.

The Department addresses below comments on specific issues within § 123.404.

(A) *Capital Expenditures that Exceed the Expenditure Minimum* (§ 123.404(a)(1)). Capital expenditures by or on behalf of a health care facility which exceed the expenditure minimum are required to be subject to certificate of need review. One commenter has requested clarification of the term "by or on behalf of." The term includes capital expenditures made by the facility itself, as well as capital expenditures made by other persons which assist the facility in offering services to its patients. For example, if a private physician who is leasing office space from a hospital plans to obligate a capital expenditure which exceeds the expenditure minimum, and this expenditure will result in the provision of services to patients of the facility, then that expenditure would be considered "on behalf of" the facility and would be required to be reviewed. The Secretary notes that, with respect to acquisitions of major medical equipment, all equipment which will be "located in" a health care facility is required to be reviewed, regardless of whether the equipment will be owned by the facility or by persons who lease space within the facility.

The Secretary has clarified the term "cost" when used in connection with capital expenditures based on Congressional intent as derived from the legislative history (See H.R. Rep. No. 190, 96th Cong., 1st Sess., p. 75 (1979) and S. Rep. No. 96, 96th Cong., 1st Sess., p. 74 (1979).) The capital expenditure threshold includes the value of all preliminary work even if the work is done by the applicant without purchasing those services from an outside source.

One commenter requested clarification regarding the requirement at § 123.404(a)(1) that the cost of plans be included in determining whether an expenditure exceeds the expenditure minimum. The term "plans" refers to the institution's architectural and other specific plans for a proposed expenditure. General long-range planning by a health care facility is not discouraged, and is not included in determining if an expenditure exceeds the expenditure minimum.

(B) *Bed Capacity* (§ 123.404(a)(2)). Several commenters objected to the proposed requirement at § 123.404(a)(2) that certain reductions in the total bed capacity of a health care facility be required to be subject to certificate of need review. The amended Act requires a certificate of need for a capital expenditure which "substantially changes" the bed capacity of a health care facility. The Secretary believes this applies to decreases as well as increases in total bed capacity. By requiring that substantial decreases in total bed capacity be subject to certificate of need review, the Department intends that beds in health care facilities will be eliminated only if they are not needed, or if reasonable alternatives for providing care, especially to the medically underserved, are in place. The Secretary recognizes that there may be instances where quick bed reductions are necessitated by licensing requirements or bankruptcy. In these instances, the Secretary encourages States to conduct expedited reviews (which may require obtaining an exception, under § 123.411, to required procedures).

A few commenters asked that the redistribution of beds among various categories not be required to be subject to certificate of need review, since redistributions will not increase the overall supply of beds. The Secretary has not accepted this recommendation, because substantial redistributions of beds may affect the delivery and cost of health services.

Many commenters disagreed with the definition of a "substantial change in bed capacity" as changes of ten beds or ten percent of the total bed capacity, whichever is less, over a two-year period. While some commenters stated the requirement should be more stringent, covering all changes in bed capacity, others said that the requirement should be less stringent, arguing that changes of only ten beds or ten percent do not warrant review. After considering all of the above comments, the Secretary has decided to retain the proposed provision, which was included in the Department's previous regulations. The Secretary has concluded that the current requirement is reasonable, but reminds States that they are free to require review of bed changes beyond those required by the Federal regulations.

Two commenters suggested that the regulations be revised to require a

certificate of need prior to changes in the licensed number of beds (rather than the total number of beds). However, since individual States have different licensing requirements, and not all beds in each State are necessarily licensed, the Secretary has decided to not to accept this suggestion.

One commenter recommended that renal dialysis stations not be considered beds for purposes of certificate of need. As with the previous certificate of need regulations, each State should determine whether to include renal dialysis stations in the definition of a "bed". Further, the Secretary notes that even if a State does not define a "bed" to include renal dialysis stations, the addition or termination of renal dialysis stations may be required to be reviewed under § 123.404(a)(3) as the addition or termination of a "health service."

(C) *Health Services.* (§ 123.404(a)(3)). Many commenters objected to the proposed requirement that capital expenditures which result in the termination of a health service be subject to certificate of need review. Sections 1527 and 1531(6) of the Act require a certificate of need for a capital expenditure which "substantially changes the services" of a health care facility. The Secretary has decided that this language applies to terminations, as well as additions, of health services. Defining a "substantial change" to include terminations of health services will permit State Agencies to conduct reviews with the goal of retaining the availability and accessibility of existing health services, especially to the poor and the medically underserved.

Several commenters requested that increases and reductions in health services, as well as additions and terminations, be required to be subject to certificate of need review under § 123.404(a)(3). The Department has not adopted this suggestion because of the problems in administering such a requirement. First, it is difficult to distinguish a conscious decision to increase or decrease a health service from those increases or reductions that are due to seasonal variations or changing usage patterns within the facility. Additionally, it is frequently difficult to measure incremental changes in a health service. An increase or decrease in a health service may be measured by a change in the number of patients, a change in the number of personnel, a change in annual operating costs, or perhaps by some other indicator. The Secretary notes that although increases and reductions in services are not explicitly required to be subject to certificate of need review, those increases and reductions which are associated with a bed change of ten beds or ten percent over a two-year period are required to be reviewed under § 123.404(a)(2). Finally, States are free to exceed the requirements of the Federal regulations and specify in their State programs that increases and reductions in health services are required to be subject to certificate of need review.

Several commenters requested that the addition of a health service not be subject to certificate of need review if it represents only a technological or scientific improvement of a health service currently being offered in the facility. The Secretary would like to clarify that under § 123.404(a)(3) (i)(A) and (ii), additions to existing services are not required to be reviewed. A State is not required to review under this service threshold an improvement to a service already being offered in a health care facility. On the other hand, a technological improvement, the addition of which would be considered a new service, would be subject to review if a capital expenditure was associated with it or the expenditure minimum for operating costs was met.

Several commenters recommended that § 123.404(a)(3)(i) of the regulations be revised to refer to capital expenditures "associated with" the addition or termination of a health service, rather than capital expenditures "which result in" the addition or termination. Frequently, a service is terminated before the capital expenditure is obligated. In this case, there is some question whether the expenditure "results in" a change of service. To avoid this ambiguity, this suggestion has been accepted. Thus, it is clear under the revised language that if a termination is associated with a capital expenditure, it is required to be subject to certificate of need review, regardless of whether the capital expenditure will be obligated before or after the termination.

Several commenters submitted questions concerning the meaning of "health services * * * offered in or through" a health care facility (at § 123.404(a)(3)). One commenter suggested removal of the term "in," stating that health services offered by physicians who lease office space in a health care facility should not be required to be reviewed. Because of the confusion that arose from the use or the term "on or through", the Department has revised this section to use instead the term "by or on behalf of". In the Department's view, use of this term subjects to review those services which properly should be reviewed: services offered by a health care facility or on its behalf. Thus, services of a physician would not be subject to review merely because the physician provided those services in space leased within a hospital. However, if these services are offered to inpatients of the hospital, then the services would be offered on behalf of the hospital, and the State Agency would determine whether they meet the service threshold of § 123.404(a)(3).

(D) *Major Medical Equipment* (§ 123.404(a)(4)). Many commenters questioned the exemption for major medical equipment used to provide inpatient services only on an "occasional and irregular" basis. Several respondents suggested that there be no exceptions to the requirement, based on section 1527(e) of the amended Act, that major medical equipment which will provide services to inpatients of a hospital be required to be subject to certificate of need review. Others recommended that the regulations be revised to specify that a certificate of need is not needed if the equipment will only be used for inpatients of a hospital in "emergency" situatons. Finally, a few commenters said that the term "occasional and irregular" is open to misuse and should be further defined or elaborated on in the final regulations.

Having considered the above comments, the Secretary has revised the regulations to specify that a certificate of need will not be required if the major medical equipment will be used to provide services to inpatients only "on a temporary basis in the case of natural disaster, major accident, or equipment failure." The Secretary believes it is unreasonable to require a certificate on need for major medical equipment which will serve inpatients only in the extreme circumstances listed above, and is therefore unwilling to eliminate this exception entirely, as some commenters recommended.

Section 123.404(a)(4)(i) of the regulations states that major medical equipment "owned by or located in" a health care facility is required to be subject to certificate of need review. One commenter asked for clarification as to whether this applies to a physician who is leasing space from a hospital, either within the facility itself or in a hospital-owned office building. Major medical equipment acquired by a physician who leases space within a health care facility is required to be subject to certificate of need review, because the equipment will be located in the health care facility. However, equipment acquired by a physician in a

hospital-owned office building is only required to be subject to certificate of need review under this threshold if the equipment will be used to serve inpatients of a hospital.

When any person proposes to acquire major medical equipment (not owned by or located in a health care facility), whether or not that person intends that the equipment will serve inpatients of a hospital, that person must submit a notice of intent under § 123.406(a) to the State Agency and the appropriate health systems agency.

The Secretary has clarified the term "cost" when used in relation to the acquisition of major medical equipment to cover situations involving trade-ins, donations, or other transfers in which medical equipment is acquired for less than fair market value, but would have required review if acquired at fair market value. In this case, if a facility trades in a head scanner with a value of $150,000 for a body scanner with a value of $280,000 and the facility spends only $130,000, the acquisition is still reviewable based on the fair market value of the new equipment.

For the discussion of the coverage provisions relating to the acquisition of major medical equipment for research purposes, see the "Research and Training Activities" section above.

(E) *Acquisitions of Health Care Facilities* (§ 123.404(a)(5)). The obligation by any person of a capital expenditure to acquire an existing health care facility is required to be subject to review if a notice of intent is not submitted or if the acquisition will result in a change in the services or bed capacity of the facility to be acquired. One commenter asked whether the whole transaction is reviewable, or just the change in services or bed capacity. Under section 1527(d) of the amended Act (and § 123.404(a)(5) of the regulations), an obligation of a capital expenditure to acquire a health care facility must be reviewed under the specified circumstances. This means the entire acquisition is subject to review, not just the change in services or bed capacity.

One commenter recommended that the State Agency be required to consult with health systems agencies prior to extending certificate of need coverage of acquisitions of health care facilities beyond that required by the Federal regulations. While the adoption of procedures and criteria by a State Agency must by statute be done in consultation with health systems agencies, the Secretary has chosen not to adopt this suggestion for the scope of coverage of certificate of need programs. The scope of State certificate of need programs is in most cases established in State law, and the Secretary is confident that this process provides ample opportunity for involvement by interested parties, including health systems agencies. In those instances where the scope of coverage is developed through State implementing regulations, State laws governing the practices and procedures of administrative agencies should provide ample opportunity for public comment.

One commenter asked what happens if a State Agency fails to render a decision within 30 days of receiving a notice of intent. For acquisitions of health care facilities, as well as for acquisitions of major medical equipment, if the State Agency fails to determine within 30 days that the proposed acquisition is subject to review, the health care facility (or major medical equipment) may be acquired without a certificate of need. The Secretary notes that the 30-day review period does not begin until the State Agency receives a notice containing all the information the State Agency requires. Receipt of an incomplete notice does not cause the 30-day review period to begin. In addition, should the person acquiring the facility in fact change the services or bed capacity of the facility, the change may be required to be subject to review under § 123.404(d)(3), "subsequent reviews," even if the State Agency failed to rule on the notice of intent during the 30-day period.

Acquisitions of existing health care facilities may also be required to be reviewed in accordance with section 1122 of the Social Security Act. Those persons in States which participate in the section 1122 review program should check the requirements under that program for review of acquisitions of health care facilities.

(F) *Leases, Donations and Transfers* (§ 123.404(b)). One respondent recommended that in the case of acquisitions by donation, lease or transfer, State Agencies be required to conduct expedited reviews. The Secretary believes that each State Agency should determine whether to conduct expedited reviews for leases, donations, and transfers. Those State Agencies wishing to conduct expedited reviews in a manner inconsistent with the procedural requirements of § 123.410 must first receive an exception under § 123.411 to do so.

One commenter asked who should determine the "fair market value" of equipment acquired by lease, transfer or donation. It is the responsibility of each State Agency to determine coverage under its certificate of need program; therefore, the State Agency would be responsible for determining the fair market value of such equipment. The Secretary notes that an acquisition by purchase for less than fair market value must be reviewed if the acquisition at fair market value would be subject to review under § 123.404(a).

(G) *Incurring an Obligation* (§ 123.404(c)). The proposed rule (at § 123.404(c)) specified that the term "obligation," when used in connection with capital expenditures, includes "commitments made for financing a proposed project." Several commenters requested a more complete definition of the term "obligation." Accordingly, the Secretary has decided to define an obligation of a capital expenditure as it is defined in the regulations governing section 1122 of the Social Security Act. The title of § 123.404(c) has been revised to reflect this change. The Secretary notes that under this paragraph a State Agency may conclude that an "obligation" has not been incurred when a contract is entered into that is conditioned upon issuance of a certificate of need. In all other instances, an "obligation" may not be made until after the issuance of a certificate of need.

Many commenters asked whether a person may issue bonds to raise funds for a proposed activity prior to the issuance of a certificate of need. Included in the definition of an obligation is an enforceable contract for the "financing of a capital asset." If under State law the bond instruments or any related documents that are used to finance the expenditure are enforceable contracts, an obligation would be incurred when the contract ws entered into. As noted above, an obligation may not be incurred until after a certificate of need is issued.

(H) *Subsequent Reviews* (§ 123.404(d)). Many commenters questioned the proposed requirement at § 123.404(d)(1) that after a certificate of need is issued for a capital expenditure, certain changes proposed in the approved activity within one year after the date that activity is undertaken must be reviewed.

Several commenters were opposed to the definition of a "change in a project." Specifically, many commenters stated that the term "and any other substantial change to the project" is too broad and should be eliminated. Others stated that a minor "expansion or reduction of an existing health service" should not be required to be reviewed. The Secretary agrees with these comments, and has therefore revised the definition of a "change in a project" to include "at a minimum, a change in the bed capacity of a facility (as described in

§ 123.404(a)(2)), and the addition or termination of a health service." The Secretary notes, however, that States may exceed this required coverage and expand the definition of a "change in a project" to include other changes to the project.

Some commenters suggested that the one-year period be extended so that a subsequent review would be required "at any time" that the facility proposes to change an approved activity. Others recommended that the one-year period be extended for a specified period, while other commenters said that there should be no requirement for a review after issuance of a certificate of need. The purpose of this provision is to ensure that when a facility modifies a previously approved capital expenditure by substantially changing the bed capacity or services associated with the approved expenditure, review of that change will be conducted. Under § 123.404(a)(2) and (3)(i), certain bed changes and additions and terminations of services are required to be subject to review only if associated with a capital expenditure. A facility might obtain approval for a capital expenditure and then immediately modify the approved project without a subsequent capital cost. The Secretary believes that if this subsequent modification (bed or service change) is made within a short period of time following the original approval, it is reasonable to assume that the modification is "associated with" the previously approved capital expenditure and, as such, required to be subject to review under § 123.404(a)(2) or (3)(i). The Secretary believes that the one-year period is a reasonable time for this presumption to be in effect. States may, of course, provide for a longer period. In addition, the subsequent review provision does not preclude a State from concluding that a modification made later than one year after the previously approved expenditure is subject to review if it concludes that the subsequent change is "associated with" the earlier capital expenditure.

With respect to subsequent reviews associated with approved capital expenditures, a few commenters asked whether a requirement for a subsequent review invalidates a previous certificate of need approval. Under § 123.404(d)(1), only proposed changes to approved projects are required to be subject to review. The activity for which the initial approval was granted need not be subject to review again.

Several commenters questioned the authority of the Secretary to require subsequent reviews of acquisitions of major medical equipment and existing health care facilities, and suggested that the Department eliminate § 123.404(d)(2) and (3) from the final regulations. These provisions are necessary to implement and administer the coverage requirements of sections 1527 (d) and (e) of the Act. Under sections 1527 (d) and (e), a proposed acquisition must be reviewed if it will result in certain activities (i.e., acquisitions of health care facilities if the beds or services of the facility will be changed; and acquisitions of major medical equipment if the equipment will be used to serve inpatients of a hospital). The provision for subsequent reviews at § 123.404(d)(2) and (3), by requiring certificate of need review if an applicant changes a proposed activity after filing a notice of intent, ensures certificate of need coverage of all those activities associated with an acquisition which are required to be covered under sections 1527 (d) and (e) of the Act, even though they may be undertaken after the notice of intent was filed.

(I) *Refinancing Activities.* Several commenters requested that a certificate of need not be required for capital expenditures which are only for refinancing an existing debt. Under sections 1527 and 1531(6) of the Act, capital expenditures by or on behalf of health care facilities in excess of the expenditure minimum are required to be subject to certificate of need review. The Secretary notes that this requirement applies to all capital expenditures obligated by or on behalf of a health care facility, which clearly include refinancing costs which would be capitalized under generally accepted accounting principles. Further, the Secretary notes that capital expenditures incurred when a debt is refinanced are required to be subject to review only if they exceed the expenditure minimum. In many instances, capital costs incurred when a debt is refinanced will be less than the expenditure minimum and will not require review. Additionally, in those cases where capital expenditures incurred in refinancing an existing debt are in excess of the expenditure minimum, and result in a net savings to the facility, the Secretary repeats the suggestion in the preamble to the proposed rules that State Agencies and HSAs conduct expedited reviews of the capital expenditures. This may require obtaining an exception, under § 123.411, to required procedures. The Secretary notes, however, that if the capital expenditure associated with refinancing an existing debt will include financing of new activities, the State Agency is required to conduct a full review of the new activities to the extent that these new activities result in the "obligation of capital expenditures, offering of institutional health services, or acquisition of major medical equipment."

§§ *122.305 and 123.405 Health maintenance organizations.*

Most of the comments on §§ 122.305 and 123.405 were simply requests for clarification. A number of commenters were dissatisfied with the special consideration and exemptions for which HMOs are eligible. These considerations and exceptions, however, are required by the 1979 amendments to the Act rather than the Department's interpretation of these amendments (see section 1527(b) of the Act). In general, the Department has little latitude in setting forth the certificate of need requirements for HMOs and for health care facilities controlled by HMOs.

One commenter was concerned that the paragraph, "Required coverage," did not mirror the language of the statute precisely. The Secretary believes, however, that the requirements as specified are consistent with the statute with respect to required coverage of HMOs. Further, setting forth the requirements in a framework consistent with the general certificate of need requirements should make the program easier to administer at the State level.

A number of respondents requested clarification regarding the meaning of the terms "direct control" and "indirect control" when used in conjunction with health care facilities of HMOs. "Direct control" of a health care facility would occur by virtue of HMO ownership of the facility. As suggested by the Conference Committee which approved the 1979 amendments to the Act, "indirect control" includes situations in which a majority of the members of the board of the hospital corporation are employees, officers or directors of an HMO or in which members of the board of an HMO are the same as the members of the board of the hospital corporation. (See S. Rep. No. 309, 96th Cong., 1st Sess., p. 86 (1979).)

Several commenters stated that the requirements for program coverage of the acquisition of major medical equipment by HMOs were not explicit in § 123.405. The certificate of need requirements for major medical equipment acquired by an HMO or a health care facility controlled by an HMO are the same as those specified in § 123.404(a)(4) (unless the project is exempt from review under § 123.405(b)(1)). (See example #1 in the explanatory note following § 123.405(a).)

A number of commenters thought the examples in the explanatory note should become a part of the regulations. Since these are examples and not an exhaustive list of every type of HMO proposal, they are not included in the regulations themselves. Others stated that it is unclear whether the establishment of HMOs and their ambulatory facilities, and activities undertaken by these HMOs and ambulatory facilities, are subject to certificate of need review. In § 123.405(a), coverage is specifically limited to activities "undertaken by or on behalf of an *inpatient* health care facility" (emphasis added) and "the acquisition of major medical equipment . . . to the extent required by § 123.404(a)(4) and § 123.404(d)(2)." States may not exceed this required coverage. Accordingly, the only outpatient activity of HMOs and their ambulatory facilities which is subject to certificate of need review is the acquisition of major medical equipment, as specified in § 123.404(a)(4), and activities that are considered by or on behalf of an inpatient facility (unless the project is exempt from review under § 123.405(b)(1)). (See the examples in the explanatory note for further guidance.)

The Secretary notes that under section 1527(b) of the Act, there is no basis for differentiating between fee-for-service and prepaid components of HMOs. The method of payment for services is not relevant in determining whether an activity is subject to certificate of need review (under § 123.405(a)) or eligible for an exemption (under § 123.405(b)). Therefore, if a fee-for-service component of an HMO meets the requirements of § 123.405(b) of the regulations, it must be granted an exemption from certificate of need review. With respect to HMO projects that are not exempt under § 123.405(b), the coverage required by § 123.405(a) applies equally to fee-for-service and prepaid components of HMOs. This matter is now explicitly addressed in the regulations, at § 123.405(b)(4).

One commenter stated that § 123.405(b)(2) ("Application for exemption") did not make clear that an HMO with an enrollment of 20,000 could receive a "speculative" exemption, i.e., that the exemption must be granted if enrollment would be 50,000 at the time the service at issue will be offered. The Secretary agrees, and has revised § 123.405(b)(2)(ii) to make this point explicitly. The Secretary notes, however, that the applicant must provide sufficient information to demonstrate that the HMO or combination of HMOs will meet the applicable requirements for the exemption at the time the service will be offered.

Section 123.403(e) of the regulations requires the State Agency to grant or deny an exemption to an HMO on the basis of procedures it has adopted for this purpose. Many commenters recommended that the reviews for exemptions be completed by the State Agency in 30 days, rather than 45 days as originally recommended in the Preamble to the Notice of Proposed Rulemaking. Although the State has the authority to prescribe the time limit for reviews of exemptions, the Secretary encourages State Agencies to expedite these reviews. Since a State Agency's determination of whether the applicable requirements for an exemption have been met will be a relatively simple exercise, the Secretary agrees with the commenters that State Agencies should generally be able to complete these reviews in no more than 30 days. The Secretary suggests that in their procedures State Agencies specify a time limit (preferably 30 days or less) for reviewing exemption applications.

One commenter suggested adding a provision that State Agencies must approve applications for exemptions if the applicable conditions have been met. Although this requirement was implicit, it has been added to § 123.405(b)(2) to ensure that State Agencies do not base reviews of exemption applications on any other considerations.

Several commenters addressed the provision that a State Agency shall not disapprove an HMO-related application solely because the proposal is not discussed in applicable plans. This provision corresponds with a requirement specified at § 123.411(a)(2) of the April 2, 1979 certificate of need regulations. The Secretary continues to believe that the fact that an HMO proposal is not discussed in the applicable plans is not a sufficient reason for denying the certificate of need. Further, the Secretary notes that section 1527(b)(5) of the Act establishes special criteria against which certificate of need applications of HMOs must be reviewed (see § 123.405(d) of the regulations). An HMO-related application must be approved if it satisfies these criteria, regardless of whether the proposal is discussed in the applicable plans.

One commenter questioned why the Department deleted the section on required findings for HMOs of the April 2, 1979 regulations. This section (§ 123.411) has not been retained because of the statutory restrictions of the Act (see section 1527(b) of the Act). However, certain provisions from § 123.411 of the April 2 regulations have been included in these regulations. Specifically, the requirement at § 123.411(a)(2) of the April 2 regulations is now at § 123.405(d) ("Inclusion in health plans") and the criteria at § 123.411(b) of the April 2 regulations are now in § 123.413(a)(13) of these regulations.

§ 123.406 Notice of intent.

Three commenters recommended that the regulations be revised to provide for sanctions if the State Agency is not notified of an acquisition of major medical equipment or an existing health care facility. Additional sanctions for failure to submit the notice of intent required under § 123.406 (a) and (b) are not necessary because the sanctions required under § 123.408 apply. The sanctions apply because a certificate of need must be obtained if a notice of intent is not filed. (See § 123.404(a) (4) and (5).)

One commenter suggested some consideration of alternatives to the requirement for a notice of intent for construction projects (§ 123.406(c)). For example, in one State the rules under the certificate of need program require submission by all health care facilities of a three-year plan, providing prior notice of potential construction projects, equipment acquisition and service changes. States may use provisions such as the one cited because they are consistent with the requirement of the statute. Accordingly, they should not be characterized as "alternatives" to that requirement.

One commenter stated that "lead time" is necessary for all projects, and recommended that the regulations be revised to require a notice of intent for all certificate of need applications, not just those for construction projects. A State may adopt such a requirement consistent with the periodic report requirement under § 122.308(a)(5) and § 123.410(a)(5). These sections require the health systems agencies and State Agencies to have procedures for applicants to submit periodic reports respecting the development of proposals subject to review.

§§ 122.306 and 123.407 Required recommendations and required approvals.

Because of the confusion the term "Special reviews" generated, § 122.306 has been retitled "Required recommendations" and § 123.407, "Required approvals." The Secretary emphasizes that the purpose of this provision is not to establish a separate category of reviews. Rather, it is to

ensure that, consistent with the statute, projects which are to rectify substantial code, licensure, or accreditation deficiencies will, under certain circumstances, be approved. The Secretary does not intend to require either that applications be submitted to a separate review process or that applications which do not meet the criteria for a required approval to be resubmitted through the normal review process. Resubmission could cause inordinate delays in projects which, while not meeting the requirements of § 123.407(a), might very well be needed for the adequate provision of health care in the area. If an application does not meet the criteria for required approval, then the planning agency should be able to arrive at a decision simply by applying all of its applicable criteria. Accordingly, the regulations have been revised and simplified to reflect this approach. An explanatory note has been added to § 123.407 to clarify planning agency responsibilities under this provision.

The Secretary is aware that the provision for required approvals is viewed in some quarters as a potentially enormous loophole for unneeded hospital replacements and renovations. However, the strict application of the provisions of § 123.407 should prevent its abuse. For this reason, the regulation at § 123.407(a) now specifies that the capital expenditure must be *required* to eliminate the code, licensure, or accreditation deficiency. Section 123.407(b), which was § 123.407(c) in the proposed rules, continues to require that any portion of a proposed capital expenditure which is not required to eliminate one of these deficiencies is not subject to the provision for required approval, but rather is subject to a regular review using the criteria developed under § 123.412.

Two commenters suggested that this section conflicts with § 123.403(d), which specifies that in emergency situations which pose a threat to the public health, a decision to issue a certificate of need, need not be consistent with the State health plan. The latter section requires that State Agencies not issue certificates of need for projects inconsistent with the State health plan except in emergencies which pose a threat to public health. Section 123.407, on the other hand, permits a State Agency to deny what would otherwise be a required approval, if the project is inconsistent with the State health plan. These sections read together permit but do not require the State Agency to issue a certificate of need for a project relating to an emergency that poses a threat to the public health even though the project is inconsistent with the State health plan. Thus, the two sections do not conflict.

Other commenters expressed concern about how a determination of need is to be made if the criteria developed under § 123.412(a) do not apply, as suggested in the Notice of Proposed Rulemaking. The Secretary, in revising § 123.407, has stated in an explanatory note following § 123.407(a) that a determination of need for the facility or service is to be made by applying the appropriate criteria developed under § 123.412. Further, the Secretary notes that the planning agencies may wish to adopt criteria for this determination of need based on utilization standards, which they should develop in line with the National Guidelines for Health Planning. Agencies may request assistance in this from the appropriate Center for Health Planning. For example, for hospitals and nursing homes, States Agencies may have criteria dealing with visits/encounters, length of stay, admission rates, patient days of care, outpatient visits, and the number of patients served. Finally, the determination by the State Agency of whether a facility or service is needed should be based on health plans. Health systems plans are required to (1) describe the number and type of resources (including facilities, personnel, major medical equipment and other resources) in the health service area, (2) state the extent to which these existing facilities are in need of modernization, closure, or conversion, and (3) identify the need for new facilities to be constructed or acquired (see section 1513(b)(2) of the Act). There may be a need, however, for a service or facility that is not identified in the health systems plan or State health plan. In such a case, the State Agency may determine that the facility or service is needed if it meets the objectives of the health systems plan and the review criteria of the State Agency.

Other commenters questioned how planning agencies will determine whether a particular project is required to comply with licensure or accreditation requirements or with government fire, building or life safety codes. Although the regulations do not specify the information to be required by planning agencies, the Secretary intends that the burden for proving that the proposal is under one of these categories be assumed by the applicant. Accordingly, when planning agencies establish these requirements they should consider requiring that applicants submit documentation from the appropriate agency that the proposed project is necessary to eliminate or prevent safety hazards, comply with State licensure standards, or comply with accreditation standards.

Two commenters were concerned about the effect of appropriateness review on reviews conducted under this section. Appropriateness reviews are reviews of existing institutional health services by health systems agencies and State Agencies and authorized by sections 1513(g) and 1523(a)(6) of the Act. Under § 123.407, planning agencies are not required to conduct appropriateness reviews in order to determine whether a facility or service is needed. However, if an appropriateness review has been conducted, the findings can and should be considered in making a determination of need under § 123.407.

A few commenters felt that if the State Agency fails to act within the required period of time, the project should be approved. The Secretary points out that the provisions of § 123.410(a)(17) apply to all applications for a certificate of need. This section requires that the State program must provide that if the State Agency fails to approve or disapprove an application for a certificate of need, the applicant may bring action in an appropriate State court to require the State Agency to approve or disapprove the application.

§ *123.408 Enforcement.*

Several commenters objected to the suggestion that criminal penalties might be appropriate as a sanction to enforce certificate of need decisions. Other commenters stated that the examples listed in § 123.408(b) should, in fact, be requirements. The Secretary continues to believe that it is more appropriate for States to develop their own enforcement mechanisms to ensure that only projects which are granted certificates of need are carried out. The Secretary points out that the Department does review in detail the performance of each State Agency. The extent to which sanctions are effective is one of the measures of performance for the certificate of need function.

Other commenters raised questions about enforcement of some of the new coverage provisions. For instance, a question was raised as to whether the denial of a license to operate a service would be an effective sanction in preventing the termination of a service. Although denial of a license would obviously be inappropriate in this case, there are other sanctions, such as fines or criminal penalties, which could be used to prevent the termination of a service.

§§ 122.307 and 123.409 Adoption and public notice of review procedures and criteria.

Several commenters suggested that the Secretary add a requirement to this regulation that agencies provide multilingual notification of proposed review procedures and criteria. While an agency may do so, the Secretary believes that it would be inappropriate to require at this time that it do so. Guidance already given to health systems agencies calls attention to linguistic problems and suggests that in health service areas where the primary language of a significant percentage (10 percent) of the residents is not English, relevant portions of health systems plans and annual implementation plans should be translated into that language. Agencies should consider using this guideline with respect to proposed procedures and criteria.

§§ 122.308 and 123.410 Procedures for health systems agency and State Agency review.

§§ 122.308(a)(1) and § 123.410(a)(1) Schedules for submitting applications.

Sections 122.308(a)(1) and 123.410(a)(1) require that all completed applications pertaining to similar types of services, facilities, or equipment affecting the same health service area be considered in relation to each other (i.e., batched) at least twice a year.

Several commenters requested that the Department clarify the term "health service area". Many suggested that the health service area should relate to the institution's primary service area. Others suggested that only projects with the same target population be considered in relation to each other. The term "health service area" in this provision is defined by the statute to mean an area that has been designated by the Secretary under section 1511 of the Act as a health service area. By requiring that all similar types of proposals affecting the same health service area be considered in relation to each other, the statute does not prevent agencies from considering the different populations served by different facilities. In reviewing similar projects, a State Agency may conclude that two proposals appropriately serve different populations. In such a case, a determination of need for one project may reasonably be made without regard to the determination of need for the other project.

Several commenters suggested that the Department require State Agencies to publish the established schedule for submission of applications. The Secretary notes that under § 123.409 State Agencies are required to publish adopted procedures which must include the time schedule for submission of applications. The schedule should be published in a form and manner that will provide affected persons adequate notice of the review period. The Secretary will be evaluating the schedules established by State Agencies in order to determine whether timely notification of the review schedule is being provided.

Several commenters expressed concern that the batching requirement would create problems with coordinating review periods in those States that also perform reviews under section 1122 of the Social Security Act. The Secretary believes that this problem will be alleviated by the incorporation of the procedural requirements of section 1532 of the Public Health Service Act, including the batching requirement, into the revised section 1122 regulations to be published soon.

Many commenters suggested that the regulations be more specific as to how often a State Agency may batch proposals. The Secretary has retained the language of section 1532(b)(13)(A)(ii) of the Act, which requires that similar proposals be considered in relation to each other at least twice a year. This satisfies the statutory requirement and gives States the flexibility to batch more often if appropriate.

Many commenters expressed concern about how State Agencies that review few applications will be able to batch proposals. Regardless of the number of applications received during the scheduled period of submission, each State Agency is required (under section 1532(b)(13)(A)(iii)) to review those completed applications submitted. Thus, if only one application of a particular type is submitted, the State will consider only that application.

A few commenters suggested that the regulations specify that applications which satisfy the requirements of § 123.407 for required approvals may not be batched. The Secretary believes that it is important for the State Agency to have the option of batching certain proposals which may also meet the requirements of § 123.407. For this reason, the Secretary has retained the language of the regulations, which provides that applications which satisfy the requirement of § 123.407 may be, but are not required to be, batched.

Many commenters stated that the categories for batching of applications listed in the regulations were too broad and should be more specific. Several commenters suggested the categories should be limited to those services addressed in the health systems plan, the State health plan, or the National Guidelines for Health Planning. A few commenters also suggested that only those services which are "technologically innovative" be required to be batched. The Secretary has decided to retain the categories listed in the regulations because they provide a reasonable minimum set of categories to be used by a State Agency. This approach allows each State Agency the flexibility to establish narrower categories as appropriate. Under § 123.409, each State Agency is required to provide the public an opportunity to comment on the proposed categories of services that it will use for batching. As a basis for determining those categories of services to be batched, State Agencies might consider analyzing previous certificate of need applications in order to determine the types of services for which a substantial number of applications have been received.

Several commenters requested that the regulations specify that applications which include more than one proposed type of service, facility or equipment must not be delayed by subjecting them to review in more than one category. The Secretary encourages State Agencies to develop a method of reviewing large applications which propose establishing numerous types of services, facilities or equipment. At a minimum, however, any such method would have to require that each component of the large application be reviewed against similar equipment or services in its appropriate batch. The Secretary notes that this can be planned for in advance by the applicant, and that in any case, the decision as to a certificate of need for all the components would be made, at most, within a six-month period.

§§ 122.308(a)(2) and 123.410(a)(2) Notification of the beginning of a review.

Several commenters requested that the regulations require that the notice of the beginning of the review period be multilingual in those areas with a significant non-English speaking population. The Secretary agrees that it is important for agencies to provide multilingual notices in those areas which include a large non-English speaking population. The Secretary has decided not to include this as a regulatory requirement and calls attention to the policy guidelines regarding linguistic problems discussed in the portion of this Appendix dealing with §§ 122.307 and 123.409 (Adoption and public notice of review procedures and criteria).

Many commenters suggested that notification of the beginning of a review be by methods other than newspapers. These commenters indicated that notice should be sent by first class mail and should be published in a more prominent section of the newspaper than in the legal notice section. A few commenters suggested deletion of the requirement that notice of the beginning of the review be published in a newspaper of general circulation. The Secretary notes that publication in a newspaper of this notice is not a requirement but that States may use another means of written notification. The Secretary has decided not to require that the notice be published in a more prominent section of the newspaper, since the price of such a notice would be prohibitive to many agencies.

Several commenters stated that the requirement for both the health systems agency and the State Agency to provide written notification of the beginning of a review period is duplicative and costly. The Secretary notes that § 122.308(c) relieves health systems agencies of this requirement if the State Agency, in performing its function under § 123.410(a)(2), provides the information required under § 122.308(a)(2).

Several commenters suggested that notice should be sent to legal service programs, welfare and social security offices, clinics, and other agencies. If these agencies want to receive notification, they may request that their names be placed on the health systems agency and State Agency mailing lists.

§§ 122.308(a)(3) and 123.410(a)(3) Review period.

Several commenters requested that the regulations require that reviews of applications which are batched may be delayed by one 15-day extension period only. Section 1532(b)(12)(c)(i) of the Act requires that, at the applicant's request, each time the planning agency requires an applicant to submit additional information after the review period has begun, the review period must be extended 15 days. The extension of the review period applies to all applications being batched. The Secretary encourages the State Agency and the health systems agency to do thorough reviews of the completeness of applications before notification of the beginning of the review. There should be infrequent requests for additional information after the application is found complete and the review period has begun. In the schedule required under § 123.410(a)(1), State Agencies are encouraged to provide ample time to determine whether additional information is necessary.

§§ 122.308(a)(4) and 123.410(a)(4) Information requirements.

Many commenters recommended that the information required to be submitted to the State Agency and the health systems agency include data on uncompensated care, community service data, and other information necessary to determine the applicant's ability and willingness to comply with requirements under Title VI (the Hill-Burton program) or XVI of the Act. The Secretary has not adopted this recommendation. The present language of the statute and the regulations permits agencies to vary the informational requirements according to the purpose for which a particular review is conducted or the type of health service being reviewed. This allows State Agencies the flexibility to require community service data, or data on uncompensated care, in those instances where such data requirements are appropriate. The Secretary notes, however, that any information required for a review must be prescribed and published by the State Agency.

Several commenters suggested that the applicant should have the right to appeal a request for information to be submitted with the application. The Secretary does not believe that it is necessary to provide for an appeal of the information requirements since these requirements must be prescribed and published by the agencies and thus would be subject to public comment under §§ 122.307 and 123.409, before the submission of the application. Several commenters suggested that information requirements be developed by the State Agency to provided for Statewide consistency. The Secretary believes that health systems agencies should have the flexibility to determine their own information requirements and has therefore not adopted this suggestion. However, the Secretary notes that health systems agencies and State Agencies are required under section 1532(a) of the Act (and § 123.409(b) of the regulations) to cooperate in the development of all review procedures.

Section 1532(b)(3) of the Act (§§ 122.308(a)(4) and 123.410(a)(4) of the regulations) requires the health systems agency and State Agency to develop procedures to ensure that requests for information are limited only to that information necessary for the agencies to perform reviews. Several commenters complained that this requirement is too vague. Some suggested that necessary information be limited to information that has a direct bearing on the project under review. The secretary has decided that planning agencies should have the flexibility to develop their own procedures and criteria for determining what information is necessary for particular reviews.

One commenter recommended that the regulations provide that in the case of an application for a medical research project, the State Agency and health systems agency may not require an applicant to submit any information which may disclose proprietary information, trade secrets or patentable inventions. Since the statute gives the State Agency and the health systems agency the discretion to determine the information necessary to perform the review, the Secretary has not included this recommendation in the regulations. Planning agencies may require that the application include information which is pertinent to the review and has been prescribed and published as being required. Potential applicants, knowing that the public will have access to any information provided in applications, and that they need provide only information that is essential to the review, should not submit information which they do not wish to be accessible to the public. If this information is properly required by an agency, however, the applicant should be aware that withholding the information may adversely affect the processing of the application.

§§ 122.308(a)(6) and 123.410(a)(6) Written findings and conditions.

Several commenters recommended that the State Agency not be allowed to make its final decision subject to any condition unless it directly relates to the service being reviewed as well as the criteria established under § 123.412 or the criteria prescribed by regulations by the State Agency. The Department has not adopted this recommendation because section 1527(a)(2) of the statute does not impose the requirement that the condition relate to the service being reviewed.

§§ 122.308(a)(8) and 123.410(a)(8) Public Hearing in the Course of Review.

One commenter recommended that a public hearing be required to be held for each certificate of need application. The Secretary has decided to retain the language of section 1532(b)(8) of the Act, which requires a public hearing "if requested by persons directly affected by the review." The Secretary notes, however, that States are free to exceed Federal requirements, and hold public hearings for all certificate of need applications.

Several commenters suggested that only one public hearing should be conducted by either the State Agency or the health systems agency. The

Secretary notes that the regulations permit the holding of a single public hearing for an application. Section 123.410(c) provides that the State Agency may delegate the hearing responsibility to the appropriate health systems agency.

One commenter stated that the provision that any "affected person" (rather than any "directly affected person") may request a public hearing will lead to longer review periods and greater costs. The Secretary disagrees, as the distinction between affected persons and person directly affected is minor. By adopting the broader term, "affected person", for the purpose of notification of the beginning of a review and for requesting a public hearing in the course of a review, the Secretary has simplified the regulations and made them more consistent.

Several commenters suggested that the regulations provide that if the State Agency has delegated its public hearing responsibility to the health systems agency, it must still hold formal administrative hearings, if requested. The Secretary has determined that this provision is unnecessary, since under § 123.410(c), in the case of such a delegation, the health systems agency is required to follow the procedures for public hearings held by the State Agency.

Several commenters stated that in the case of a State Agency delegating its public hearing responsibility to a health systems agency, the additional procedures that must be followed will be very costly. The Secretary encourages State Agencies to consider whether financial support should be provided to a health systems agency that has been delegated the public hearing responsibility. Further, the Secretary notes that the health systems agency has the right to refuse the delegation of this responsibility if it believes that it will be burdensome for it to perform this function. Also, the Secretary notes that State law may prevent some State Agencies from delegating their hearing responsibilities.

§ 123.410(a)(9) Ex parte contacts.

Several commenters requested that the Department clarify the term "ex parte." A typical definition of ex parte communication, found in the Federal Administrative Procedure Act (5 U.S.C. 551(14)), is "an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports on any matter or proceeding. . . ." States may wish to adopt this definition or a similar one for their certificate of need programs. It is important to note that any communications made after the commencement of the public hearing that are placed in the record of the proceedings are not ex parte and are not prohibited. Also, this provision applies to contacts with the State Agency and not with the health systems agency.

Several commenters requested that the regulations require that there be no ex parte contacts between representatives of the health systems agency and any person in the State Agency who exercises any responsibility respecting an application or its withdrawal after the commencement of a hearing. The Secretary has determined that such a revision is unnecessary, since § 123.410(a)(9) applies to health systems agency representatives when their actions are considered to be on behalf of the applicant or are considered in opposition to the issuance or in favor of the withdrawal of the certificate of need.

One commenter stated that the regulations were not clear in specifying whether the ex parte provision would apply when the health systems agency has been delegated the authority to hold the required public hearings. If the health systems agency has been delegated the public hearing function by the State Agency, the prohibition regarding ex parte contacts with the State Agency applies after the commencement of the hearing by the health systems agency. (See § 123.410(a)(8), (9), and (c).)

§ 123.410(a)(10) Statement of reasons.

One commenter suggested the deletion of the requirement that the State Agency provide a statement of reasons for decisions which are inconsistent with recommendations of the health systems agency. The commenter suggested that the regulations require a statement of reasons only for State Agency decisions which are inconsistent with the health systems plan or annual implementation plan. The Secretary believes that health systems agencies should know why State Agency decisions are inconsistent with their recommendations, and has therefore decided not to adopt this suggestion.

Another commenter recommended that a copy of the statement of reasons be sent to the applicant as well as the health systems agency. The Secretary agrees with this suggestion and has included this requirement in § 123.410(a)(10).

§ 122.308(a)(11) Conflicts of interests.

Several commenters recommended that in the case of a conflict of interest, the person be prohibited from speaking at the public hearing. One commenter suggested that the conflict of interest provision also be extended to a health systems agency member whose immediate family member is employed by the applicant. The Secretary has decided not to accept these changes. The Secretary believes that a board member who has a conflict of interest should be able to speak at a public hearing as long as that person is not entitled to vote on the matter. In addition, the Secretary believes it is the responsibility of each health systems agency to decide the circumstances in which a board member whose immediate family member is employed by the applicant should have his or her participation in the review limited. A health systems agency may adopt a stricter standard if it is not satisfied with the scope of § 122.308(a)(11).

§ 122.308(a)(12) Coordination within an SMSA.

This section, together with § 123.401, has been modified so that the other HSAs in an SMSA are given an opportunity to make recommendations on proposed projects *before* the State Agency makes its decision. The requirement on HSAs to notify other HSAs in the SMSA has been removed from § 122.308(a)(12); the definition of "affected person" in § 123.401 has been changed to include all HSAs in an SMSA. Thus State Agencies will give notification of the beginning of a review to all of these HSAs. Existing procedures in States for HSAs and State Agencies to receive copies of applications can be employed to send copies of applications to those other HSAs in an SMSA which wish to review and make recommendations on the proposed recommendations made by health systems agencies" applies to recommendations made by any HSA, including the other HSAs in an SMSA.

§ 123.410(a)(11) Public hearings for reconsideration of a State Agency decision.

Section 123.410(a)(11) requires the State Agency to offer a public hearing for reconsideration of the State Agency decision if requested by any person who has shown good cause. The Secretary has revised this subparagraph to require that a request for a public hearing will show good cause if it presents significant relevant information not previously considered by the State Agency, which with reasonable

diligence could not have been presented before the State Agency made its decision. The Department made this change because it was unreasonable to burden the State Agency with the requirement to conduct an additional hearing when the information not previously considered should have been presented during the course of the review. The Secretary notes that because this is a minimum requirement, a State program that retains the broader, former requirement will continue to satisfy this provision.

Another commenter suggested that the State Agency provide notification of the public hearing for review of the State Agency decision by publishing a notice in the newspaper. The regulations require that the State Agency provide notification of a reconsideration hearing to the person requesting the hearing, the person proposing the project, the appropriate health systems agency, and others upon request. The Secretary believes that to require the State Agency to publish an additional notice in a newspaper would be unduly burdensome.

The Secretary has added a note after § 123.410(a)(11) to clarify that the regulations do not require that a person must request a reconsideration hearing before obtaining an administrative review (under § 123.410(a)(13)) or a judicial review (under § 123.410(a)(14)). However, State law may require that a person exhaust all administrative remedies before seeking administrative or judicial review. In such a case, interested persons should consult the State Agency to determine if this would apply to the reconsideration hearing.

§ 123.410(a)(12) Maximums on capital expenditures.

Many commenters suggested how States should establish the maximum amount of capital expenditure which may be obligated under a certificate of need. The Secretary believes that each State Agency should establish its own method of determining capital expenditure maximums. Under § 123.409, the State Agency must provide the public the opportunity to comment on its proposed method.

§ 123.410(a)(13) Administrative review.

Some commenters disagreed with the Department's position stated in the Preamble to the Notice of Proposed Rulemaking that the addition of the term "administratively" makes unacceptable the current practice in some States of having courts as the initial appeals body. These commenters interpret section 1532(b)(12)(A) of the Act as only requiring that the review be conducted under an appeals mechanism consistent with the State law governing the practices and procedures of administrative agencies. The Secretary disagrees with this interpretation. Section 1532(b)(12)(D) requires that an "administrative" appeal be provided. Thus, a State that provides only for judicial review does not meet this requirement even though judicial review is the appeals mechanism provided under State law. Moreover, Section 1532(b)(12)(E) requires that there be a separate judicial review.

Another commenter contended that this provision would be satisfied by a State Agency itself offering a rehearing of its decision. The Secretary disagrees with this interpretation, having concluded that the term "appeal" means an independent review of the State Agency's decision. In addition, because section 1532(b)(8) establishes a rehearing requirement, permitting a rehearing to meet the "appeal" requirement would render superfluous the section 1532(b)(8) provision.

One commenter requested that the Secretary clarify the scope of the administrative review requirement to provide that a "de novo" review is not allowed. The scope of administrative review is determined under State law. Therefore, a "de novo" review would be permitted if authorized under State law.

The Secretary proposed that the appeals entity may be either an entity other than the State Agency or, if permitted by State law, a person within the State Agency who did not participate in the certificate of need decision and has the authority to make a final decision on the appeal. A few commenters stated that a component of the State Agency should not be permitted to be the appeals entity. These commenters believed it would be difficult for any entity that is part of the State Agency, even though it did not participate in the certificate of need decision, to avoid pressure from the State Agency staff who took part in the certificate of need review. The Secretary does not accept this suggestion because it is possible for an independent component of the State Agency to conduct the appeal satisfactorily. A State that is concerned with the problem raised by the commenter may use an agency other than the State Agency.

One commenter recommended that the regulations specify that the State Agency may not impose fees upon the affected person requesting the administrative review if a hearing is part of the administrative review. The Secretary has not adopted this recommendation, since States should be allowed the discretion of using their existing procedures for administrative appeal. However, the Department would view as inappropriate for a State to impose a fee so excessive that it has the effect of denying persons the right to appeal a State Agency's decision.

A note has been added to § 123.410(a)(13) to clarify that nothing in the regulations requires that a person must request an administrative review before obtaining judicial review (under § 123.410(a)(14)). However, applicable State law may require that an administrative review be held before judicial review is obtained.

§ 123.410(a)(14) Judicial review.

Several commenters indicated that the definition of persons adversely affected was too broad and should be revised. A few commenters suggested that judicial review be limited to those adversely affected persons who sought administrative review of the State Agency's decision. The Secretary believes that the Department should not place this limitation on the category of persons who may request judicial review. Therefore, the definition of persons adversely affected has not been narrowed in these regulations. The Department has revised the regulations to provide for the term "person adversely affected" to include the State Agency and any person who meets the definition of adversely affected person as defined under § 123.401 or who participated in the proceedings before the State Agency. This definition provides anyone who meets the definition of affected person or who may have requested a public hearing for the purpose of reconsideration of the State Agency decision the opportunity to obtain judicial review. The State Agency was included in the definition to provide the State Agency the option of requesting judicial review when its initial decision has been revised by the entity performing the administrative review.

Several commenters suggested that any person adversely affected by a final decision of a State Agency who plans to obtain a judicial review of the decision be required to seek judicial action within 30 days after completion of an administrative review, except where a different time period is established under State law. The Secretary has decided that the determination of when a judicial review will take place should be made under State law and therefore has not adopted this recommendation. Nevertheless, States are urged to consider the need for resolving appeals expeditiously so that applicants are not faced with inordinate delays on their applications.

§§ 122.308(a)(9) and 123.410(a)(15) Annual reports of the health systems agency and the State Agency.

One commenter suggested that the annual reports should specify the reviews being conducted, completed financial statements which include the dollar amounts of the proposals reviewed, a breakout of the dollar amounts for those projects approved and disapproved, and the percentage of projects which are approved and disapproved. Another commenter suggested that the annual reports include an explanation of the decisions and recommendations made by the agency which consumers and providers could fully understand. The Secretary agrees that such information might be helpful. However, these suggestions have not been adopted because requiring such a detailed report would be unduly burdensome for some agencies. State agencies and health systems agencies may consider including the above information in their annual reports.

§ 123.410(a)(18) Withdrawal of certificate of need.

One commenter recommended the addition of a provision for the expiration of a certificate of need if the project has not commenced within one year of approval or if the project is not completed within one year of the estimated date of completion. Another commenter suggested that in the case of a certificate of need review that takes longer than 90 days, the applicant be allowed to adjust the timetable, in order to reflect delays which result from the delay in the State Agency decision. A few commenters suggested that the State Agency should review on a quarterly basis the progress of the holder of the certificate in meeting the timetable specified in the approved application. Finally, commenters also suggested that the evidence of the progress be submitted by the applicant to the appropriate health systems agency. The Secretary believes States should have discretion in determining how to implement this provision, and has therefore not adopted these recommendations.

§§ 122.308 and 123.411 Exceptions to use of procedures.

Several commenters suggested that the Secretary eliminate this entire section. The Secretary has rejected this suggestion because the Secretary believes that there are circumstances in which these procedural requirements may impose an unnecessary burden. The waiver of these requirements is appropriate when it would not substantially and adversely affect the rights of any person.

Several commenters requested that the Department delete the provision for a general exception to procedures. The Secretary does not agree with this request. The general exception provision has been created to provide agencies an opportunity to use alternate procedures established by the Department. For example, a general exception to established procedures may be necessary if the Department were to establish an expedited review procedure for energy conservation proposals. If the agency elects to avail itself of the general exception procedure, the agency is still required to follow the notice and comment requirements of §§ 122.307(b) and 123.409(c) in order to provide for public comment on its proposal to use the alternate procedure.

Many commenters requested that the requirement that the substitute procedure proposed by the agency be "less costly and more efficient" be reinstated in this section. This requirement was deleted because of the difficulty in determining whether a proposed substitute procedure is actually less costly and more efficient. The Secretary has determined that a request for an exception should only be evaluated on the basis of whether it is consistent with the purposes of the Act and whether it adversely and substantially affects the rights of affected persons.

§§ 122.310 and 123.412 Criteria.

§§ 122.310(a) and 123.412(a) General.

A commenter noted that the limitations placed on the criteria State Agencies may apply (see section 1527(a)(2) of the Act) do not apply to the health systems agencies. The Secretary acknowledges that the statute at section 1527(a) refers only to State Agencies. However, the statute requires that planning agencies use at least the criteria based on the considerations specified in the Act at section 1532(c), and that they apply those criteria developed and published in accordance with regulations of the Secretary (section 1532(a) of the Act). The Secretary emphasizes that health systems agencies and State Agencies should cooperate in the development of criteria, as required by statute at section 1532(a), to the extent appropriate to achieve efficiency in their reviews and consistency in their criteria. To enhance this coordination, the Secretary has required at § 122.310 that any additional criteria developed by the health systems agencies must not be inconsistent with those based on the considerations listed at § 123.412(a) of the amended regulations. The Secretary notes that if a health systems agency makes a review recommendation based on criteria which the State Agency may not use, the State Agency may not be able to follow the health systems agency recommendation.

§§ 122.310(b) and 123.412(b) Use of criteria.

Many commenters disagreed with the provision in the proposed regulations that the criteria adopted for reviews in accordance with the considerations specified by § 123.412(a) may vary according to the purpose for which a particular review is being conducted or the type of service reviewed. In particular, commenters stated that the access considerations listed at (a) (5) and (6) of this section should be applicable to all reviews conducted under the certificate of need program. The Secretary points out that section 1532(a) of the statute allows for criteria to vary depending on the purpose of the review or the type of health service being reviewed. However, the Secretary emphasizes that planning agencies are required to apply all criteria that are appropriate for each review. Moreover, planning agencies are required to consider the access considerations in most cases since the regulations at §§ 122.311 and 123.413 require that the agencies make written findings regarding their access criteria with respect to all applications that they recommend be approved or that they approve (with the specific exceptions made by § 123.413(a)).

A few commenters requested a specific statement informing planning agencies that they should make cost containment activities the foremost consideration when reviewing proposals. The Secretary has not accepted this suggestion since there are other, equally important considerations, for example, need, access, availability and quality.

Comments received on the specific considerations at § 123.412(a) (1) through (21) are discussed below. Technical assistance on the development of criteria based on these general considerations is available to planning agencies from the Centers for Health Planning.

§ 123.412(a)(3) Alternative methods.

One commenter suggested that this consideration should be expanded to include the question of whether the funds proposed to be spent on a given project might be better used for a different project to serve underserved

population groups. The Secretary does not accept this suggestion since the access concerns are sufficiently addressed elsewhere under § 123.412(a) (5) and (6) of these regulations. Another commenter thought that mention of reductions or elimination of services should be stricken from the consideration. The Secretary has not accepted this suggestion because the consideration simply specifies that if the proposal is to reduce or eliminate (or to offer, expand, or relocate) a service, the agencies must consider alternative methods of providing the service. This is simply a consideration for the development of criteria, it does not itself mandate coverage of any proposal.

§§ *123.412(a) (5) and (6) Access.*

Many commenters requested that planning agencies be required (1) to consider the access considerations as listed at § 123.412(a) (5) and (6) for all reviews, and (2) to deny the certificate of need if the finding is negative. The commenters reasoned that these considerations are always appropriate because the idea of community need for a service is valid only if the service will serve all the members of the community. Moreover, they pointed to congressional intent that an important concern in planning for the health of the community is whether all members of the community have access to the health care services they need. On the other hand, other commenters suggested that § 123.412(a)(5)(ii) and (6) be eliminated. Reasons given were that the Department does not have the authority to include these sections, that they overly stress the access concerns relative to the other concerns of the certificate of need review program, that relevant data are either not available or are not allowed by law to be collected, and that the questions posed by the planning agencies might look into areas that are beyond the applicant's control. Finally, other commenters requested that the Secretary place the suggested questions listed in the preamble to the proposed rules directly in the regulations.

The Secretary has determined that authority for establishing the considerations exists under section 1532(a) of the Act and that the limitations on the State Agency's authority is section 1527(a)(2) of the Act are not at issue in this regard. Section 1531(a) requires the planning agencies to apply criteria developed in accordance with the Secretary's regulations. Section 1527(a)(2) permits the State Agency to apply only certain criteria, among which are the "criteria prescribed by section 1532(c)." The access considerations in the regulations are an elaboration on the statutory considerations at section 1532 (c)(3) and (c)(6)(E). Because these considerations are directly related to the "criteria prescribed by section 1532(c)", as provided by section 1527(a)(2), State Agencies may properly apply criteria developed from them in conducting their reviews. The consideration at § 123.412(a)(5) has only added a phrase required by the amended Act at section 1532(c)(6)(E) to the former regulations (42 CFR 123.409(a)(3)). Moreover, the general consideration at § 123.412(a)(6) clarifies the former regulations covering access considerations at § 123.409(a)(13) by adding the specific factors at § 123.412(a)(6) (i) through (iv). These provisions underline the Department's commitment to ensure that the medically underserved will receive equal access to care, that the project will be accessible to the whole community, and that the community needs the proposed project.

By requiring in §§ 122.311 and 123.413 that planning agencies make written findings on these criteria for each proposal that is recommended for approval or approved (excepted projects specifically not included), the Secretary has provided that the access issue will be considered where appropriate. However, the Secretary has decided for two reasons not to require that an application be automatically disapproved when negative findings on the issue of access have been made by the planning agencies. First, the statute does not authorize the Department to require disapprovals based on these considerations. Second, access considerations, although quite important, are but 2 of 21 different factors that the agencies are to consider, as applicable, in performing individual reviews.

The presence of these access considerations in the regulations reflects the Department's concern over equitable access and encourages planning agencies to be responsive to the needs of the medically underserved. These considerations are not to be construed as requiring the planning agencies to act as enforcers of requirements under other Federal programs, e.g., fulfillment of uncompensated service obligations or obligations to provide access for the physically handicapped. Planning agencies should, however, consider the performance of health care institutions under the other Federal programs and use this information along with findings on all other appropriate criteria to determine whether a certificate of need should be issued. The Secretary has not accepted the suggestions either to place in the regulations the questions and specific data examples which appeared in the preamble to the proposed rules or to eliminate them. The planning agencies are to develop specific criteria which are appropriate to their particular areas based on the general considerations found in Federal regulations. However, the Secretary has decided to reemphasize the responsibility of the planning agencies to develop specific criteria and collect the information needed regarding these access considerations. To provide technical assistance, that part of the preamble to the proposed rules which gave specific illustrations on access questions and data is republished below (with minor changes).

The Secretary suggests that, in order to determine whether all members of the community to be served will have equal access to the service or equipment for which certificate of need approval is sought, planning agencies consider the following kinds of questions in reviewing applications: (1) If the facility (or portion thereof) to which a new service is to be added was constructed with "Hill-Burton" funds, has the applicant complied with its community service assurance? (2) Has the facility demonstrated through population-based planning a relationship between the application and need in the community for the service proposed? Would issuance of the certificate increase access for the medically underserved? Could the same expenditure be made for other services or equipment that would better serve the needs of the community? (3) Does the facility participate in Federally funded third-party reimbursement programs such as Medicare and Medicaid? (4) What portion of the poplulation of the facility's service area has received benefits under these programs? (5) Are the proportions of persons served by the facility who are minorities and handicapped in approximate parity with their proportions in the population of the facility's service area?

The Secretary has not specified the types of data the planning agencies must require from applicants. However, planning agencies must have procedures specifying what data the applicant is required to provide (see § 123.410(a)(4) for procedures regarding information which may be required of applicants). These data might include (1) the composition of the population of the applicant's actual or potential service area by race, ethnic origin and handicap; (2) estimates of high risk health indicators in the population of the applicant's service area; (3) current patient utilization data (inpatient,

outpatient, and emergency room) by race, ethnic origin, handicap, Zip code and method of payment; (4) the number and percent of physicians with admitting privileges who admit patients receiving Federal and State assistance for health care; and (5) projected utilization data by race, ethnic origin, and handicap. Additionally, a State Agency might require that the applicant provide an impact analysis statement showing the anticipated effect of the proposed facility, equipment, or service on access to health care for medically underserved persons, indicating how approval of the application will reduce access barriers and the extent to which the approved facility, service, or equipment will be accessible to the medically underserved. State Agencies may wish to identify different or additional data to be required of the applicant.

Several commenters noted that a health care facility is prohibited by law from collecting some of the information that will be needed to answer the considerations under § 123.412(a)(6). The Secretary emphasizes that these regulations do not require the collection of any specific data, so that there is no problem of planning agencies complying with any such prohibitions. Whenever not prohibited by law, planning agencies should request the data required to make their specific findings, to the extent that they are not available from secondary sources.

Another commenter suggested that the criteria based on § 123.412(a)(6) be applied only when the planning agencies have the necessary data. The Secretary thinks it inappropriate to condition the use of criteria, but encourages planning agencies to base their findings on the best information available.

Commenters stated that the statute at section 1527(a)(2) does not allow planning agencies to consider the accessibility of an institution as a whole when an application is only for a specific service, or group of services. The Secretary has concluded that such a consideration is permissible under section 1527(a)(2) of the Act. That section provides that in revising an application for a certificate of need, a State Agency may consider only certain criteria, including those directly related to criteria prescribed by section 1532(c) of the Act and to criteria prescribed by regulations of the Secretary before the date of the enactment of the 1979 Amendments. Consideration of an applicant's policy toward the medically underserved is directly related to section 1532(c)(6)(E) of the Act as well as to regulations published by the Secretary on April 2, 1979 (see §§ 122.308(a)(3) & (13) and 123.409(a)(3) & (13) (44 FR 19319–19326)). The accessibility of the facility as a whole may certainly be relevant to an agency's determination of whether a specific service within the facility is accessible.

Some commenters asked what information a health care institution would be required to provide to show that the facility is accessible. As with all information required on applications, this information requirement is to be developed and published by planning agencies after appropriate public comment.

Several commenters suggested that the regulations specifically address the elderly as a group whose unique needs should be considered in certificate of need reviews. The Secretary agrees and has included "the elderly" in § 123.412(a)(5)(i) and (ii) to ensure that their needs are specifically considered.

A few commenters requested that a provision be inserted in § 123.412(a)(5)(ii) requiring planning agencies to consider the effect of a relocation, reduction or elimination of a service or facility on the employees of the institution. The Secretary has determined that such a provision is not appropriate in these considerations because this factor is not directly related to the considerations listed at section 1532(c) of the Act. However, the Secretary notes that planning agencies may consider this factor in the development of their health systems plans and State health plans. To the extent that this factor is treated within a plan, it may be considered in reviews, because the plans themselves are required to be considered in performing reviews.

Many respondents were concerned that the listing of the considerations in § 123.412(a)(6)(i) through (iv) serves to limit access considerations to these alone. Although the regulations only require the development of criteria based on the considerations listed at § 123.412(a)(6)(i) through (iv), the Secretary urges that planning agencies consider any other barriers to access that exist in their planning areas. As other commenters pointed out, this reflects Congressional intent (see H.R. Rep. No. 190, 96th Cong., 1st Sess., p. 73 (1979)). Accordingly, the Secretary has added an explanatory note listing examples of other types of access barriers which planning agencies may wish to consider.

Several commenters asked how the "applicant's service area" would be defined. This term, mentioned at § 123.412(a)(6)(i), may not be the same as the health service area. The determination of the applicant's service area is for the planning agencies to make, and the Secretary suggests that agencies use the applicant's data as appropriate. Planning agencies should define a service area according to the type of service proposed and the location of the persons who use or are expected to use that service.

A few commenters stated that the percentage of the population in the applicant's service area which is medically underserved might, for reasons unrelated to access barriers, not be the same as the percentage of the medically underserved who use or will use the proposed service (§ 123.412(a)(6)(i)). The Secretary agrees, but notes that the two figures do give some approximation of the extent to which the applicant is meeting and is likely to meet the needs of the medically underserved. Also, the comparison is but one factor to be considered, along with the others in § 123.412(a)(6), in estimating the contribution of the proposed service in meeting the needs of the medically underserved.

Another commenter suggested that the consideration at § 123.412(a)(6)(i) be changed from "the extent to which the medically underserved populations will use the proposed services if approved" to "the extent to which medically underserved populations are expected to use the proposed services if approved." The Secretary has adopted this change, since this factor must necessarily be considered prospectively.

Several commenters replied that by including the parenthetical phrase, "(including unresolved civil rights access complaints against the applicant)" at § 123.412(a)(6)(ii), the Secretary directly involves the planning agencies in proceedings which should be decided by a Federal agency or in a court of law. Moreover, commenters stated that if a planning agency considers the unresolved civil rights access complaints, it would be denying the applicant due process. The Secretary emphasizes that it is necessary for the planning agencies to use all the information available to them with respect to access issues. The existence of a civil rights access complaint may be a relevant factor for the agencies to consider in this regard. Therefore, the Secretary has retained the parenthetical reference. The Department is not suggesting that the planning agencies become enforcers of the civil rights laws or that they should resolve such complaints themselves; rather, the agencies should use this information only to the extent that it is helpful in making their findings regarding access.

Because the use of the word "unresolved" may have been misleading in this regard, the Department has deleted the word.

With regard to § 123.412(a)(6)(iii), several respondents argued that few hospitals have the ability to control the admitting practices of physicians with privileges in their facilities. The Secretary agrees that the purpose of this subsection is not to focus planning efforts on physician practices in the area, but rather to ensure that certificate of need decisions are based upon the degree to which the applicant serves patients with limited or no ability to pay for care. The Secretary has revised the consideration accordingly, adding the term "medically indigent". The Secretary wishes to emphasize the importance of this provision. Although its focus has been changed, the provision has been rewritten to emphasize that hospitals bear an important responsibility to help ensure that needy persons in their service areas have access to health care.

Many commenters questioned the meaning of the provision regarding alternative admissions at § 123.412(a)(6)(iv). The Secretary has revised the wording of this provision in order to clarify its meaning. Under this provision planning agencies should consider the extent to which the applicant's facility is accessible to inpatients as well as to outpatients. In so doing, planning agencies should consider whether patients are admitted only by a personal physician or whether the applicant provides other ways by which a patient in need of inpatient treatment can be admitted (for example, by any physician who is treating patients at one of the hospital's outpatient clinics).

§ 123.412(a)(8) Availability of resources.

Two commenters stated that the consideration at § 123.412(a)(8) would give the planning agencies the authority to tell the applicant how best to use its resources. The Secretary notes that the Act at section 1532(c)(6) (A) and (D) requires planning agencies to consider "* * *the availability of resources* * *" and "* * *the availability of alternative uses of such resources* * *", and that these are not limited to resources under the control of the applicant. They may include, for example, personnel resources which would be employed by the applicant if a project were to be approved, but by another institution if it were not.

One commenter pointed out that there are almost always alternative uses available for a given resource, but that these uses may not be needed more than the proposed use. Section 123.412(a)(8) was intended to encourage agencies to consider whether the resources at issue should more appropriately be devoted to other, more important uses. Accordingly, the Secretary has changed this consideration from "the availability of alternative uses of these resources for the provision of other health services" to "the need for alternative uses of these resources as identified by the applicable health systems plan, annual implementation plan or State health plan."

§ 123.412(a)(10) and (11) Training programs.

The Secretary points out that projects which meet health training needs should not be approved solely on the basis of that factor, but on the application of the other criteria as well. If an area needs a particular health service, it may be appropriate that the service also serve as a medical care, medical education and medical research resource. All services need not support medical education, but enough services should be available for the training of health professionals so that duplicative services are not required to be developed primarily for educational purposes. (See H.R. Rep. No. 190, 96th. cong., 1st. Sess., p. 73 (1979).)

§ 123.412(a)(12) Special needs of providers serving more than one health service areas.

The Secretary received one comment requesting that specific reference be made in regulations to sectarian homes because they frequently serve populations drawn from a wider geographic area than that of the health service area in which they are located. The Secretary notes that congress intended that the consideration at § 123.412(a)(12) be applied to those centers of medical excellence which receive a substantial portion of their patients from beyond health service areas adjacent to the area in which the health care facility is located. (See S. Rep. No. 1285, 93rd Cong., 2nd Sess., p. 48–49 (1974).) This consideration would also apply to any sectarian home which provides health care in a similar manner. The Secretary does not believe it is necessary to list additional examples in the regulations. The criteria developed by the planning agencies should address the effect the specific application will have within the health service area, in adjacent health service areas, and also beyond these borders. The criteria are to be applied with all other applicable criteria developed from the general considerations listed at § 123.412(a).

§ 123.412(a)(13) Special needs and circumstances of HMOs.

Several commenters questioned the specific wording of this provision. The Secretary has not added any additional considerations to those in the regulations of April 2, 1979. (For a detailed explanation see the **Federal Register**, 44 FR 19311–19313.) The purpose of these considerations is to ensure that HMOs are not hampered in seeking to fulfill their obligations to provide needed services to their members, and to prevent the duplication of unneeded facilities and services by HMOs when these are available through coordination or contract with non-HMO providers.

Two commenters requested that the statement at § 123.409(c) of the April 2, 1979, regulations be added to these regulations. This statement allowed a State Agency to base its review of HMOs on criteria which considered factors other than those set forth under regulations at § 123.412(a)(13) if the Secretary approves the request. The Secretary has not accepted this suggestion, since the Act at section 1527(b)(5) states that a certificate of need must be approved if the two criteria (incorporated into the regulations at § 123.412(a)(13)) are met. Thus, no purpose would be served in having the agencies consider additional factors.

§ 123.412(a)(14) Behavioral and biomedical research projects.

The Secretary points out that this consideration would apply to many of those institutions which receive consideration under § 123.412(a)(12) (special needs of entities serving more than one health service area). When planning agencies develop criteria based on this consideration, they should concentrate on whether the costs and charges to patients of the health care facility will be affected by these research activities, the special advantages that are present, and whether a national need will be met. (See also this Appendix at § 123.401, *Definitions* and § 123.404, *Scope of coverage* for further information on certificate of need review of research activities.)

§ 123.412(a)(15) Construction projects.

One commenter suggested that the term "methods" as it appears in this provision be replaced by the term "design", since the former term is not appropriate when considering the entire project. The Secretary has not accepted

this suggestion, since methods of construction includes designs. Furthermore, Congress intended that planning agencies consider the effect of construction projects on the costs and charges to the public of providing health services by other persons. (See S. Rep. No. 309, 96th. Cong., 1st. Sess., p. 79 (1979).)

§ 123.412(a)(16) Energy conservation.

One commenter suggested that this factor be strengthened to require that planning agencies give special consideration to applications which proposed energy conservation measures. The Secretary has not accepted this suggestion. Energy conservation is but one factor in determining whether a particular application should be approved. Planning agencies should consider, in developing their criteria, the National Health Priority at section 1502(a)(11) of the Act, which calls for the promotion of an effective energy conservation and fuel efficiency program for health service institutions.

§ 123.412(a)(17) and (18) Competition.

The Secretary notes that initial guidance on competition will be in the form of a monograph to include the views of various experts in the area of competition. Its purpose will be to provide assistance to planning agencies on how to incorporate factors regarding competition into plan development and project review activities. The Department will develop technical assistance materials relating how agencies have effectively identified and promoted the concept of competition in their plans.

A few commenters suggested that these two general considerations not be used until the Secretary gives further guidance on how planning agencies are to apply the factors alluded to in regulations. The Secretary has no authority to delay the implementation of these provisions. For further guidance the planning agencies may wish to contact the appropriate Center for Health Planning.

Respondents also requested further guidance on the roles of planning agencies in applying these general considerations to particular proposals. The Secretary emphasizes that it is through the development of plans that planning agencies should determine whether a specific health service responds to competitive forces, not through individual determinations as applications are being reviewed. As stated in the proposed rules, the Secretary believes that the effect of competitive forces may vary from location to location and from service to service, and that analyzing these effects may be best accomplished in the planning process at the State or local level. Congress has stated that market forces do not or will not appropriately allocate supply for inpatient health services. (See section 1502(b) of the Act and S. Rep., No. 309, 96 Cong., 1st. Sess., p. 58 (1979).)

One commenter stated that competition is inconsistent with the health planning program's attempts to promote other goals such as cost containment or access to health care. The Secretary disagrees with this assessment and points out that where market forces operate properly, price competition can make a significant contribution to containing costs.

One commenter suggested that § 123.412(a)(17) should specifically recognize psychiatric hospitals as an area in which competitive forces always exist and exempt psychiatric hospitals from the certificate of need review process. The Secretary rejects this suggestion. No institution or set of institutions which are subject to the certificate of need review program can be exempt from the review process. The effect of competition is a factor to be included in arriving at certificate of need decisions, not in exempting certain activities from review.

Some commenters stated that the Secretary should promote consumer awareness of the prices charged for the same type of health care service in a given area. Although this matter is not within the scope of these regulations, the Secretary agrees that planning agencies should play an important role in making the public aware of prices for services in their community. Moreover, the Act requires that health systems agencies, in consultation with the State Agencies, collect information on the rates charged for each of twenty-five most frequently used hospital services in the State and make this information available to the public (section 1513(h)).

§ 123.412(a)(19) Efficiency and appropriateness of existing services and facilities.

Commenters argued that the information required by this consideration is not generally available and in most cases cannot be supplied by the applicant. The Secretary notes that it may not be necessary for the applicant to provide information to planning agencies on whether other providers in the area which offer a service or operate a facility similar to the proposed service or facility do so in an efficient or appropriate manner. Planning agencies have other means to make this determination, such as relying on the results of a suitable, previously performed appropriateness review. Other commenters said that such use of an appropriateness review constitutes the development of an illegal sanction under appropriateness review. The Secretary does not believe that the use in a certificate of need review of a finding from an earlier appropriateness review constitutes a sanction under the latter. Moreover, this consideration by itself is not the sole determinant of a certificate of need review. It is to be applied with all other appropriate criteria.

One commenter suggested that this consideration be deleted because a project should be reviewed on its own merits. The Secretary agrees that the evaluation of a project should include review of a project's own merits. However, determination of the need within the community for the project requires that planning agencies look beyond the application itself to the relationship between the application and the other health care services within a given health service area and that they examine all of these in relation to the need of the population being served.

§ 123.412(a)(20) Quality of care.

Some commenters stated that planning agencies are not qualified to make a determination about the quality of care provided by a specific facility in the past. A planning agency need not become expert in medical care to assess data indicative of quality of care. While some determinations regarding quality of care may be difficult to make, and some data may not be available, there are certain actions agencies may take to assist them in making their determinations. Health systems agencies are required to coordinate their activities, including the sharing of information and data with other agencies, such as the Professional Standards Review Organizations (PSROs) (section 1513(d)(1) of the Act). PSROs routinely obtain and analyze data related to quality of care, then compare it to industry norms and the average values for the health service area.

In like manner, each State Agency can collect information from providers doing business in the State as well as other agencies of the State government. Comparison of data can indicate differences in quality of care in specific institutions as related to average values (section 1522(b)(7) of the Act).

§ 123.412(a)(21) Osteopathic or allopathic facility applications.

Many commenters requested that the explanation which conveyed Congressional intent for this general consideration as it appeared in the annotated statute, published as an Appendix to the **Federal Register** Notice of February 22, 1980 (45 FR 12182–3), be included in either final certificate of need regulations or its preamble. The Secretary has inserted this explanation as an explanatory note following § 123.412(a)(21).

The Secretary has decided not to accept the suggestion that the phrase "notwithstanding section 1532(c) (of the Act)" be inserted at the beginning of this consideration, although this phrase appears in section 1527(f) of the Act. This phrase could be interpreted as prohibiting planning agencies from applying the criteria they have developed to determine need. Congress did not intend to exempt all osteopathic and allopathic facilities from the general considerations at section 1532(c) of the Act. To avoid this absurd result, the Department has properly characterized this as one of the considerations on which agencies are to base their criteria.

One commenter requested that the Secretary require planning agencies to consider the need for allopathic and osteopathic facilities separately. The Secretary has rejected this suggestion. Congress did not intend by placing this section in the statute to require that the planning agencies look at each of these types of medical care as separate systems. Rather, it sought to ensure that the planning program not discriminate against osteopathic facilities and practitioners, and did so by requiring that planning agencies, where appropriate, consider the need for and availability of osteopathic facilities and services. (See H.R. Rep. No. 190, 96th Cong., 1st. Sess., p. 82 (1979).)

§§ 122.311 and 123.413 Required findings on access.

Some commenters praised, while others criticized, the proposal that planning agencies be required, for certain approved applications, to make written findings on access. Some suggested that the Secretary extend the requirement to all applications, not only those that are approved. These commenters also urged that in every case the written findings take into account the current accessibility of the facility as a whole and that the three exceptions to the requirement for written findings be eliminated.

Others questioned the authority for requiring written findings on access in any case and expressed concern over placing the planning agencies in the role of civil rights compliance bodies. These commenters said that the written findings required under §§ 122.311 and 123.413 duplicated the findings required under § 123.410(a)(6) and that the emphasis that the findings place on access will reduce the importance of the other criteria. Other commenters, however, stated that the regulations should require disapproval of any applications which do not meet the access criteria, or require that affirmative action steps be imposed in these instances.

After careful consideration of the comments, the Secretary has deleted the term "where appropriate" from the requirement that the State Agency's written findings must take into account the current accessibility of the facility as a whole. Thus, a State Agency must take into account the accessibility of the facility as a whole for each project as to which it is required to make a written finding under § 123.413(a). There are several reasons for this change. The Secretary notes that the exception to the requirement for written access findings at § 123.413(a)(2) for projects not directly related to the provision of health services or to beds or major medical equipment means that a State Agency would only have to consider the "accessibility of the facility as a whole" when the project bears a direct relation to the delivery of health care. In those cases the accessibility of the facility as a whole bears, on the accessibility of the proposal under review. When access findings are required, the relevance of the access to the facility as a whole may vary from proposal to proposal. The planning agencies are required to take into account the accessibility of the facility as a whole to the extent that the accessibility of the facility as a whole bears on the accessibility of the particular project under review.

The Secretary does not agree with those commenters who contended that access findings on the facility as a whole would be inappropriate and should be prohibited. Rather, these findings are expected to be informative to the community using the services as well as to the applicant, and planning agencies are encouraged to make them whenever appropriate.

The Secretary has decided not to delete the exceptions under § 123.413(a). These involve projects for which approvals are required under § 123.407(a), projects not directly related to the provision of health services, beds or major medical equipment, and projects proposed by or on behalf of an HMO or a health care facility which is controlled, directly or indirectly, by an HMO. The statute (at section 1527 (b)(5)) specifically limits the criteria which may be applied to HMO applications. These considerations for criteria, set forth in § 123.412(a)(13) (i) and (ii), do not include the access considerations. Accordingly, since access criteria may not be applied to HMO applications, there is no basis for requiring written findings. Additionally, those projects which do not affect patient care, or are to resolve life safety code violations, are not directly related to access. Therefore, for these projects, the provision for written findings at § 123.410(a)(6) is sufficient.

Many commenters stated that the requirement for written findings would be burdensome or would duplicate the requirement at § 123.410(a)(6). The new provision at § 123.413 is not expected to duplicate other requirements in the statute and regulations. Rather, the written access findings are expected to be an important element of the general findings required at § 123.410(a)(6). The Secretary disagrees that any requirement for written findings would be burdensome. Written findings which are based on the criteria are an essential part of the planning process, rather than a burdensome diversion.

The Secretary is not requiring that written findings be provided for those projects which are disapproved. Section 123.410(a)(6) requires written findings on every agency decision or recommendation and where the access criteria are an important consideration in the disapproval, these findings would be required to state the extent to which the access criteria are not met.

The Secretary notes the Congress' desire not to establish the planning agencies in the role of civil rights enforcement bodies (see H.R. Rep. No. 190, 96th Cong., 1st Sess., p. 73 (1979)). These regulations do emphasize the role of the planning agencies in ensuring equal access by requiring that there are specific written findings whenever appropriate. However, the regulations do not require that the planning agencies disapprove or recommend disapproval of any application which does not meet the access criteria. The access criteria are important, but the Secretary reaffirms the Department's position that decisions are to be based on the application of all relevant criteria. In summary, the Secretary believes that these required findings are consistent with the Department's and Congress' concern with access. The regulations stress the importance of access but do not diminish the planning

agencies' responsibility for considering a variety of factors in arriving at a decision.

While these regulations do not require State Agencies to impose conditions on certificates of need, the Secretary believes that the imposition of conditions on certificates of need can provide an important opportunity for planning agencies to improve accessibility for medically underserved populations and thereby further the national priority stated at section 1502(a)(1) of the Act. Approvals subject to such conditions permit completion of needed projects, while ensuring that these projects, if undertaken, will be accessible to underserved groups.

The Secretary notes that planning agencies, as recipients of Federal financial assistance, are subject to Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975. The Department has issued regulations and guidelines which provide guidance to recipients of Federal financial assistance in complying with these laws. The Department is reviewing the relationship between these statutes and regulations and the responsibilities of planning agencies with regard to project approvals. Further guidance will be issued concerning the obligations of planning agencies under these civil rights laws.

The Secretary is retaining in the regulations the provision allowing agencies to impose the condition that the applicant take affirmative steps to meet those criteria. This provision gives planning agencies no more authority than they have under the Act. In fact, if State law prohibits attaching any condition to a certificate of need, then the agencies will not be able to impose any condition. Accordingly, affirmative action plans are discretionary, and States may use them when their use serves the needs of the community best.

The regulations do not specify in any further detail the form of an affirmative action plan. If the planning agencies elect to prepare an affirmative action plan or have the applicant do so, the Secretary believes that the nature of the plan is best left to the agencies themselves, within the broad guidance that the plan be a schedule of the steps the applicant is to take to meet the access criteria.

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Part IV

Office of Personnel Management

Executive Personnel Financial Disclosure Requirements; Employees Responsibilities and Conduct; Final Rule

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 734 and 735

Executive Personnel Financial Disclosure Requirements; Employees Responsibilities and Conduct

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: Section 203(g) of the Ethics in Government Act of 1978, as amended (the "Act"), directs the Office of Government Ethics ("OGE") to develop and make available financial disclosure forms for reporting the information required of top-ranking personnel in the executive branch under Title II of the Act. The Office of Personnel Management is publishing final regulations establishing procedures for the filing, review and public availability of the reports filed by such officers and employees.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Norman B. Smith or Jane S. Ley at (202) 632–7642.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management ("OPM") is publishing final regulations to state in greater detail than the Act the information which must be contained in the financial disclosure report (SF 278). Typical situations are described by examples, where appropriate and practicable. The regulations cover, among other subjects, the persons required to file reports; the availability of the reports to the public; potential civil liability in the event the reports are used commercially, or for establishing credit rating or, directly or indirectly, in the solicitation of money for any political, charitable or other purpose; the requirements for qualifying a "blind" trust under the Act; limited waiver procedures; and remedial action which can be taken by agencies where the financial reports disclose conflicts of interest, actual or apparent. Proposed regulations were published in the **Federal Register** on March 25, 1980 (45 FR 19502–19518). Editorial revisions and other changes have been made in order to simplify and clarify the regulations.

Comments Received:

The notice of proposed rulemaking provided a 60-day period for public comment. OPM received comments from 27 agencies, law firms, and other organizations including labor organizations and public interest groups.

Several comments questioned various aspects of the statutory requirements of Title II of the Act. However, these regulations merely implement the financial disclosure scheme of the Act and cannot alter its fundamental principles.

Most of the comments offered specific recommendations for clarifying or modifying specific provisions of the regulations as proposed. These recommendations were analyzed for compatibility with several goals for the final regulations including: the fulfillment of the legislative intent embodied in Title II; the development of an administrative system for disclosure report preparation, processing, and review which is efficient and effective; the ability to retain and recruit Federal executives who are both capable and forthright; and the furtherance of an awareness of conflict of interest and other standards of conduct issues among members of the Executive branch.

Among the significant comments and revisions, the following may be noted:

In § 734.105(h) the definition of income has been clarified. The net distributive share of partnership income must be reported.

Regarding exceptions from the general requirement that advice-and-consent nominees file public financial disclosure reports, the exception for foreign service officers, § 734.201(c)(3), has been expanded to include foreign service officers outside of the State Department. This is appropriate in view of the manner in which their appointments are processed.

The procedural rules on the exclusion of certain Schedule C employees from public financial disclosure requirements has been clarified. Section 734.203(c)(1) requires the requesting agency to make an annual filing.

A new *Example (3)* has been added to § 734.301(a) (on reporting of income) to demonstrate that income in-kind and certain discounts are required to be treated as reportable income.

There were several inquiries on the treatment under § 734.301(b) (on reporting of purchases, sales and exchanges) of transactions essentially treated by individuals as equivalent to withdrawals and deposits in "personal savings accounts." The regulations have been amplified to provide that these transactions with respect to Treasury bills, money market mutual funds, and certificates of deposit issued by banking institutions are not deemed purchases, sales, or exchanges.

Example (1) of § 734.301(d) (on gifts and reimbursements) has been revised to correct certain technical deficiencies.

Several comments focused on the rules contained in § 734.301(d) (on reporting interests in property). Proposed examples in that provision were questioned on the grounds that it did not seem appropriate to require an entire collection of rare objects to be publicly disclosed on the basis of recurrent sales from that collection. However, section 202(a)(3) of the Act requires reporting of interests "in a trade or business, or for investment or the production of income." The test is not that there be primarily a commercial purpose for disclosure to be required, but that there is a nexus with the market. The fact that recurrent sales have occurred demonstrates that pecuniary factors are an aspect of the holdings to the individual. The sales trigger of the rule as demonstrated in revised *Example (3)* would not be activated by a collector who makes tax-free exchanges for like-kind objects, as such transactions are not considered sales.

Section 734.301(e)(1) (on reporting of liabilities) was modified to clarify that the greatest amount owed to a creditor during a reporting period is to be disclosed.

Pursuant to section 207(b) of the Act, a rule has been adopted in § 734.303(b)(3)(ii) to make the reporting of gifts received by dependent children co-extensive with the reporting otherwise required for gifts received by spouses.

In response to several comments, §§ 734.403(b)(6) and 734.404(c)(6) (on communications between interested parties and trustees) have been revised to conform to the formulation of section 202(f)(3)(c)(vi) of the Act. Accordingly, requests for distributions may be made orally. However, the interested parties may not specify whether any such distribution shall be made in cash or in kind.

The question of what should constitute a well-diversified portfolio of readily marketable securities for qualified diversified trusts was raised in connection with the formulation which appears in § 734.404(b). OPM feels that the current definition best reflects the Congressional intent and the portfolio distributions of typical appointees.

The general rules for qualified trusts have been clarified to specifically provide that the terms of such a trust are normally irrevocable. The terms may not be amended, except with prior written approval (§ 734.405(a)). A further revision clarifies that a trustee may not acquire any property from an interested party without the prior written approval of the Director of The Office of Govenment Ethics (§ 734.405(d)(2)). Accordingly, in addition to approval of a qualified trust's initial portfolio, the Director must give prior approval of any

subsequent additions to the portfolio by interested parties.

In § 734.406(b), the list of persons eligible to be the independent trustee of a qualified trust has been expanded to include an investment adviser who demonstrates to the satisfaction of the Director of the Office of Government Ethics general involvement in his or her role as such an adviser in the management or control of trusts.

The effective date rule for the qualified trust provisions (§ 734.408), was modified to provide that although such provisions would generally apply to trusts qualified after October 26, 1978, these trusts could be exempted by the Director of the Office of Government Ethics from specific provisions to avoid impracticality or undue hardship.

The rules on the limitations on outside earned income of advice-and-consent appointees have been revised by amending the definition in § 734.501(b). The modifications include specific exemption of amounts received during a period when not employed by the Federal government. This resolves computation difficulties arising when there have been periods of both private and Federal employment during a calendar year.

Several comments raised objections about the requirement that law enforcement agents and other officials must file a publicly available application in order to inspect a financial disclosure report (see *Example (2)* of § 734.603(e)). However, the only exception to this requirement which was adopted relates to Special Agents of the Federal Bureau of Investigation who are conducting a criminal inquiry into possible conflict of interest violations (see § 734.603(c)).

In response to several comments on the expedited procedure for review of the public financial disclosure reports of advice-and-consent Presidential appointees (§ 734.604(c)), a new rule was added to paragraph (c)(4), regarding failure to complete the required processing within the established time limits. The rule allows the Director of the Office of Government Ethics to modify the procedure in the case of a particular department or agency upon a determination that the modification is necessary and appropriate for a class of nominees.

It should be noted that guidance as to the requirements for financial disclosure report preparation by reporting individuals is contained in the instructions which accompany the report form (SF 278).

The Office of Personnel Management has determined that this is a significant regulation for the purposes of Executive Order 12044.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

Accordingly, the Office of Personnel Management is amending Title 5, Code of Federal Regulations, as follows:

(1) A new Part 734 is added, to read as follows:

PART 734—EXECUTIVE PERSONNEL FINANCIAL DISCLOSURE REQUIREMENTS

Subpart A—General Provisions

Sec.

734.101 Authority.
734.102 Purpose.
734.103 Agency regulations.
734.104 Policies.
734.105 Definitions.

Subpart B—Persons Required To File

734.201 General requirements for filing.
734.202 Reporting individual; defined.
734.203 Certain individuals excluded from reporting requirements.
734.204 Employment of sixty days or less.
734.205 Special waiver of reporting requirements.

Subpart C—Contents of Reports

734.301 Reports of incumbents.
734.302 Reports of other reporting individuals.
734.303 Special rules.
734.304 Property categories.

Subpart D—Trusts

734.401 Qualified trusts, general considerations.
734.402 Special rules in the case of certain trusts.
734.403 Qualified blind trusts.
734.404 Qualified diversified trusts.
734.405 Certification of trusts proposed for qualification; other matters.
734.406 Independent trustee; defined.
734.407 Special filing requirements in the case of qualified trusts.
734.408 Effective date.

Subpart E—Special Provisions

734.501 Outside earned income.
734.502 Waivers.

Subpart F—Procedure

734.601 Report forms.
734.602 Filing of reports.
734.603 Custody of and public access to reports.
734.604 Review of reports.
734.605 Advice and opinions.

Subpart G—Penalties and Remedial Action

734.701 Failure to file or falsifying reports.
734.702 Certain actions in the case of qualified trusts.
734.703 Misuse of reports.
Appendix A—Certificate of Independence.
Appendix B—Certificate of Compliance.

Authority: Titles II and IV of Pub. L. 95–521 (October 26, 1978), as amended by Pub. L. 96–19 (June 13, 1979).

Subpart A—General Provisions

§ 734.101 Authority.

The regulations in this part are issued pursuant to the authority of Titles II and IV of the Ethics in Government Act of 1978, ("the Act") (Pub. L. 95–521, as amended).

§ 734.102 Purpose.

These regulations supplement and implement Title II of the Act, set forth more specifically certain procedures provided in that title and furnish examples, where appropriate.

§ 734.103 Agency regulations.

Each agency may, subject to the prior approval of the Office of Government Ethics, issue regulations implementing this part. These regulations—

(a) Shall be consistent with the Act and with this part, and

(b) Shall impose no additional reporting requirements on individuals subject to the Act, except as may be specifically authorized by statute or by approval of the Office of Government Ethics. Requests for this approval shall be submitted in writing to the Office, setting forth the need for any additional reporting requirements by the agency involved.

§ 734.104 Policies.

(a)(1) Title II of the Ethics in Government Act of 1978 requires high-level Federal executives to disclose their personal financial interests and thereby demonstrate that they are able to carry out their duties without compromising the public trust. Public confidence in Government goes hand in hand with an open Government. Title II extends the cleansing principle of "Sunshine" to consideration of conflicts of interest.

(2) Title II, as amplified and implemented by these regulations of this Part 734, will serve to deter conflicts of interest and to identify potential conflicts of interest in the case of newcomers to Government service by providing for a systematic review of the financial holdings of both current and prospective officers and employees.

(3) Statements of income, assets and liabilities must be reported by the President and Vice President of the United States, presidential appointees, those in the Senior Executive Service, those in confidential or policymaking positions (Schedule C), and civil service employees in grades GS–16 and above (and the equivalent), including comparable officers in the uniformed and foreign services. These reports are available to the public. If anyone uses them for commercial or credit rating reasons or in connection with the

solicitation of money for any political, charitable or similar purpose, the Attorney General may institute a civil action against such a person which may result in a penalty not to exceed $5,000.

(4) The reports are not net worth statements. Only assets held as investments and certain other items must be recorded—not items for personal use, such as a residence or jewelry not held for sale. In most instances, specific values are not called for but rather items may be reported by six categories of value ranging from "$1,001 to $5,000" to "greater than $250,000" as the highest category.

(5) The reports do not cover certain contributions under the Federal Election Campaign Act or certain gifts under the Foreign Gifts Act; see § 734.301(c).

(6) Nothing in the Act or this part requiring reporting of information or the filing of any report shall be deemed to authorize the receipt of income, gifts, or reimbursements, the holding of assets, liabilities, or positions, or involvement in transactions that are prohibited by law, Executive order or regulation.

(7) Personnel below the grade of GS–16 continue to remain subject to the financial reporting requirements contained in the Office of Personnel Management's regulations contained in Part 735 of this title. These statements, however, are confidential and are not available for public inspection.

(b) The provisions of Title II of the Act and this part requiring the reporting of information shall supersede any general requirement relating to individuals specified by § 734.202, under any other provision of law or regulation on the reporting of information required for purposes of preventing conflicts of interest or apparent conflicts of interest. Such provisions of Title II and this part shall not supersede the requirements of 5 U.S.C. 7342 (relating to the Foreign Gifts Act).

§ 734.105 Definitions.

For purposes of this part:

(a) *Act.* The term "Act" means the Ethics in Government Act of 1978 (Pub. L. 95–521, as amended).

(b) *Agency.* The term "agency" means any executive department, military department, Government corporation or independent establishment or agency.

(c) *Dependent child.* The term "dependent child" means, when used with respect to any reporting individual, a son, daughter, stepson, or stepdaughter who—

(1) Is unmarried and under age 21 and is living in the household of the reporting individual, or

(2) Is a dependent of the reporting individual within the meaning of section 152 of the Internal Revenue Code of 1954.

(d) *Designated agency ethics official.* The term "designated agency ethics official" means an officer or employee who is designated by the head of the agency to administer the provisions of Title II of the Act and this part within an agency, or the delegate of such an official.

(e) *Executive branch.* The term "executive branch" includes each executive department, military department, Government corporation and independent establishment and any other entity or administrative unit in the executive branch unless such agency, entity or unit is specifically included in the coverage of Title I (relating to the legislative branch) or Title III (relating to the judicial branch) of the Act.

(f) *Gift.* The term "gift" means a payment, advance, forbearance, rendering, or deposit of money, or anything of value, unless consideration of equal or greater value is received by the donor, but does not include—

(1) Bequests and other forms of inheritance,

(2) Suitable mementos of a function honoring the reporting individual,

(3) Food, lodging, transportation, and entertainment provided by a foreign government within a foreign country or by the United States Government,

(4) Food and beverages consumed at banquets, receptions, or similar events, or

(5) Communications to the offices of a reporting individual including subscriptions to newspapers and periodicals.

(g) *Honoraria.* The term "honoraria" has the meaning given such term for purposes of the Federal Election Campaign Act of 1971. An honorarium is defined in the regulations of the Federal Election Commission as a payment of money or anything of value received by an officer or employee of the Federal Government, if it is accepted as consideration or an appearance, speech, or article. The term does not include payment for or provision of actual travel and subsistence, including transportation, accommodations, and meals of an officer or employee and spouse or an aide, and does not include amounts paid or incurred for any agent's fees or commissions. See also the definitions of "Gift" in paragraph (f) and "Reimbursement" in paragraph (k) of this section.

(h) *Income.* The term "income" means all income from whatever source derived, including but not limited to the following items: Compensation for services, including fees, commissions, and similar items; gross income derived from business and net income if the individual elects to include it; gains derived from dealings in property including capital gains; interest; rents; royalties; dividends; annuities; income from life insurance and endowment contracts; pensions; income from discharge of indebtedness; net distributive share of partnership income; and income from an interest in an estate or trust. The term includes items, whether or not taxable for Federal income tax purposes, such as interest on municipal bonds. Generally, income means "gross income" as determined in conformity with the principles of 26 CFR 1.61–1 through 1.61–15.

(i) *Personal hospitality of any individual.* The term "personal hospitality of any individual" means hospitality extended for a nonbusiness purpose by an individual, not a corporation or organization, at the personal residence of that individual or the family of such individual or on property or facilities owned by that individual or the family of such individual.

(j) *Personal Residence.* The term "personal residence" means any real property used exclusively as a private dwelling by the reporting individual or his or her spouse, which is not rented for any period during a calendar year. There may be more than one personal residence, and the term may include a vacation home. The term is not limited to domicile.

(k) *Reimbursement.* The term "reimbursement" means any payment or other thing of value received by the reporting individual, other than gifts, to cover travel-related expenses of such individual other than those which are—

(1) Provided by the United States Government,

(2) Required to be reported by the reporting individual under 5 U.S.C. 7342 (relating to the Foreign Gifts Act), or

(3) Required to be reported under section 304 of the Federal Election Campaign Act of 1971 (2 U.S.C. 434) (relating to reports of campaign contributions).

(l) *Relative.* The term "relative" means an individual who is related to the reporting individual, as father, mother, son, daughter, brother, sister, uncle, aunt, great aunt, great uncle, first cousin, nephew, niece, husband, wife, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, halfbrother, halfsister, or who is the grandfather or grandmother of the spouse of the reporting individual, and shall be

deemed to include the fiance or fiancee of the reporting individual.

(m) *Reporting individual.* For the definition of "reporting individual", see § 734.202.

(n) *Reviewing official.* The term "reviewing official" means the designated agency ethics official, the Secretary concerned, the head of the agency, or the Director, Office of Government Ethics, as the case may be.

(o) *Secretary concerned.* The term "Secretary concerned" has the meaning set forth in 10 U.S.C. 101(8) (relating to the Secretaries of the Army, Navy and Air Force, and certain other Secretaries), and, in addition, means—

(1) The Secretary of Commerce, in matters concerning the National Oceanic and Atmospheric Administration, and

(2) The Secretary of Health and Human Services, with respect to matters concerning the Public Health Service.

(p) *Value.* The term "value" means a good faith estimate of the dollar value if the exact value is neither known nor easily obtainable by the reporting individual. In the case of any interest in property, such estimation shall be made in accordance with the principles of § 734.303(a).

Subpart B—Persons Required To File

§ 734.201 General requirements for filing.

(a) *Incumbents.* A reporting individual who, during any calendar year, performs the duties of his or her position or office for a period in excess of 60 days shall file a report containing the information prescribed in Subpart C of this part on or before May 15 of the succeeding year.

(b) *New entrants.* Within 30 days of assuming a position or office described in § 734.202, a reporting individual shall file a report containing the information prescribed in subpart C of this part, unless such individual—

(1) Has left another position referred to in § 734.202 (with respect to which a report under this section has previously been filed) within the 30 days prior to his assumption of such new position, or

(2) Has already filed such a report—

(i) As a nominee for the new position, or

(ii) As a candidate for the position.

Example (1). *Y*, a GS–16 employee of the Treasury Department (who has previously filed reports in accordance with the rules of this section) terminates employment with that Department on January 12, 1980, and begins employment with the Commerce Department on February 10, 1980, in a Senior Executive Service position. *Y* is not a new entrant since she has assumed a position described in § 734.202 within thirty days of leaving another position so described. Accordingly, she need not file a new report with the Commerce Department.

Note.—While *Y* did not have to file a new report with the Commerce Department, that Department should request a copy of the report she had filed with the Treasury Department so that Commerce could determine whether or not there would be any conflicts or potential conflicts in connection with *Y's* new employment.

Example (2): If in *Example (1)*, *Y*, had left a position with the Legislative branch in which she had been compensated at a rate equal to or in excess of GS–16, *Y* would, nevertheless, be a new entrant as her former position would not have been one described in § 734.202. *Y* would have to file a report with the Commerce Department.

(c) *Nominees.* Within five days of the transmittal by the President to the Senate of the nomination of an individual to a position, appointment to which requires the advice and consent of the Senate, the individual shall file a report containing the information prescribed in Subpart C of this part. This requirement shall not apply to any individual who is nominated to a position as:

(1) A judicial officer or employee covered by section 301(b) of the Act,

(2) An officer of the uniformed services, or

(3) A foreign service officer in the State Department (or other department or agency).

See § 734.604(c), relating to expedited procedure in the case of individuals described in the first sentence of this paragraph (c); however, those individuals referred to in paragraph (c)(2) or (c)(3) of this section, shall file their reports in accordance with paragraph (b) of this section.

(d) *Candidates.* (1) Within 30 days of becoming a candidate in a calendar year for nomination or election to the office of President or Vice President, as determined by the Federal Election Commission, or

(2) On or before May 15 of that calendar year,

whichever is later, and on or before May 15 of each successive year an individual continues to be a candidate, he or she, except for an incumbent President or Vice President, shall file a report containing the information prescribed in Subpart C of this part. Notwithstanding this requirement in any calendar year in which an individual continues to be a candidate for any office but all elections for such office relating to such candidacy were held in prior calendar years, the individual need not file a report unless he or she becomes a candidate for another vacancy in that office or another office during that year.

Example (1): The Federal Election Commission determined that *P* became a candidate for President in January of 1979. *P* will be required to file a financial disclosure report on or before May 15, 1979. If *P* had become a candidate on June 1, 1979, she would be required to file a disclosure within 30 days of that date.

Example (2): If *P* withdraws from the race in March of 1980, she will not be required to file an annual disclosure report by May 15, 1980, as she has not continued to be a candidate until that date.

(e) *Termination of employment.* On or before that thirtieth day after termination of employment from a position or office described in § 734.202, a reporting individual shall file a report containing the information prescribed in Subpart C of this part for the period from the end of the calendar year with respect to which a report was last filed pursuant to paragraph (a) of this section to the date on which the individual left such office or position. Notwithstanding the preceding sentence, in a case in which the individual assumes employment in another position or office described in § 734.202 within 30 days of such termination, no report shall be required by the provisions of this paragraph. See *Example (1)* in paragraph (b) of this section.

(f) *Extensions.* The reviewing official may, for good cause shown, grant to any employee or class of employees an extension of up to 45 days. The Director, Office of Government Ethics, for good cause shown, may grant an additional extension of up to 45 days. The employee shall set forth specific reasons for an additional extension which shall be forwarded to the Director, through the reviewing official, who shall also submit his or her comments on the request.

§ 734.202 Reporting individual; defined.

For purposes of this part the term "reporting individual" includes—

(a) The President;

(b) The Vice President;

(c) Each officer or employee in the executive branch, including a special Government employee as defined in 18 U.S.C. 202, whose position is classified at GS–16 or above of the General Schedule prescribed by 5 U.S.C. 5332, or the rate of basic pay for which is fixed, other than under the General Schedule, at a rate equal to or greater than the minimum rate of basic pay fixed for GS–16; each member of a uniformed service whose pay grade is at or in excess of O–7 under 37 U.S.C. 201; and each officer or employee in any other position determined by the Director of the Office of Government Ethics to be of equal classification;

Example (1): Foreign service officers in the State Department rated as FSO 1 or 2 must file a report since they have a rate of basic pay equal to or greater than the basic rate of pay fixed for GS–16.

(d) Each employee who is an administrative law judge appointed pursuant to 5 U.S.C. 3105;

(e) Any employee not described in paragraph (c) of this section who is in a position in the executive branch which is excepted from the competitive service by reason of being of a confidential or policymaking character;

(f) The Postmaster General, the Deputy Postmaster General, each Governor of the Board of Governors of the United States Postal Service and each officer or employee of the United States Postal Service or Postal Rate Commission whose basic rate of pay is equal to or greater than the minimum rate of basic pay fixed for GS–16; and

(g) The Director of the Office of Government Ethics and each designated agency official.

Notwithstanding the provisions of paragraph (e) of this section, any employee excluded from the reporting requirements of this part by virtue of a determination under § 734.203 shall not be deemed to be a reporting individual. For purposes of § 734.201(e), status as a reporting individual shall continue for a period of 30 days after termination of employment from a position or office to which this section applies.

§ 734.203 Certain individuals excluded from reporting requirements.

(a) *In general.* Any individual or group of individuals described in § 734.202(e) (on positions of a confidential or policymaking character) may be excluded from the reporting requirements of this part in cases in which the Director, Office of Government Ethics, determines, in his or her sole discretion, that such exclusion would not affect adversely the integrity of the Government or the public's confidence in the integrity of the Government.

(b) *Exclusion determinations.* The determination described in paragraph (a) of this section has been made for the following individuals and groups of individuals and, therefore, they may be excluded from the reporting requirements of this part pursuant to the provisions of paragraph (c) of this section:

(1) Individuals in any position classified below GS–16, or the rate of basic pay for which is less than the minimum rate of basic pay fixed for GS–16, who have no role in advising or making policy determinations with respect to agency programs or policies. For example, such individuals may include chauffeurs, private secretaries, stenographers and those who hold positions of similar nature where consistent with the basic criterion set forth in the preceding sentence.

(c) *Procedure.* (1) The exclusion of any individual from reporting requirements pursuant to this section will be effective as of the time the employing agency or other governmental entity files with the Office of Government Ethics a list and description of each position for which exclusion is sought, as well as the identity of its current occupant. Such a list showing any additions or deletions or a statement that there have been no changes must be filed annually with the Office of Government Ethics on or before May 15.

(2) In the event that the Office of Government Ethics finds that one or more positions has been improperly excluded, it will advise the agency or other governmental entity and set a date for the filing of the report.

§ 734.204 Employment of sixty days or less.

(a) *In general.* Any reporting individual who—

(1) As determined by the designated agency ethics official or Secretary concerned, in a case to which the provisions of § 734.201(b) or (e) would otherwise apply, or

(2) As determined by the Director, Office of Government Ethics, in a case to which the provisions of § 734.201(c) (on nominees) would otherwise apply, is not reasonably expected to perform the duties of his or her office or position for more than 60 days in a calendar year, shall not be subject to the reporting requirements of § 734.201(b), (c), or (e), respectively.

(b) *Exception.* Notwithstanding the provisions of paragraph (a) of this section, if the reporting individual performs the duties of his or her office or position for more than 60 days in a calendar year, the report otherwise required by—

(1) Section 734.201(b) or (c) shall be filed within 15 calendar days after the sixty-first day of that performance unless the individual has filed a request for a waiver under § 734.205(b), and

(2) Section 734.201(e) (on termination reports) shall be filed as provided in that paragraph.

§ 734.205 Special waiver of reporting requirements.

(a) *General rule.* In unusual circumstances, the Director, Office of Government Ethics, may grant a request for a waiver of any reporting requirement otherwise applicable under this part for an individual who is reasonably expected to perform, or has performed, the duties of his or her office or position for fewer than 130 days in a calendar year, but only if the Director determines that—

(1) The individual is a special Government employee (as defined in 18 U.S.C. § 202) who performs temporary duties either on a full-time or intermittent basis,

(2) The individual is able to provide services specially needed by the Government,

(3) It is unlikely that the individual's outside employment or financial interests will create a conflict of interest, and

(4) Public financial disclosure by the individual is not necessary in the circumstances.

(b) *Procedure.* (1) The individual must file a request for a waiver with the Office of Government Ethics within 10 days after—

(i) The individual knows that he or she will serve more than 60 days in any calendar year, or

(ii) The expiration of the 60 days, whichever is earlier. The request shall state the reasons the individual believes the conditions of paragraph (a)(1) through (4) of this section are met in the particular case, and the request shall be filed with the report otherwise required by this part. The report shall bear the legend at the top of page 1:

"CONFIDENTIAL: WAIVER REQUEST PENDING PURSUANT TO 5 CFR § 734.205."

(2) The Office of Government Ethics shall seek advice from the agency in which the individual serves as to its views on the justification for the waiver.

(3) In the event the waiver is granted, the report shall not be subject to the public disclosure requirements of § 734.602; however, the waiver request and grant of waiver shall be subject to those requirements. In the event that the waiver is not granted, all such legends shall be removed and the report shall be subject to the public disclosure requirements; however, the waiver request shall not be subject to those requirements.

Subpart C—Contents of Reports

§ 734.301 Reports of incumbents.

Each report filed pursuant to § 734.201(a) shall include a full and complete statement, on the form prescribed by the Office of Government Ethics and in accordance with instructions issued by the Office, on the following:

(a) *Income.*—(1) *In general.* The source and amount or value of—

(i) Income, including type of income, other than that referred to in paragraph (a)(2) of this section and other than that from current employment by the United States Government, and

(ii) Any honoraria, including the date, received during the preceding calendar year which from any source total $100 or more in value.

For special rules on spouses and dependent children, see § 734.303(b).

Example (1): The types of income which should be disclosed do include: (i) Outside earned income,

(ii) Pensions, and

(iii) A partner's net distributive share of partnership income from a commercial venture.

Example (2): An official is asked to speak at a banquet in Washington about his hobby which is unrelated to his public duties. He is given $200 for doing so. Whether or not acceptance of the payment is permitted by the regulations of his agency, the $200 received must be reported as income pursuant to paragraph (a)(1)(ii) of this section, as it is an honorarium (as defined in § 734.105(g)). The value of the meal received at the banquet need not be disclosed. (See § 734.105 (f)(4) and (g)).

Example (3): An official is a participant in a bona fide retirement plan of Coastal Airlines. Pursuant to such plan, the official and his spouse receive passage on some Coastal flights without charge; they receive passage on other flights at a discount fare. The difference between what Coastal charges members of the public generally and what the official and his wife are charged for a particular flight (if charged at all) is deemed income in-kind. Such income in-kind is required to be reported separately under paragraph (a)(1) of this section.

(2) *Certain income.* The source and type of income which consists of dividends, rents, interest, and capital gains from any source, received during the preceding calendar year which exceeds $100 in amount or value, which shall be categorized as to the total amount or value of each item in accordance with the following table:

(i) Not more than $1,000;

(ii) Greater than $1,000 but not more than $2,500;

(iii) Greater than $2,500 but not more than $5,000;

(iv) Greater than $5,000 but not more than $15,000;

(v) Greater than $15,000 but not more than $50,000;

(vi) Greater than $50,000 but not more than $100,000; and

(vii) Greater than $100,000.

Example (1): An official rents out a portion of her residence. She receives rental income of $600 from one individual for four months and $1200 from another individual for the remaining eight months of the year covered by the report. She must identify the property, and indicate the category of the amount of rent received pursuant to paragraph (a)(2) of this section.

Example (2): An official has three savings accounts with Bank A. One is in his name and earned $85 in interest. One is in a joint account with his wife and earned $120 in interest. One is in his name and his dependent daughter's name and earned $35 in interest. The official must disclose the name of the bank and the category of the total amount of interest earned from all three accounts. He must also disclose the accounts under paragraph (d) of this section if in the aggregate they total more than $5,000 in that bank.

(b) *Purchases, sales and exchanges of certain property.* A brief description (including the date) of any purchase, sale or exchange during the preceding calendar year:

(1) Of real property, other than a personal residence of the reporting individual or spouse, and

(2) Of stocks, bonds, commodities futures, and other forms of securities, which shall be categorized as to each transaction in accordance with § 734.304, in any case in which the fair market value of such property exceeds $1,000.

Notwithstanding paragraphs (b)(1) and (2) of this section, any transaction solely by and between the reporting individual, the spouse, and dependent children need not be reported. For purposes of this paragraph, transactions involving Treasury bills, money market mutual funds, and certificates of deposit issued by banking institutions are not deemed purchases, sales, or exchanges when effected at rates, terms, and conditions available generally to members of the public.

Example (1): An official sells her personal residence in Virginia for $100,000 and purchases a residence in the District of Columbia for $200,000. She realized a gain on the sale of the Virginia home of $30,000. She need not report the sale of the Virginia residence or the purchase of the D.C. residence under paragraph (b) of this section.

Example (2): An official sells his beach home in Maryland for $50,000. Because he has rented it out for one month every summer, it does not qualify as a personal residence. He must disclose the sale under paragraph (b) of this section and any capital gain realized on the sale under paragraph (a)(2) of this section.

Example (3): An official sells a ranch to his dependent daughter. The official need not report the sale under paragraph (b) of this section because it is a transaction between the reporting individual and a dependent child. If the daughter were no longer a dependent child the sale and any capital gain, except for that portion attributable to a personal residence, would have to be disclosed.

Example (4): An official sells an apartment building and realizes a loss of $100,000. He must report the sale of the building under paragraph (b) of this section, but he need not disclose the sale under paragraph (a)(2) of this section, as it did not result in a capital gain.

(c) *Gifts and reimbursements.*—(1) *In general.* The identity of the source, a brief description, and the value of all gifts (other than gifts described in paragraph (c)(2) of this section) from any source other than a relative of the reporting individual, received during the preceding calendar year which total $100 or more in value. Gifts received must be reported pursuant to the requirements of this paragraph. See § 734.104(a).

Example (1): An official accepts a print, a pen and pencil set, and a letter opener from a community service organization she has worked with solely in her private capacity. If any one of the gifts is valued at at least $100, she must disclose that gift. If any one gift is valued at less than $100 she need not report the gift unless the organization had during that same reporting year given her other item(s) whose value when aggregated would equal $100 or more. For purposes of aggregation she need not count items valued at $35 or less; see paragraph (c)(5) of this section. For method of valuation see paragraph (c)(4).

Gift 1—Print: Value $75
Gift 2—Pen and pencil set: $40
Gift 3—Letter opener: $20

The official must disclose Gifts 1 and 2, but not Gift 3.

(2) *Certain gifts.* The identity of the source, a brief description, and the value of any gifts of transportation, lodging, food, or entertainment from any source other than a relative of the reporting individual, received during the preceding calendar year which total $250 or more in value. Notwithstanding the preceding sentence, any food, lodging or entertainment received as the "personal hospitality of any individual" need not be reported. (See § 734.105(i).)

Example (1): An official receives the following items from a single source:

1. Dinner at a restaurant—$50
2. Round-trip taxi fare to meet donor at the restaurant—$15.
3. Dinner at donor's city residence—(value uncertain)
4. Round-trip airline transportation to donor's country home—$200
5. Weekend at donor's country home including duck hunting and tennis match—(value uncertain)

The official need only disclose Gifts 1 and 4. Gifts 3 and 5 need not be disclosed because they fall within the exception for "personal hospitality of an individual." (See § 734.105(i).) Gift 2 while otherwise disclosable need not be aggregated with Gifts 1 and 4 because it is valued less than $35. (See paragraph (c)(4) of this section.)

Example (2): An official accepts a number of invitations for dinner at restaurants in the

city. The dinners are valued at more than $35 and in the aggregate are more than $250. The invitations are for purely personal reasons and are from one individual. Nevertheless, the official must report these dinners because they do not fall within the definition of "personal hospitality of any individual." See § 734.105(i). The official can request a waiver of this reporting requirement pursuant to § 734.303(g). If granted, the waiver is public.

(3) *Reimbursements.* The identity of the source, a brief description, and the value of any reimbursements not otherwise reportable under the provisions of this subpart received during the preceding calendar year which from any source total $250 or more in value from any source.

Example (1): An official is asked to speak at an out-of-town meeting on a matter which is unrelated to his official duties and his agency. The round trip air fare is more than $250. If the official pays for the ticket and is then reimbursed by the organization to which he spoke, he must disclose this reimbursement under paragraph (c)(3) of this section. If the organization simply provided the ticket, this must be disclosed as a gift under paragraph (c)(2) of this section.

(4) *Valuation of gifts and reimbursements.* The value to be assigned to a gift or reimbursement is its fair market value. For most reimbursements this will be the amount actually received. For gifts and non-cash reimbursements the value should be determined in one of the following manners:

(i) If the gift has been newly purchased or is readily available in the market, the value shall be its retail price. The reporting individual need not contact the donor but may and should contact a retail establishment selling similar items to determine the present cost in the market.

(ii) If the item is not readily available in the market, such as a piece of art, a hand-made item, or antique, the individual can, as in the case of property in § 734.303(a)(2), make a good faith estimate of the value of the item.

For purposes of this paragraph (c)(4), the term "readily available in the market" means that an item generally is available for retail purchase in the metropolitan area nearest to the official's residence.

Examples

Items such as a pen and pencil set, letter opener, leather case or engraved pen are generally available in the market and can be determined by contacting stores which sell like items and ascertaining the retail price of each.

The value of a dinner at a restaurant can either be the actual cost of the reported dinners or the approximate value of the dinner given the posted fare of the restaurant. The reporting individual need not ask the donor to see the check.

(5) *De minimis exception.* Any gift with a fair market value of $35 or less need not be aggregated for purposes of this paragraph (c). The acceptance of these gifts is subject to the restrictions imposed by Executive Order 11222 and regulations promulgated thereunder as is the acceptance of the gifts of $35 or more.

(6) *Cross-reference.* For special waiver in the case of certain gifts see § 734.303(g).

(d) *Interests in property.*—(1) *In general.* A brief description of any interest in property held at the close of the preceding calendar year in a trade or business, or for investment or the production of income, having a fair market value in excess of $1,000, which shall be categorized as to the fair market value of each item in accordance with § 734.304. Each item of real and personal property shall be disclosed separately.

(2) *Exceptions.* Notwithstanding the provisions of paragraph (d)(1) of this section, the following shall not be reported:

(i) Any personal liability owed to the reporting individual by a relative,

(ii) Personal savings accounts in a single financial institution or holdings in a single money market mutual fund, in the case of a reporting individual, spouse, and dependent children who have deposits or holdings, respectively, aggregating $5,000 or less in that institution or fund, and

(iii) A personal residence of the reporting individual or spouse.

For purposes of this paragraph (d), the term "personal savings account" means a certificate of deposit or any other form of deposit in a bank, savings and loan association, credit union, or similar financial institution.

Example (1): The following items are examples of property required to be disclosed. This list is not inclusive but is presented to show typical items:

(A) Real estate other than a personal residence of a reporting individual or spouse,

(B) Stocks, bonds, securities, and commodities contracts,

(C) Animals owned for commercial purposes,

(D) Commercial crops, those growing and those held in storage,

(E) Antiques owned for resale,

(F) Beneficial interests in trusts and estates (see § 734.303(c)),

(G) Art held for investment,

(H) Pensions and annuities, and

(I) Money market mutual funds.

Example (2): An official has a $4,000 savings account in Bank A. His wife has a $2,500 certificate of deposit issued by Bank B and his daughter has a $200 savings account in Bank C. The official does not have to disclose the deposits as the total value of the deposits in any one bank do not exceed $5,000. Nevertheless, the source and amount of interest income would have to be disclosed under paragraph (a)(2) if it exceeds $100.

Example (3): Reporting individual *R* has a collection of post-impressionist paintings which have been carefully selected over the years. From time to time, as new paintings have been acquired to add to the collection, *R* has made recurrent sales of both less desirable post-impressionist works from his collection and paintings of various schools which he acquired through inheritance. Under these circumstances, *R* would report income from sales of any paintings pursuant to paragraph (a)(2) of this section, and all the paintings he retains as interests in property pursuant to paragraph (d) of this section. The Office of Government Ethics deems recurrent sales from a collection or related holdings to remove the collection and such holdings from the exemption for purely personal items from public financial disclosure under section 202 of the Act.

Example (4): Reporting individual *R* has several commodity transactions in calendar year 1979, as follows:

Positions, date of purchase and date of sale (includes short sales)

No. (1)–3 contracts April 1980 Gold (Comex), 4/18/79, open position [carried over to 1980]

No. (2)–2 contracts June 1980 Gold (Comex), 12/13/79, 6/19/79

No. (3)–1 contract February 1980 Gold (Comex), open position [carried over to 1980] 8/17/79

No. (4)–3 contracts August 1980 Gold (Comex), 5/13/79, 9/19/79.

(i) *Position No. (1)* is an interest in property which, since it was held as of the close of calendar year 1979, is reported under paragraph (d) of this section as an interest in property (if the $1,000 fair market value criterion of paragraph (d) is met). In accordance with standard accounting practices with respect to such interests, the fair market value of a commodity contract, for purposes of this section, is determined by the amount of the net unrealized gain or loss. This item is also reported under paragraph (b) of this section as a purchase, if the $1,000 fair market value criterion of paragraph (b) is met.

(ii) The gain or loss realized with respect to the transactions relating to *Position No. (2)* (a short sale) is reported under paragraph (b) of this section as a completed purchase and sale (if the $1,000 threshold criterion of paragraph (b) is met). With respect to a completed purchase and sale such as *Position No. (2)*, the threshold criterion is applied against the net realized gain or loss. The completed purchase and sale is also reported uder paragraph (a)(2) of this section (relating to income items), if the $100 threshold criterion of paragraph (a)(2) is met. Accordingly, if the completed purchase and sale had resulted in a loss, it would not have been reportable under paragraph (a)(2).

(iii) *Position No. (3)* (notwithstanding that it is a short sale) is an interest in property which, since it was held as of the close of calendar year 1979, is reported under

paragraph (d) of this section as an interest in property (if the $1,000 threshold criterion of paragraph (d) is met). This item is also reported under paragraph (b) of this section as a sale, if the $1,000 threshold criterion of paragraph (b) is met.

(iv) The gain or loss realized with respect to the transactions relating to *Position No. (4)* is reported under paragraph (b) of this section as a completed purchase and sale (if the $1,000 threshold criterion of paragraph (b) is met). The completed purchase and sale is also reported under paragraph (a)(2) of this section (relating to income items), if the $100 threshold criterion of paragraph (a)(2) is met.

(v) It should be noted that the principles of this example are applicable with respect to the purchase and sale of options contracts.

(e) *Liabilities*—(1) *In general.* A brief description of the total liabilities owed to any creditor, other than a relative, to whom, at any time during the preceding calendar year, over $10,000 is owed, which shall be categorized as to the amount of any such liability in accordance with § 734.304. The greatest amount owed to any such creditor during such period shall be reported.

(2) *Exceptions.* Notwithstanding the provisions of paragraph (e)(1) of this section, the following shall not be reported:

(i) Any mortgage secured by a personal residence of the reporting individual or spouse,

(ii) Any loan secured by a personal motor vehicle, household furniture, or appliances, which loan does not exceed the purchase price of the item which secures it, and

(iii) Any revolving charge account with an outstanding liability which does not exceed $10,000 as of the close of that preceding calendar year.

Example (1): An official has the following loans outstanding at the end of the calendar year:

1. Mortgage on personal residence—$80,000
2. Mortgage on rental property—$50,000
3. VISA Card—$1,000
4. Master Card—$11,000
5. Loan secured by family automobile purchased for $6,200—$5,000
6. Loan secured by antique furniture purchased for $8,000—$10,000
7. Loan from parents—$20,000

Loans indicated in items 2, 4, and 6 must be disclosed. Loan 1 is exempt from disclosure because it is secured by the personal residence. Loan 3 need not be disclosed because it is considered a revolving charge account and it is less than $10,000. Loan 5 need not be disclosed because it it secured by a personal motor vehicle and is for less than the purchase price. Loan 7 need not be disclosed because the creditor is a relative.

(f) *Other positions*—(1) *In general.* Identification of all positions held, at any time during the period beginning on January 1 of the preceding calendar year and ending on the date of filing as an officer, director, trustee, partner, proprietor, representative, executor, employee, or consultant of any corporation, company, firm, partnership, trust, or other business enterprise, any non-profit organization, any labor organization, or any educational or other institution other than the United States. Notwithstanding the preceding sentence, the following need not be reported:

(i) Positions held without compensation in any religious, social, fraternal, or political entity, and

(ii) Positions solely of an honorary nature, such as those with an *emeritus* designation.

(2) *Initial reports; special rules.* In the case of a reporting individual who has not filed a report under § 734.201 during the preceding calendar year—

(i) For purposes of paragraph (f)(1) of this section, all such positions held during the preceding two calendar years shall also be reported, and

(ii) Except in the case of the President and the Vice President, identification and a brief description of the nature of the duties performed or services rendered with respect to each source of compensation which exceeded $5,000 in either of the preceding two calendar years.

Notwithstanding the provisions of paragraph (f)(2)(ii) of this section, information need not be reported which is considered confidential as a result of a privileged relationship, established by law, between the reporting individual and any person, or with respect to any person for whom services were provided by any firm or association of which the reporting individual was a member, partner, or employee, unless the individual was directly involved in the provision of such services.

Example (1): A partner or employee of a law firm who has worked on a matter involving a client from which the firm received over $5,000 in fees during a calendar year must report the name of the client only if the value of the services rendered by the partner or employee was more than $5,000. The name of the client, except in unusual situations, would not be considered confidential.

(g) *Certain agreements and arrangements.* Identification of the parties to, and a brief description including the date of any agreement or arrangement, in existence at any time during the period beginning on January 1 of the preceding calendar year and ending on the date of filing, with respect to—

(1) Future employment,

(2) A leave of absence during the period of the reporting individual's Government service,

(3) Continuation of payments by a former employer other than the United States Government, and

(4) Continuing participation in an employee welfare or benefit plan maintained by a former employer. (See 18 U.S.C. 209(b)).

§ 734.302 Reports of other reporting individuals.

(a) *New entrants, nominees, and candidates.* Each report filed under § 734.201(b), (c), or (d) shall include a full and complete statement, on the form prescribed by the Office of Government Ethics and in accordance with instructions issued by the Office, under the provisions of § 734.301, except for paragraphs (b) (relating to purchases, sales and exchanges of certain property) and (c) (relating to gifts and reimbursements) of that section; however, the following shall also be reported:

(1) *Income.* For purposes of paragraph (a) of § 734.301, relating to income, all the income items specified in that paragraph received during a period which begins on January 1 of the preceding calendar year and ends on the date on which the report is filed,

(2) *Interests in property.* For purposes of paragraph (d) of § 734.301, relating to interests in property, all the interests specified in that paragraph held during a period which begins on January 1 of the preceding calendar year and ends fewer than thirty-one days before the date on which such report is filed, and

(3) *Liabilities.* For purposes of paragraph (e) of § 734.301, relating to liabilities, all the liabilities specified in that paragraph owed during a period which begins on January 1 of the preceding calendar year and ends fewer than thirty-one days before the date on which the report is filed.

(b) *Termination reports.* Each report filed under § 734.201(e) shall include a full and complete statement, on the form prescribed by the Office of Government Ethics and in accordance with instructions issued by the Office, under the provisions of § 734.301; except that in any case in which information is required by that section to be reported for the preceding calendar year with respect to any item, transaction, or occurrence, all such information for a period which begins on January 1 of the current calendar year and ends on the date on which the report is filed, shall also be reported.

§ 734.303 Special rules.

(a) *Valuation of interests in property.* This paragraph (a) sets forth detailed rules for determining the value of interests in property for purposes of

§ 734.301(d). A good faith estimate of value may be made in lieu of a determination under paragraph (a)(1) or (a)(2) of this section, in any case in which such a determination cannot be obtained without undue hardship or expense to the reporting individual.

(1) *Real property.* If the current value of an interest in real property or an interest in a real estate partnership is not ascertainable without an appraisal, a reporting individual may report:

(i) The date of purchase and the purchase price of the interest in the real property, or

(ii) The assessed value of the real property for tax purposes, adjusted to reflect the market value of the property used for the assessment if the assessed value is computed at less than 100 percent of that market value.

(2) *Other property.* If the current value of any item, other than real property referred to in paragraph (a)(1) of this section, is not ascertainable without an appraisal, a reporting individual may report (as appropriate)—

(i) The book value of a corporation whose stock is not publicly traded,

(ii) The net worth of a business partnership other than a real estate partnership,

(iii) The equity value of an individually owned business,

(iv) With respect to entities not referred to in paragraph (a)(2)(i) through (iii) of this section, any recognized indication of value accompanied by a full and complete description of the method used in determining such value, or

(v) In lieu of any indication of value referred to in this paragraph (a)(2), the assessed value of any such item for tax purposes, adjusted in the manner prescribed in paragraph (a)(1)(ii) of this section.

In any case in which the assessed value for tax purposes of any item is reported under paragraph (a)(1)(ii) or (a)(2)(v) of this section, in lieu of a categorization of the fair market value of that item in accordance with § 734.304, a full and complete description of the method used in determining the assessed value shall be reported.

(b) *Spouses and dependent children.* Each report required by the provisions of this subpart shall include:

(1) *Income.* For purposes of § 734.301(a), relating to income:

(i) With respect to a spouse, only the source of items of outside earned income (as defined in § 734.501(b)) which exceed $1,000; and in the case of such items derived from a spouse's self-employment in a business or profession, only the nature of the business or profession need be reported, and

(ii) With respect to interests in property of a spouse or dependent child, only income derived from such interests which are reported or reportable pursuant to § 734.301(d).

Example (1): The spouse of a reporting individual is employed as a teller at Bank X and earns $15,000 per year. The reporting individual must disclose that the spouse is employed by Bank X; however, the individual need not report the $15,000 earnings.

Example (2): The spouse of a reporting individual is self-employed as a pediatrician. The reporting individual need only disclose that the spouse is a physician.

(2) *Purchases, sales and exchanges of certain property.* For purposes of § 734.301(b), on purchases, sales and exchanges, with respect to interests in property of a spouse or dependent child reported or reportable under § 734.301(d), any purchase, sale, or exchange specified in § 734.301(b) with respect to any such interest;

(3) *Gifts and reimbursements.* For purposes of § 734.301(c), on gifts and reimbursements, with respect to—

(i) A spouse, only gifts and reimbursements, or

(ii) A dependent child, only gifts,

specified in that section received by the spouse or dependent child (to any extent) by reason of such spouse's or dependent child's relationship to the reporting individual;

Example (1): A reporting official and her spouse were taken to dinner by an individual the official dealt with as a Federal employee. The value of the spouse's dinner must be reported as a gift.

Example (2): The employer of the spouse of a reporting individual takes the spouse and such individual to dinner. The employer does not do business with the reporting individual's agency. The reporting individual is invited because of the marriage relationship. The reporting individual need not report the spouse's dinner as a gift under § 734.301(c). Only the reporting individual's dinner is reportable, if the threshold limitations of that section are satisfied.

(4) *Interests in property and liabilities.* For purposes of § 734.301 (d) and (e), on interests in property and liabilities, respectively, all information on any such interests or liabilities specified in those paragraphs of a spouse or dependent child, other than with respect to items—

(i) Which the reporting individual certifies,

(A) Represent the spouse's or dependent child's sole financial interest or responsibility, and

(B) That the reporting individual has no specific knowledge of,

(ii) Which are not in any way, past or present, derived from or related to the income, assets or activities of the reporting individual, and

(iii) From which the reporting individual neither derives, nor expects to derive, any financial or economic benefit.

Example (1): The spouse of a reporting individual has acquired some securities from money earned in a part-time job. The securities have been set aside to provide funds to contribute to the cost of a grandchild's education. The reporting individual is not familiar with the holdings. Therefore, because the grandchild's education is not a legal obligation of the reporting individual, the securities are not reportable under the rules of this paragraph (b)(4).

(c) *Trusts and estates.* Each report required by the provisions of this subpart shall include the information otherwise required by these provisions, about the holdings of and the income from any trust or other financial arrangement—

(1) From which income is received by, or

(2) With respect to which a beneficial interest in principal or income is held by,

the reporting individual, spouse, or any dependent child. Notwithstanding the preceding sentence, no information is required about a non-vested beneficial interest in the principal of an estate and, in the case of a trust referred to in § 734.402(a), only the information described in § 734.402(b) shall be reported. Since the proper application of the rules of section 202(f)(1) of the Act and paragraph (c)(2) of this section depends on all the facts and circumstances of the particular case, reporting individuals or their representatives should consult with Office of Government Ethics staff to determine the proper treatment of any non-vested beneficial interest in the principal of a trust or other financial arrangement.

(d) *Divorce and separation.* Notwithstanding any other provision of this subpart, a reporting individual shall not be required to report any information about:

(1) A spouse living separate and apart from the individual with the intention of terminating the marriage or providing for permanent separation,

(2) A former spouse or a spouse from whom the individual is permanently separated, or

(3) Any income or obligations of the individual arising from the dissolution of his or her marriage or the permanent separation from his or her spouse.

(e) *Political campaign funds.* Political campaign funds, including campaign receipts and expenditures, need not be included in any report filed under this part.

(f) *Gifts received when not in Government employment.* In the case of a reporting individual to whom the provisions of § 734.201(a) or (e) apply, the report need not contain any information about gifts and reimbursements to which the provisions of § 734.301(c) would otherwise apply, which are received during a period in which the reporting individual was not an officer or employee of the Federal Government.

(g) *Special rule in the case of certain gifts.*—(1) *In general.* In unusual cases, a gift as defined in § 734.105(f) need not be aggregated under § 734.301(c), if the Director, Office of Government Ethics, determines:

(i) That the basis of the relationship between the grantor and grantee and the motivation for the gift are purely personal, and

(ii) That no countervailing public purpose requires public disclosure of the nature, source, and value.

In the event of any such determination, the waiver request and the grant of waiver shall be subject to the public disclosure requirements of § 734.603.

(2) *Procedure.* An individual seeking an exemption under this section shall file a request with the Office of Government Ethics which sets forth:

(i) The identity and occupation of the donor;

(ii) A statement that the relationship between the donor and the reporting individual is purely personal in nature; and

(iii) A statement that neither the donor nor any person or organization for whom the donor actually works or serves as a representative conducts business with, or is subject to regulation by, or is directly affected by action taken by, the agency which employs the reporting individual.

In the event that the immediately preceding statement cannot be made without qualification, the reporting individual may indicate those qualifications along with a statement demonstrating that he or she plays no role in any official action which might directly affect the donor or any organization for which the donor works or serves as a representative.

§ 734.304 Property categories.

(a) The valuation categories specified for property items are as follows:

(1) Not more than $5,000;

(2) Greater than $5,000 but not more than $15,000;

(3) Greater than $15,000 but not more than $50,000;

(4) Greater than $50,000 but not more than $100,000;

(5) Greater than $100,000 but not more than $250,000; and

(6) Greater than $250,000.

Subpart D—Trusts

§ 734.401 Qualified trusts; general considerations.

(a) *In general.* (1) Prior to enactment of the Act's qualified trust provisions, there was no accepted definition of a properly formulated blind trust. However, there was general agreement that the use of blind trusts frequently could ameliorate potential conflict of interest situations. An underlying concept is that if a Government official does not know the identity of his or her financial interests, his or her official actions should not be subject to collateral attack by questions of conflict of interest of the appearance of such a conflict. In other words, if the Government official does not know what he or she owns, it is impossible for him or her intentionally to take actions to benefit specifically his or her own personal interests. Therefore, the general public policy goal to be achieved through the use of blind trusts is an actual "blindness" or lack of knowledge by the Government official with respect to the holdings held in trust. In unusual cases, this goal may be deemed to have been achieved with respect to an official appointed to a position by the President, by and with the advice and consent of the Senate, where there is a general dispersion of securities held in trust among individual entities and economic sectors under circumstances in which it is unlikely that official actions taken by him will affect individual holdings to such a degree that the overall value of the entire portfolio will be materially enhanced. The result of wide diversification under the conditions prescribed is considered tantamount to actual blindness.

(2) Trusts certified under the provisions of this Subpart D are not subject to the general rules of Subpart C of this part, which normally require the public financial disclosure report of a reporting individual to indicate the contents of a trust's portfolio. Further, as described in paragraph (b)(3) of this section, in the case of trusts which are certified, the normal application of 18 U.S.C. 208 and other Federal conflict of interest laws is ameliorated by the Act in accordance with the concepts discussed in paragraph (a)(1) of this section.

(b) *Nature of qualified trusts.* The public policy concerns and objectives indicated in paragraph (a) of this section are fulfilled by the major requirements of this subpart as described in this paragraph (b). The Office of Government Ethics will apply the standards of this subpart to specific cases.

(1) *A truly independent trustee.* Under § 734.406, the individual or institution in charge of a qualified trust, and therefore of investing the assets of the trust, must be independent of the Government official in reality and appearance. The trustee must not be subject to control or influence in the administration of the trust by any interested party: the official, his or her spouse, or dependent children. Permissible trustees are limited to members of professional groups with standards of conduct governing their actions as fiduciaries (financial institutions, attorneys, accountants, investment advisers and brokers). The trustee cannot be a relative, employee, or business partner of the official, spouse, or dependent children.

(2) *A trust document meeting certain minimum standards.* Under § 734.403, regarding qualified blind trusts, and § 734.404, regarding qualified diversified trust, the trust document must, except for limited exceptions, expressly prohibit communications between the trustee and the Government official, and other interested parties, regarding the trust's holdings and activities. The trustee must be empowered to make investment decisions independent of any consultation with or control by the interested parties. Generally, communications about the trust between the interested parties and the trustee must be in writing. Copies of all written communications must be filed with the Office of Government Ethics. The trust document must also provide that the interested parties will not attempt to obtain information about the trust holdings and activities except as specifically provided therein.

(3) *Relationship to conflict of interest laws.*—(i) *Qualified blind trusts.* In the case of a qualified blind trust (§ 734.403), an asset placed in trust by an interested party is considered a financial interest of the Government official for the purposes of 18 U.S.C. 208 and any other conflict of interest statutes or regulations of the Federal Government until the party is notified by the trustee that the asset has been disposed of, or has a value of less than $1,000. Thus, the trust is considered blind only as to assets subsequently purchased by the trustee. The interested parties will have no knowledge of the trustee's acquisitions, and thus the Government official and the other interested parties will be truly blind with respect to these holdings.

(ii) *Qualified diversified trusts.* In the case of a qualified diversified trust (§ 734.404), the trust's holdings are not deemed financial interests of the Government official for purposes of 18 U.S.C. 208 or any other Federal conflict of interest law. This type of trust may only be utilized by an official appointed by the President, by and with the advice and consent of the Senate. It must be established to the satisfaction of the Director, Office of Government Ethics, under § 734.404(b), that the assets of a diversified trust proposed for qualification consist of a well-diversified portfolio of readily marketable securities. None of the assets initially placed in the trust may consist of securities of issuers having substantial activities related to the reporting individual's primary area of responsibility.

(4) *Relationship to Subpart C reporting requirements.* Qualified trusts are not subject to the normally applicable reporting requirements of Subpart C of this part. The less inclusive rules of § 734.402(b) are applied with respect to qualified trusts pursuant to the Act.

(5) *Prior approval of trust document and assets placed in the trust.* Before a trust can be certified, every proposed trust document (see § 734.405) and proposed trustee (see § 734.406) must be approved by the Office of Government Ethics. This is essential so that the Office can ensure in advance that the proposed trust arrangement satisfies the letter and spirit of the established standards. Model qualified trust instruments are available from the Office to attorneys for their use in drafting trust agreements to be proposed for qualification.

(6) *Effective sanctions and enforcement.* Under the provisions of Subpart G of this part, civil and criminal sanctions are provided for any Government official or trustee who violates his or her obligation under a qualified trust. In addition, the Office of Government Ethics has authority under the Act to impose appropriate administrative or other sanctions.

§ 734.402 Special rules in the case of certain trusts.

(a) *In general.* Notwithstanding the provisions of Subpart C of this part, a reporting individual need not, except as otherwise provided in this subpart, report the holdings of or the source of income from any of the holdings of:

(1) Any qualified blind trust, as defined in § 734.403,

(2) Any qualified diversified trust, as defined in § 734.404, or

(3) Any "excepted trust," one:

(i) Which was not created directly by the individual, his or her spouse, or any dependent child, and

(ii) The holdings or sources of income of which the individual, his or her spouse, and any dependent child have no knowledge.

(b) *Subpart C reporting requirements*—(1) *Income.* In the case of a trust referred to in paragraph (a) of this section except for a qualified diversified trust, a reporting individual shall report the category of the aggregate amount of the trust's income attributable to the beneficial interest in the trust of the individual, his or her spouse, or any dependent child under the rules of Subpart C of this part. In the case of a qualified diversified trust, only amounts actually received in respect of such a trust by the individual, his or her spouse, or any dependent child, or applied for the benefit of any such interested party, shall be deemed income derived from the trust for purposes of this part.

(2) *Holdings and sources of income.* In the case of a trust referred to in:

(i) Paragraph (a)(1) or (a)(2) of this section, no report under Subpart C of this part on holdings and sources of income is required, or

(ii) Paragraph (a)(3) of this section, holdings and sources of income shall be reported under the rules of Subpart C of this part only to the extent that the reporting individual has reasonably specific knowledge of the holdings and sources of income.

Example (1): A reporting individual, *R*, is the beneficiary of a family trust created by his grandfather. *R*—(i) has never seen the trust instrument, (ii) receives a monthly payment of $500 from the trustee, and (iii) has been told by his grandfather that the trust assets include large holdings of Canadian mining stock. *R* does not have any further specific knowledge about the trust and its holdings, and the grandfather and trustee have declined to provide further information. This trust would be considered by the Office of Government Ethics to be an excepted trust described in paragraph (a)(3) of this section. *R* is obligated to report $6,000 as income from the trust in his annual financial disclosure report filed under Subpart C, and under § 734.301(d) he would report that he is a beneficiary of an excepted trust which he believes to have Canadian mining stock among its holdings.

Example (2): During 1979, the trustee of reporting individual *M*'s qualified diversified trust makes payments as follows:

(i) A monthly distribution of $1,000 to *M* as specified in the trust instrument,

(ii) $4,000 to *M*'s wife for medical expenses pursuant to the trustee's discretion under the terms of the trust instrument, and

(iii) $2,500 to *M*'s son for educational expenses pursuant to the trust instrument.

For 1979, $18,500 is deemed to be the income derived from the trust and should be reported under Subpart C of this part; notwithstanding, that the actual income attributable to the interests of *M*, his spouse, and dependent children in the qualified diversified trust might be a greater amount. The actual amount must be kept confidential by the trustee and, under § 734.404, not revealed to the interested parties.

Example (3): Note that $18,500 would be the income deemed to have been derived from the qualified diversified trust in *Example (2)*, even if the actual income attributable to the interests of the interested parties was less than $18,500 or even if the trust had a net loss for the year.

§ 734.403 Qualified blind trusts.

(a) *Definition.* For purposes of § 734.402, the term "qualified blind trust" means a trust certified by the Director, Office of Government Ethics, under § 734.405 which includes the provisions described in paragraph (b) of this section and has an independent trustee (as defined in § 734.406). See section 202(f)(3) of the Act.

(b) *Required provisions.* The trust instrument which establishes a trust to which this section applies must provide that—

(1) The trustee in the exercise of his or her authority and discretion to manage and control the assets of the trust shall not consult or notify any interested party;

(2) The trust shall not contain any asset the holding of which by an interested party is prohibited by any law or regulation;

(3) The trustee shall notify promptly the reporting individual and the Director, Office of Government Ethics, when any particular asset transferred to the trust by any interested party has been completely disposed of or when the value of that asset becomes less than $1,000;

(4) The trust tax return shall be prepared by the trustee or his or her designee, and the return and any information relating thereto, other than the trust income summarized in appropriate categories necessary to complete an interested party's tax return, shall not be disclosed publicly or to any interested party;

(5) An interested party shall not receive any report on the holdings and sources of income of the trust, except that the trustee shall—

(i) Make quarterly reports of the aggregate market value of the assets representing the interested party's interest in the trust,

(ii) Report the net income or loss of the trust and make any other reports necessary to enable the interested party to complete an individual tax return required by law, and

(iii) Provide the information described in § 734.402(b) (relating to reporting of income);

(6) Except for communications which consist solely of requests for distributions from the trust, which shall not specify whether any such distribution shall be made in cash or in kind, there shall be no direct or indirect communication between the trustee and an interested party about the trust unless the communication is in writing and unless it relates only:

(i) To the general financial interest and needs of the interested party including, but not limited to, an interest in maximizing income or long-term capital gain,

(ii) To the notification of the trustee of a law or regulation subsequently applicable to the reporting individual which prohibits the interested party from holding an aset, which notification directs that the asset not be held by the trust, or

(iii) To directions to the trustee to sell all of an asset initially placed in the trust by an interested party which in the determination of the reporting individual creates a conflict of interest or the appearance thereof due to the subsequent assumption of duties by the reporting individual but nothing in the trust instrument shall require any such direction;

(7) The interested parties shall not take any action to obtain, and shall take appropriate action to avoid receiving, information about the holdings of, and the sources of income of, the trust, including obtaining a copy of any trust tax return filed by the trustee or any information relating thereto, except for the reports and information specified in paragraph (b)(5) of this section; and

(8) The trustee and any other person designated in the trust instrument as an investment adviser shall fulfill the filing requirements of § 734.407(b) and (c).

Example (1)

(A) Professionals employed by the trustee to prepare the trust tax return should be cautioned against sending informational copies to any interested party, and

(B) An interested party who inadvertently receives in the mail a broker's confirmation of a transaction for the trust should send the confirmation to the trustee with an accompanying letter instructing the trustee to take steps to assure that the party will not receive such confirmations in the future (a copy of such a letter must be sent to the Office of Government Ethics pursuant to § 734.407(c)).

Paragraph (b)(7) of this section prohibits any activity by interested parties to obtain, directly or indirectly, any information which under the rules of this section is precluded from interested parties. The paragraph also specifically prohibits the passive receipt of precluded information by interested parties. Accordingly, interested parties and trustees, their staffs, and professionals who may be employed by them are required to exercise a high degree of diligence to safeguard against inadvertent disclosure of precluded information to the interested parties.

(c) *Transitional rule.* In the case of a trust established prior to October 26, 1978, if there is a good faith attempt to create a qualified blind trust, the trust may, under the rules of section 202(f)(7) of the Act, be certified under the provisions of § 734.405, as a qualified blind trust notwithstanding any provision of this section to the contrary.

§ 734.404 Qualified diversified trusts.

(a) *Definition.* For purposes of § 734.402, the term "qualified diversified trust" means a trust certified by the Director, Office of Government Ethics, under § 734.405 which has a portfolio as specified in paragraph (b) of this section, includes the provisions described in paragraph (c) of this section, and has an independent trustee (as defined in § 734.406). This certification may be granted only in the case of individuals described in paragraph (e) of this section. See section 202(f)(4)(B) of the Act.

(b) *Required portfolio.*—(1) *In general.* It must be established to the satisfaction of the Director, Office of Government Ethics, that the assets of the trust proposed for qualification consist of a well-diversified portfolio of readily marketable securities. Accordingly, the reporting individual, or a representative of the individual, shall provide the Director with a detailed listing of the securities proposed for inclusion in the portfolio, specifying their market values and demonstrating that the requirements of this paragraph (b) have been met. None of the assets initially placed in the trust may consist of securities of issuers having substantial activities related to the reporting individual's primary area of responsibility. No limitations are established under this paragraph with respect to—

(i) Cash, or

(ii) Debt instruments issued by the United States or its non-corporate instrumentalities.

(2) *Well-diversified.*—(i) *Portfolios which exceed $250,000.* In the case of a trust which has assets with a total market value which exceeds $250,000, the portfolio will be deemed well-diversified, for purposes of this section, unless the trust holds—

(A) Securities of any issuer which have a market value which exceeds twenty percent of the total market value of the portfolio, or

(B) Securities substantially related to any industry or economic sector which have a market value which exceeds thirty percent of the total market value of the portfolio.

Notwithstanding the preceding sentence, the Office of Government Ethics may authorize limited deviations from the standards of this paragraph (b)(2)(i) with respect to the holdings initially transferred to the trust in cases where, under all the facts and circumstances, the Office determines that overall portfolio balance has been achieved.

Example (1): In unusual circumstances involving a divorce settlement, the proposed initial portfolio of a trust with a total market value of $350,000 is determined by the Office of Government Ethics to have overall balance and is deemed well-diversified even though securities of three utilities represent 32 percent of the portfolio's total market value and the securities of one bank represent 23 percent. However, the trustee may not purchase additional utility or bank securities while the percentages of portfolio market value they represent continue to exceed the standards of paragraph (b)(2)(i) of this section.

(ii) *Portfolios which do not exceed $250,000.* The Office of Government Ethics recognizes that it is impractical in the case of smaller trusts to expect the same quantitative diversification with respect to initial holdings that is required in the case of larger trusts. Consequently, in the case of a trust which has assets with a total market value which does not exceed $250,000, the Office may authorize a lesser degree of diversification than the standards of paragraph (b)(2)(i) of this section with respect to the holdings initially transferred to the trust in cases where, under all the facts and circumstances, the Office determines that overall portfolio balance has been achieved.

Example (1): A proposed initial portfolio with a total market value of $100,000 contains four listed securities, each representing a different industry or economic sector. Two of the securities each have a market value of $24,000, and the other two securities each have a market valueof $26,000. The portfolio will be deemed to be well-diversified.

(iii) *Consultation.* Interested parties and their representatives are invited to consult with the Office of Government Ethics on the question of whether overall portfolio balance has been achieved in particular cases.

(3) *Readily marketable.* A security will be deemed readily marketable, for purposes of this section, if:

(i) Daily price quotations for the security appear regularly in newspapers of general circulation, such as the Wall Street Journal, New York Times, and Washington Post, and

(ii) The trust holds the security in a quantity which does not unduly impair liquidity.

(c) *Required provisions.* The trust instrument which establishes a trust to which this section applies must provide that:

(1) The trustee in the exercise of his or her authority and discretion to manage and control the assets of the trust shall not consult or notify any interested party;

(2) The trustee shall not acquire any securities in excess of the diversification standards of paragraph (b)(2)(i) of this section;

(3) The trustee shall not disclose publicly or to any interested party information as to the acquisition, retention, or disposition of any particular securities;

(4) The trust tax return shall be prepared by the trustee or his delegate, and such return and any information relating thereto shall not be disclosed to the public or to any interested party;

(5) An interested party shall not receive any report on the holdings and sources of income of the trust; except that the trustee shall:

(i) Make quarterly reports of the aggregate market value of the assets representing such interested party's interest in the trust, and

(ii) Provide the information described in § 734.402(b) (relating to reporting of income);

(6) Except for communications which consist solely of requests for distributions from the trust, which shall not specify whether any such distribution shall be made in cash or in kind, there shall be no direct or indirect communication between the trustee and an interested party about the trust unless the communication is in writing and unless it relates only—

(i) To the general financial interest and needs of the interested party (including, but not limited to, an interest in maximizing income or long-term capital gain), or

(ii) To information, documents, and funds provided by, or needed from, the interested party to effectuate the provisions of paragraph (d) of this section;

(7) The interested parties shall not take any action to obtain, and shall take appropriate action to avoid receiving, information about the holdings of, and the sources and amounts of income of the trust including obtaining a copy of any trust or personal tax return filed by the trustee or any information relating thereto, except for the reports and information specified in paragraph (c)(5) of this section; and

(8) The trustee and any other person designated in the trust instrument as an investment adviser shall fulfill the filing requirements of § 734.407(b) and (c).

With respect to paragraph (c)(7) of this section, see *Example (1)* following § 734.403(b).

(d) *Personal income tax returns.* In the case of a trust to which this section applies, the trustee shall be given power of attorney to prepare, and shall file, on behalf of any interested party the personal income tax returns and similar returns which may contain information about the trust. Appropriate Internal Revenue Service power of attorney forms shall be used for this purpose. Communications regarding decisions such as whether to file joint or separate returns, the portions of a tax obligation to be borne by each spouse, the amounts and timing of tax payments, and the sources of funds therefor, shall be subject to paragraph (c)(6)(iii) of this section.

(e) *Applicability.* The provisions of this section shall be applicable only in the case of a trust created for the benefit of a reporting individual appointed to his or her office by the President, by and with the consent of the Senate, or the spouse or dependent child of such a person. In the case of a reporting individual whose nomination is before a Senate committee, the individual must inform the Committee of his or her intention to establish a qualified diversified trust at the time his or her financial disclosure report is filed with the Committee. This notification is not required of a reporting individual who is already in office. This section is not applicable in the case of members of the uniformed services or foreign service officers in the State Department.

(f) *Transitional rule.* In the case of a trust established prior to October 26, 1978, if there is a good faith attempt to create a qualified blind trust, the trust may, under the rules of section 202(f)(7) of the Act, be certified under the provisions of § 734.405, as a qualified diversified trust, notwithstanding any provision of this section to the contrary.

§ 734.405 Certification of trusts proposed for qualification; other matters.

(a) *General rule.* In any case in which an interested party desires to have a trust certified as a qualified blind trust or qualified diversified trust under the provisions of § 734.403 or § 734.404, respectively, the party or his or her representative should consult with the Director, Office of Government Ethics (or his or her delegate), as to the appropriateness of and requirements for certification in the particular case. In order to assure timely trust certification, the interested party shall be responsible for the expeditious submission to the Office of all required documents and responses to requests for information. A trust will be certified by:

(1) The Director in the case of a qualified blind trust, or

(2) The Director in concurrence with the Attorney General in the case of a qualified diversified trust,

only if it is established to the Director's satisfaction that the requirements of section 202 of the Act and this subpart have been met and that certification in the case is consistent with the policies established by those provisions and other applicable laws and regulations. Certification shall be indicated by a letter from the Director to the interested party or his or her representative. Certification of a trust may be revoked by the Director at any time, if in his or her sole discretion, he or she determines that continued certification is no longer justified. The terms of a qualified trust are normally irrevocable. The terms may not be amended, except with the prior written approval of the Director upon a showing of necessity and appropriateness.

(b) *Absence of control by interested party.* Except as expressly approved by the Director, Office of Government Ethics, in the case of a trust proposed for certification under the provisions of § 734.403, any asset transferred to a trust under this subpart shall be free of any restriction on its transfer or sale. Accordingly, in the case of interest in tax shelters, partnerships, and close corporations, the interested party shall demonstrate to the satisfaction of the Director that, under all the facts and circumstances, the interests are free of any restriction with respect to their transfer or sale.

(c) *Interested party, defined.* For purposes of this subpart, the term "interested party" means a reporting individual, the spouse, and any dependent child in a case in which the individual, spouse, or dependent child has a beneficial interest in the principal or income of a trust proposed for certification.

(d) *Restrictions applicable to trustees.* The trustee of a qualified blind trust or qualified diversified trust shall not knowingly or negligently:

(1) Disclose any information to an interested party with respect to the trust that may not be disclosed under any provision or requirement of this subpart.

(2) Acquire any holding:

(i) Directly from an interested party without the prior written approval of the Director, or

(ii) The ownership of which is prohibited by, or not in accordance with the terms of, the trust instrument,

(3) Solicit advice from any interested party with respect to such trust, which solicitation is prohibited by any provision or requirement of this subpart or the trust instrument, or

(4) Fail to file any document required by this subpart.

(e) *Restrictions applicable to reporting individuals.* In the case of a qualified blind trust or qualified diversified trust, a reporting individual shall not knowingly or negligently:

(1) Solicit or receive any information about the trust that may not be disclosed under any provision or requirement of this subpart, or

(2) Fail to file any document required by this subpart.

§ 734.406 Independent trustee, defined.

(a) *General rule.* For purposes of this subpart, the term "independent trustee" shall include any person referred to in paragraph (b) of this section who, under all the facts and circumstances, is determined by the Director, Office of Government Ethics, in his or her sole discretion, to be independent of any interested party with respect to a trust proposed for qualification under this subpart. The Director shall indicate his or her approval of a proposed trustee, and of any person in addition to a party to the trust designated in the trust instrument as an investment adviser, by his or her signature on properly executed Certificates of Independence submitted to the Office of Government Ethics in the form prescribed by Appendix A of this part. Approval of a trustee may be revoked by the Director at any time, if, in his or her sole discretion, he or she determines that continued approval is no longer justified.

(b) *Eligible person.* A person, to be eligible to serve as a trustee under this section, must be:

(1) A financial institution, which is a "bank" as defined in 15 U.S.C. 80b–2(a)(2);

(2) An attorney, who is admitted to practice before the highest court of any jurisdiction;

(3) A certified public accountant;

(4) A "broker", as defined in 15 U.S.C. 78c(a)(4); or

(5) An "investment adviser", who is a person as defined in 15 U.S.C. 80b–2(a)(11) or who demonstrates to the satisfaction of the Director general involvement in his or her role as such an adviser in the management or control of trusts.

(c) *Requirements.* No eligible person shall be determined to be independent under this section unless that person, or any officer or employee thereof, involved or to be involved in the management or control of the trust:

(1) Is independent of and unassociated with any interested party so that that person cannot be controlled or influenced in the administration of the trust by any interested party,

(2) Is not or has not been an employee of an interested party, or any organization affiliated with any interested party and is not a partner of, or involved in any joint venture or other investment with, any interested party, and

(3) Is not a relative or any interested party.

Accordingly, an otherwise eligible person who shares in a business enterprise or other undertaking with any interested party shall not be deemed to be independent under the rules of this paragraph (c).

Example (1). Reporting individual *R* terminates his partnership in a law firm upon nomination to a full-time government position. *R* wishes to have *T*, a partner in *R's* former firm, serve as his trustee. *T* may serve as *R's* trustee.

Example (2). In *Example (1), T* would have been precluded from serving as *R's* trustee if additionally:

(i) They both serve on the board of a local bank,

(ii) They are each limited partners in a tax shelter or operating business venture, or

(iii) Their spouses jointly operate a commercial venture.

Example (3). In Example (1), T would not have been precluded from serving as *R's* trustee if additionally:

(i) They both serve on a committee of their country club,

(ii) They each bought XYZ Corp. listed stock, after it was discussed by them during a golf weekend several months ago, or

(iii) *R* had purchased an office building from *T*.

§ 734.407 Special filing requirement in the case of qualified trusts.

(a) *Reporting individuals.* In the case of any qualified blind trust or qualified diversified trust, the reporting individual shall:

(1) *Execution.* Within thirty days after the trust is certified under § 734.405(a) by the Director, Office of Government Ethics, file with the Director a copy of:

(i) The executed trust instrument of the trust, and

(ii) A list of the assets which were transferred to the trust, categorized as to value in accordance with § 734.304.

The provisions of any trust filed with the Director under this paragraph which relate to the testamentary disposition of the trust assets need not be reported. If reported, the provisions shall not be subject to public disclosure.

(2) *Transfer of assets.* Within thirty days of transferring an asset, other than cash, to the trust, file a report with the Director, Office of Government Ethics, which shall briefly describe each asset, categorized as to value in accordance with § 734.304.

(3) *Dissolution.* Within thirty days of the dissolution of the thrust—

(i) File a report of the dissolution with the Director, Office of Government Ethics, and

(ii) File with the Director, a list of assets of the trust at the time of the dissolution, categorized as to value in accordance with § 734.304.

Any document filed under the requirements of this paragraph shall be subject to the public disclosure requirements of § 734.602.

(b) *Trustees.* The trustee of a qualified blind trust or qualified diversified trust, and any person in addition to a party to the trust designated in the trust instrument as an investment adviser, shall file with the Director, Office of Government Ethics, by the May 15 following any calender year during which the trust was in existence a properly executed Certificate of Compliance in the form prescribed by Appendix B of this part. In addition, the trustee shall maintain and make available for inspection by the Office of Government Ethics, as it may from time to time direct, the trust's books of account and other records and copies of the trust's tax returns for each taxable year of the trust. Any document (and the information contained therein) inspected under the requirements of this paragraph (other than a Certificate of Compliance) shall not be subject to the public disclosure requirements of § 734.602, and shall not be disclosed to any interested party.

(c) *Written communications.* In the case of any written communication with respect to a qualified blind trust or qualified diversified trust, which is described in § 734.403(b)(6) or § 734.404(c)(6), respectively, a copy of the communication shall, within five days of its date, be filed by the person initiating the communication with the Director, Office of Government Ethics. In the case of a qualified diversified trust, notwithstanding the preceding sentence, written communications not described in the third sentence of § 734.404(d) which consist entirely of reports from interested parties of their transactions and occurrences unrelated to the trust made to the trustee to

effectuate the provisions of that section shall (in lieu of being filed with the Director) be retained by the trustee and are subject to inspection under paragraph (b) of this section.

§ 734.408 Effective date.

The provisions of this subpart shall be applicable to trusts certified as approved qualified blind trusts or qualified diversified trusts after October 26, 1978. In the case of a trust certified prior to November 1, 1980, notwithstanding the preceding sentence, the Director of the Office of Government Ethics may exempt the trust from specific provisions of this part if he or she determines, upon application of the trustee or any interested party, that exemption is necessary and appropriate to avoid impracticality or undue hardship.

Subpart E—Special Provisions

§ 734.501 Outside earned income.

(a) *Limitation.* Any reporting individual:

(1) Who occupies a full-time position in the Executive branch, appointment to which is made by the President by and with the advice and consent of the Senate, and

(2) Who is compensated at a rate of pay which equals or exceeds the lowest rate of pay specified for GS–16 of the General Schedule prescribed by 5 U.S.C. 5332,

may not have in any calendar year outside earned income attributable to that calendar year which is in excess of 15 percent of that compensation.

(b) *Defined.* For the purposes of this section, the term "outside earned income" means wages, salaries, commissions, professional fees and other compensation received for personal services actually rendered, other than for services for the United States Government described in paragraph (a) of this section. Income received

(1) By an inactive partner, or

(2) From investments with respect to which the personal services of the reporting individual are not a material factor,

shall not be deemed outside earned income for purposes of this section. The term does not include amounts received during a period in which the reporting individual was not employed as specified by paragraph (a) of this section for personal services actually rendered during the period.

(c) *Other employment limitations.* The provisions of this section shall not preclude the application of limitations on outside employment which may be imposed on employees of a particular agency.

§ 734.502 Waivers.

(a) With respect to reporting requirements: Section 201(i) of the Act authorizes the Director to grant a waiver for officers and employees if they have served fewer than 130 days in a calendar year. For the rules relating to this waiver, see § 734.205.

(b) With respect to gifts: Section 202(a)(2)(D) of the Act authorizes the Director to grant a waiver in an unusual case with respect to the necessity for aggregating gifts. For the rules relating to this waiver, see § 734.303(g).

Subpart F—Procedure

§ 734.601 Report forms.

The Office of Government Ethics makes available standard forms for reporting the information required by this part.

§ 734.602 Filing of reports.

(a) Except as otherwise provided in this section, a reporting individual shall file the report required under this part with the designated agency ethics official at the agency in which the individual:

(1) Is serving,

(2) Served prior to termination of employment, or

(3) Will serve.

The designated agency ethics official shall note on any report or supplemental report the date it is received.

(b) The President and Vice President shall file their reports with the Director of the Office of Government Ethics.

(c) Each agency shall transmit to the Director, Office of Government Ethics, copies of the reports required to be filed by:

(1) The Postmaster General,

(2) The Deputy Postmaster General,

(3) The governors of the Board of Governors of the United States Postal Service,

(4) Designated agency ethics officials,

(5) Candidates for the office of President or Vice President, and

(6) Officers and employees in, and nominees to, offices or positions which require confirmation by the Senate other than those required of members of the unformed services.

Prior to transmitting a copy of the report to the Director, the agency shall, except in the case of the designated agency ethics official's report, which shall be reviewed by the head of the agency (or his or her delegate), review the report in accordance with § 734.604(b). The Director shall forward a copy of the report of each nominee to the Senate committee considering the nomination. (See § 734.604(c) for procedures regarding the review of such reports.)

(d) The Director shall file his or her report in the Office of Government Ethics. Upon receipt, the report will be made immediately available to the public in accordance with this part.

(e) Candidates for President and Vice President identified in § 734.201(d), other than an incumbent President or Vice President, shall file their reports with the Federal Election Commission which in turn shall send copies of such reports to the Office of Government Ethics pursuant to paragraph (c) of this section.

(f) Members of the uniformed services identified in § 734.202(c), shall file their reports with the Secretary concerned.

§ 734.603 Custody of and public access to reports.

(a) Each agency shall make each report filed with it under this part available to the public in accordance with the provisions of this section, together with a copy of the official position description of the Government office or position held by the reporting individual involved, if available.

(b) This section does not require public availability of the report filed by any individual in:

(1) The Central Intelligence Agency,

(2) The Defense Intelligence Agency,

(3) The National Security Agency, or

(4) Any individual engaged in intelligence activities in any agency of the United States,

if the President finds that, due to the nature of the office or position occupied by the individual, public disclosure of the report would, by revealing the identity of the individual or other sensitive information, compromise the national interest of the United States. These individuals may be authorized, notwithstanding § 734.701(a), to file any additional reports necessary to protect their identity from public disclosure if the President first finds that such filings are necessary in the national interest.

(c) Each agency shall, within fifteen days after any report is actually received by the agency, permit inspection of the report by, or furnish a copy of the report to, any person who makes a written application stating:

(1) The person's name, occupation and address,

(2) The name and address of any other person or organization on whose behalf the inspection or copy is requested, and

(3) That the person is aware of the prohibitions on the obtaining or use of the report, as set forth in paragraph (e) of this section.

The application shall be made available to the public throughout the period

during which the report itself is made available to the public. The reviewing officials and the support staffs who maintain the files, the staff of the Office of Government Ethics, and Special Agents of the Federal Bureau of Investigation who are conducting a criminal inquiry into possible conflict of interest violations need not submit the application provided for by this paragraph.

(d) The agency may require a reasonable fee, established by appropriate agency regulation, to recover the direct cost of reproduction or mailing of such report, excluding any salary of any employee involved in such process. A copy of the report may be furnished without charge or at a reduced charge if the agency determines that waiver or reduction of the fee is in the public interest. The criteria used by an agency to determine when a fee will be reduced or waived shall be established by an appropriate regulation.

(e) It is unlawful for any person to obtain or use a report—

(1) For any unlawful purpose;

(2) For any commercial purpose, other than by news and communications media for dissemination to the general public;

(3) For determining or establishing the credit rating of any individual; or

(4) For use, directly or indirectly, in the solicitation of money for any political, charitable, or other purpose.

Example (1): The deputy general counsel of an agency as its reviewing official (see § 734.105(n)) is responsible for reviewing the public financial disclosures filed by officials within that agency. The personnel director for that agency, not exercising functions within the ethics program, wishes to review the disclosure of an individual within the agency. The personnel director must file an application to review the disclosure. However, the supervisor of an official with whom the deputy general counsel consults with respect to matters arising in the review process need not file such an application.

Example (2): A state law enforcement agent is conducting an investigation which involves the private financial dealings of an individual who has filed a public disclosure. The agent must complete a written application in order to review or obtain a copy of the statement.

Example (3): A copy of a report is obtained by a reporter for use in a general newspaper article. This copy is seen on the reporter's desk by an editor who is in charge of a local charity drive. The editor observes that the reporting individual owns a business in his community and sends a personal note to the individual referring to the business and soliciting a contribution for the charity. This use is prohibited.

Example (4): A financial institution has received an application for a loan from an official indicating her present financial status. The official has filed a public financial disclosure with her agency. The financial institution cannot review the disclosure for purposes of checking the information contained on the report against that which appears on the application.

(f)(1) Any report filed with an agency, or transmitted to the Director, Office of Government Ethics, under this section, shall be retained by the agency or the Office of Government Ethics, or both, as the case may be. The report shall be made available to the public for a period of six years after receipt of the report. After the six-year period the report shall be destroyed unless needed in an ongoing investigation, except that in the case of an individual who filed the report under § 734.201(c) and was not subsequently confirmed by the Senate, or who filed the report under § 734.201(d) and was not subsequently elected, the report shall be destroyed one year after the individual either is no longer under consideration by the Senate or is no longer a candidate for nomination or election to the Office of President or Vice President.

(2) For purposes of paragraph (f)(1) of this section, in the case of a reporting individual with respect to whom a trust has been certified under Subpart D of this part, a copy of the qualified trust agreement, the list of assets initially placed in the trust, and all other publicly available documents relating to the trust shall be retained until the periods for retention of all other reports on the individual have lapsed under paragraph (f)(1) of this section.

§ 734.604 Review of reports.

(a) *In general.* Reports shall be reviewed by the appropriate reviewing official within 60 days after the date of filing. Reports reviewed by the Director, Office of Government Ethics, shall be reviewed within 60 days from the date each report was transmitted by the agency to OGE.

(b) *Responsibilites of reviewing officials.*—(1) *Initial review.* The reviewing official shall review each report to determine to his or her satisfaction that:

(i) Each item is completed, and

(ii) No interest or position disclosed on the form violates or appears to violate:

(A) Any applicable provision of Chapter 11 of 18 U.S.C. Part 1,

(B) The Ethics in Government Act of 1978, as amended, and the regulations promulgated thereunder,

(C) Executive Order 11222 and applicable regulations promulgated thereunder, or

(D) Any other statute or regulation applicable to the employees of the reviewing official's agency.

The reviewing official shall not sign and date the report until that determination is made. A reviewing official need not audit the report to ascertain whether the disclosures are correct; disclosures are to be taken at "face value" unless there is a patent omission or ambiguity or the official has independent knowledge of matters outside the report. A report which is signed by a reviewing official, however, shall signify that the agency in which the reporting individual serves has found that the information contained in the report discloses no conflict of interest under applicable laws and regulations and that the report fulfills the requirements of this paragraph (b)(1).

(2) *Requests for additional information.* If the reviewing official believes that additional information is required, the official shall request this information indicating a date by which the information must be submitted. This additional information shall be made a part of the report.

(3) *Review on basis of additional information.* If the reviewing official concludes on the basis of the information disclosed in the report and any additional information required under paragraph (b)(2) of this section that:

(i) The report fulfills the requirements of paragraph (b)(1) of this section, the reviewing official shall sign and date the report, or

(ii) The report does not fulfill the requirements of paragraph (b)(1) of this section, the official shall:

(A) Notify the reporting individual of this opinion,

(B) Afford the reporting individual a reasonable opportunity for an oral or written response, and

(C) Determine on the basis of the response whether or not the report fulfills the requirements.

(4) *Review to determine remedial action.* If the reviewing official concludes, after following the procedure set forth in paragraph (b)(3)(ii) of this section, that:

(i) The report fulfills the requirements of paragraph (b)(1) of this section, the reviewing official shall sign and date the report and notify the reporting individual in writing that this action was taken; or

(ii) The report does not fulfill the requirements of paragraph (b)(1) of this section, the reviewing official shall:

(A) Notify the individual of that opinion,

(B) Afford the individual an opportunity for personal consultation, if practicable,

(C) Determine what remedial action should be taken to bring the report into compliance, and

(D) Notify the individual in writing of the remedial action required, indicating a date by which that action must be taken.

Except in unusual situations which must be fully documented to the satisfaction of the reviewing official, remedial action shall be completed within 90 days from the date the individual was notified that the action would be required.

(5) *Remedial steps.* Remedial steps may include, as appropriate:

(i) Divestiture of the conflicting interest,

(ii) Restitution,

(iii) The establishment of a qualified trust under section 202(f) of the Act,

(iv) Request for an exemption under 18 U.S.C. 208(b),

(v) Recusal, or

(vi) Voluntary request by the individual for transfer, reassignment, limitation of duties or resignation.

(6) *Compliance or referral.* (i) If the reporting individual complies with a written request for remedial action required under paragraph (b)(4)(ii), the reviewing official shall indicate in the comment section of the report that this action has been taken and shall sign and date the report. The reviewing official shall send to the reporting individual written notification of the signing and of the addition of the comment to the form.

(ii) If the reporting individual does not comply with a written request for remedial action transmitted under paragraph (b)(4)(ii) of this section, the reviewing official shall notify the Office of Government Ethics and refer the matter for appropriate action to:

(A) The President, where the reporting individual is in a position, other than in the uniformed services, appointment to which requires the advice and consent of the Senate,

(B) The Secretary concerned, for a member of the uniformed services, or

(C) The head of the agency, for any other officer or employee, except in the case of the Postmaster General or Deputy Postmaster General, the Director of the Office of Government Ethics shall recommend to the Governors of the Board of Governors of the United States Postal Service the action to be taken. In unusual circumstances, the Office of Government Ethics may order corrective action as authorized by section 402(b)(9) of the Act.

(7) *Appropriate action.* Appropriate action includes changes in assigned duties or adverse action in accordance with the procedures set forth in 5 CFR Part 752.

(8) *Scope of this paragraph.* The provisions of this paragraph (b) shall not apply in the case of the President or Vice President, or a candidate or nominee for such office.

(c) *Expedited procedure in the case of individuals appointed by the President and subject to confirmation by the Senate.* Notwithstanding paragraph (a) of this section, in the case of a report filed by an individual described in § 734.201(c) who is nominated to a position, by the President, by and with the advice and consent of the Senate:

(1) The Executive Office of the President shall furnish the financial disclosure reporting forms to the nominee and shall forward the completed report to the designated agency ethics official at the agency in which the nominee will serve or is serving; or when appropriate, the nominee shall file the completed report directly with the designated agency ethics official.

(2) The designated agency ethics official shall review the report and, only after the official completes a review in accordance with paragraph (b)(1) of this section and concludes that there is no conflict of interest under applicable laws and regulations, the official shall:

(i) Attach to the report a copy of the official position description (when available) of the position to be filled by the nominee;

(ii) Personally certify the report and date the certification;

(iii) Write an opinion letter to the Director, Office of Government Ethics, certifying that there is no conflict of interest under applicable laws and regulations, and discussing:

(A) Any problems which the official encountered in reaching the conclusions upon which that certification is based and describing the resolution of the problems, and

(B) Any specific commitment, agreement, recusal, or other undertaking by the nominee to resolve any such problem through recusal, divestiture or similar action (with a copy of any such commitment, agreement, recusal, or other undertaking which has been reduced to writing to be sent to the Director as soon as it is available); and

(iv) Deliver the letter and report to the Director, Office of Government Ethics, within three days after the receipt of the report by the agency in which the nominee will serve or is serving.

(3) The Director of the Office of Government Ethics shall review the report and the letter from the designated agency official and, if satisfied that there is no unresolved conflict, the Director shall sign the report and date the approval. The Director shall submit the report with a letter to the Senate Committee involved expressing the Director's opinion that on the basis of information contained in the report the nominee is in compliance with applicable laws and regulations.

(4) If in the case of any nominee or class of nominees for any reason the expedited procedure specified in this paragraph (c) cannot be completed within the time set forth in paragraph (c)(2)(iv) of this section, the designated agency official shall inform the Director. When necessary and appropriate in the case of a class of nominees, the Director may modify the rule of that paragraph with respect to a particular department or agency.

§ 734.605 Advice and opinions.

For purposes of assisting both current and former employees in avoiding situations in which they would not be in compliance with applicable laws and regulations and to inform members of the public—

(a) The Director, Office of Government Ethics, will render advisory opinions on matters of general applicability or on important matters of first impression after, to the extent practicable, providing interested parties with an opportunity to transmit written comments on the request for the advisory opinion, and whereby such advisory opinions are compiled, published, and made available to agency ethics counselors and the public; and

(b) Each Secretary concerned and designated agency official, including the President in the case of individuals employed in the Executive Office of the President, shall maintain a list of those circumstances or situations which have resulted or may result in non-compliance with such laws or regulations; such list shall be periodically published, and shall be furnished to those individuals employed within the agency who are required to file reports under this part, however, the absence of any situation or circumstance from such a list shall not be construed as an indication that an individual in such circumstance or situation would be in compliance with such laws or regulations.

Subpart G—Penalties and Remedial Action

§ 734.701 Failure to file or falsifying reports.

(a) *Civil action.* The Attorney General may bring a civil action in any appropriate United States District Court against any individual who knowingly and willfully falsifies or who knowingly

or willfully fails to file or report any information required under this part. The court in which the action is brought may assess against the individual a civil penalty in any amount, not to exceed $5,000.

(b) *Referral of cases.* The head of each agency, each Secretary concerned, or the Director, Office of Government Ethics, as the case may be, shall refer to the Attorney General the name of any individual he or she has reasonable cause to believe has willfully failed to file a report or has willfully falsified or willfully failed to file required information.

(c) *Administrative remedies.* The President, the Vice President, the Director, Office of Government Ethics, the Secretary concerned, the head of each agency, and the Office of Personnel Management, may take any appropriate personnel or other action in accordance with applicable law or regulation against any individual failing to file a report or falsifying or failing to file required information. This action includes adverse action under 5 CFR Part 752.

§ 734.702 Certain actions in the case of qualified trusts.

(a) The Attorney General may bring a civil action in any appropriate United States District Court against any individual who knowingly and willfully violates the provisions of § 734.407(a) (1) and (2). The court in which the action is brought may assess against the individual a civil penalty in any amount, not to exceed $5,000.

(b) The Attorney General may bring a civil action in any appropriate United States District Court against any individual who negligently violates the provisions of § 734.407(a)(1) and (a)(2). The court in which the action is brought may assess against the individual a civil penalty in any amount, not to exceed $1,000.

§ 734.703 Misuse of reports.

The Attorney General may bring a civil action against any person who obtains or uses a report filed under this part for any purpose prohibited by section 205(c)(1) of the Act and § 734.603(e). The court in which the action is brought may assess against the person a penalty in any amount, not to exceed $5,000. This remedy shall be in addition to any other remedy available under statutory or common law.

Appendix A

The Certificate of Independence required by § 734.406(a) shall be executed as follows:

CERTIFICATE OF INDEPENDENCE

With respect to the trust of _____ (Settlor), which has been submitted to the Office of Government Ethics for certification pursuant to the Ethics in Government Act of 1978 (Pub. L. 95–521, as amended), the undersigned proposed Trustee of such trust, or person in addition to a party to the trust designated in the trust instrument as an investment adviser, is eligible to serve in such fiduciary capacity in accordance with section 202(f)(3)(A) of such Act:

FIRST: The undersigned is (check one)—

☐ a financial institution, which is a "bank" as defined in 15 U.S.C. 80b–2(a)(2);

☐ an attorney, who is admitted to practice before the highest court of _____;

☐ a certified public accountant;

☐ a "broker", as defined in 15 U.S.C. 78c(a)(4);

☐ an investment adviser, who is a person defined in 15 U.S.C. 806–2(a)(11) or who demonstrates to the satisfaction of the Director general involvement in his or her role as such an adviser in the management or control of trusts; or

☐ a person in addition to a party to the trust designated in the trust instrument as an investment adviser.

SECOND: The undersigned (and any officer or employee of the undersigned, involved or to be involved in the management or control of the trust)—

(A) Is independent of and unassociated with any interested party so that the undersigned (and any such officer and employee) cannot be controlled or influenced in the administration of the trust by any interested party;

(B) Is not or has not been an employee of an interested party, or any organization affiliated with any interested party and is not a partner of, or involved in any joint venture or other investment with, any interested party;

(C) Is not a relative of any interested party; and

(D) Does not share actively in a business enterprise or other undertaking with any interested party.

* * * * *

The undersigned certifies that the statements contained herein are true, complete and correct to the best of such undersigned's knowledge and belief.

Date _____
(firm) _____
By: _____
(title) _____
Approved by _____

Director, Office of Government Ethics

Date _____

Appendix B

The Certificate of Compliance required by § 734.407(b) shall be executed as follows:

CERTIFICATE OF COMPLIANCE

With respect to the qualified blind trust [qualified diversified trust] of _____ (Settlor), the undersigned, the approved Trustee of such trust or approved person in addition to a party to the trust designated in the trust instrument as an investment adviser pursuant to 5 CFR 734.406, has served in such fiduciary capacity during the calendar year _____ (or for the period beginning _____ and ending _____) and is eligible to continue in such capacity by virtue of the following:

The undersigned (and any officer or employee involved in the management or control of the trust) has not knowingly or negligently, and will not—

(A) disclose any information to an interested party with respect to such trust that may not be disclosed pursuant to 5 CFR 734.403(b)(5) (5 CFR 734.404(c)(5), in the case of a qualified diversified trust) or any other provision or requirement of Subpart D of 5 CFR Part 734,

(B) acquire any holding the ownership of which is prohibited by, or not in accordance with, 5 CFR 734.403(b)(2) (5 CFR 734.404(c)(2), in the case of a qualified diversified trust) or the terms of the trust instrument,

(C) solicit advice from any interested party with respect to such trust, which solicitation is prohibited by 5 CFR 734.403(b)(1) (5 CFR 734.404(c)(1), in the case of a qualified diversified trust) or any other provision or requirement of Subpart D of 5 CFR Part 734 or the trust instrument,

(D) fail to file any document required by 5 CFR 734.407(b) and (c) or any other provision of Subpart D of 5 CFR Part 734, or

(E) violate or fail to comply with any provision or requirement of Subpart D of 5 CFR Part 734 or the trust instrument.

* * * * *

The undersigned certifies that the statements contained herein are true, complete and correct to the best of such undersigned's knowledge and belief.

Date _____
(firm) _____
By: _____
(title) _____

PART 735—EMPLOYEE RESPONSIBILITIES AND CONDUCT

§§ 735.501–735.508 (Subpart E)—[Removed]

(2) Subpart E of 5 CFR Part 735 is revoked.

(Titles II and IV of Pub. L. 95–521 (October 26, 1978), as amended by Pub. L. 96–19 (June 13, 1979))

[FR Doc. 80–32692 Filed 10–20–80; 8:45 am]

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October 21, 1980

Part V

Department of Labor

Occupational Safety and Health Administration

Basic Program Elements for Federal Employee Occupational Safety and Health Programs; Final Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1960

[Docket No. F-002]

Basic Program Elements for Federal Employee Occupational Safety and Health Programs; Final Rule

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

ACTION: Final rule.

SUMMARY: Executive Order 12196, issued to provide direction for the implementation of Section 19 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 668), directs the Secretary of Labor to issue a set of basic program elements to assist the various Federal agencies in carrying out their responsibilities under the act and Executive Order 12196. Executive Order 12196 went into effect October 1, 1980 and supersedes Executive Order 11807. In order to provide occupational safety and health protection for Federal employees, Section 19 imposes on the head of each Federal agency the responsibility to "establish and maintain an effective and comprehensive occupational safety and health program which is consistent with the standards promulgated under Section 6." This document revises 29 CFR Part 1960, entitled Safety and Health Provisions for Federal Employees, to reflect the requirements of Executive Order 12196 and to carry out the Secretary's responsibilities under Sections 19 and 24 of the Act.

DATES: This final rule is effective October 21, 1980. For information on other related dates, see the discussion of "Effective Date" set forth in the Supplementary Information.

FOR FURTHER INFORMATION CONTACT: Ms. Clinton M. Wright, Director, Directorate of Training, Education, Consultation and Federal Agency Programs, Room N3476, U.S. Department of Labor, Washington, D.C. 20210 (202-523-7251).

SUPPLEMENTARY INFORMATION:

1. Background

On March 12, 1980, a draft revision of 29 CFR Part 1960, newly entitled "Basic Program Elements for Federal Employee Occupational Safety and Health Programs and Related Matters" was submitted to a task group of the Federal Advisory Council on Occupational Safety and Health (FACOSH) for consideration. On March 21 and March 28, 1980, the draft proposal of Part 1960 was submitted by the task group to all members of FACOSH for consideration and advice. This proposal was prepared by the Agency after full consideration of the views and advice of FACOSH. On May 21, 1980, in accordance with Section 1-401(c) of Executive Order 12196, the Secretary of Labor submitted this proposed revision to the Office of Management and Budget (OMB). OMB, on June 17, 1980, distributed the proposal to selected agencies for comment.

In addition, on August 15, 1980, notice was published (45 FR 54355) inviting public comment on the proposed revision of 29 CFR Part 1960. A period for receipt of written comments on the proposed revision was provided, ending September 15, 1980.

The purpose of this revision of Part 1960 is to set forth the basic program elements that each Federal agency head is to follow in establishing and maintaining an effective and comprehensive occupational safety and health program for an agency's employees. Section 1-401(c) of Executive Order 12196 requires the Secretary of Labor to promulgate these basic program elements to provide guidance to the heads of Federal agencies to carry out the terms of the Executive Order. The final rule establishes procedures and guidance, among other things, for the administration of Federal occupational safety and health programs (Subpart B), for compliance with OSHA standards (Subpart C), for inspection of agency workplaces for hazardous conditions and the abatement of such conditions where they are found to exist (Subpart D), for effective coordination and cooperation between Federal agencies in achieving a safe and healthful Federal work environment (Subpart E), for the establishment and operation of occupational safety and health committees (Subpart F), for dealing with employee allegations of reprisal (Subpart G), for training of various individuals in occupational safety and health (Subpart H), for recordkeeping and reporting (Subpart I), for evaluating Federal safety and health programs (Subpart J), and for forming and operating Field Federal Safety and Health Councils (Subpart K).

This final rule is, in most respects, the same as the proposal. Most changes are not substantive; they are largely technical or editorial in nature. In some provisions dealing with the details of agency programs, the word "should" has been substituted for the word "shall." However, it is OSHA's position that those alterations do not detract from the efficacy of the program elements and do provide the flexibility required by Section 1-401 of the Executive Order. Following is a discussion of the major issues identified in agency responses to OMB's solicitation of views and in public comments on OSHA's notice of rulemaking and OSHA's response thereto, including any major changes in the proposal.

2. Discussion

A. Agencies noted that § 1960.1(b) contained no provision for consultation with employees or their representatives prior to requesting approval from the Secretary of alternate program elements. OSHA believes that employees and employee representatives, as well as safety and health committees where established, should play a role in the development of alternate program elements. Therefore, we have changed § 1960.1(b) to require such consultation where alternate program elements are contemplated. A request that an opportunity for hearing be provided has been rejected as being inconsistent with the tenor of the Federal occupational safety and health program, with the requirement of maintaining flexibility set forth in the Executive Order, and with the basic statutory scheme of Section 19 of the Act that vests primary authority for assuring Federal employee safety and health in the heads of the separate Federal agencies. We believe employee participation is amply assured through the committee structure. Moreover, OSHA's agency evaluation program will identify any agency which does not afford adequate opportunity for employee participation.

B. Several agencies criticized Subpart G of the proposal, dealing with employee allegations of discrimination, as duplicative of existing agency and Office of Personnel Management procedures for the disposition of personnel matters. It is not our intention to impose procedures which would duplicate any efficient procedures that presently exist. Therefore, we have substantially revised Subpart G to require agency heads to have procedures to assure that employees are not subject to reprisals for participating in agency safety and health activities. The rule permits agency heads a degree of flexibility as to the details of the procedures. However, § 1960.46(b) provides that, should OSHA find through its evaluation of agency occupational safety and health programs that employee rights under the Executive Order are not being adequately protected by existing

procedures, the Secretary shall report such findings to the President by September 30, 1982, and shall recommend improvements in procedures for the investigation and resolution of allegations of reprisal. Section 1960.47 has been revised to require that safety and health committees be advised of agency activity regarding allegations of reprisal.

Finally, there was criticism of the broad language of § 1960.46 which permits an employee to refuse to work under certain circumstances. That language has been made more precise to reflect the concept that an employee may refuse to work where he or she has a reasonable belief that the task involved poses an imminent risk of death or serious physical harm coupled with a reasonable belief that there is insufficient time to seek effective redress through normal hazard reporting and abatement procedures.

C. Several agencies requested that the basic program elements include a reference to Section 4(b)(1) of the OSH Act. That section, in effect, precludes the application of OSHA standards to working conditions that are addressed by other Federal agencies' standards or regulations affecting occupational safety and health. One of the purposes of Section 4(b)(1) is to avoid duplication of effort by OSHA and other Federal agencies. For example, if this request were accepted, where a Federal agency must comply with standards or regulations affecting occupational safety and health issued by another Federal agency, then OSHA standards, otherwise applicable to Federal employees under Executive Order 12196, would, by virtue of Section 4(b)(1), not be applicable to the working conditions addressed by other Federal standards.

The suggestion to include a reference to Section 4(b)(1) of the OSH Act in the basic program elements was rejected because the OSH Act and its legislative history make it clear that the provisions of the OSH Act applicable to Federal employees are Section 19 and Section 24 (statistics). Thus, OSHA is precluded from making any other provision of the OSH Act expressly applicable to the Federal employee programs.

The proposal was changed, however, to make it clear that OSHA recognizes that Federal agencies must, in certain circumstances, comply with both OSHA standards and those of other Federal agencies such as the Department of Energy (DOE). We have included in the final program elements an expressed recognition of this fact. We do not believe, however, that conflicts between OSHA standards and those of other agencies are at all common. For example, OSHA's radiation standards are identical to those of DOE. In most other cases, OSHA does not have standards dealing with hazards already addressed by the agencies' standards; for example, OSHA would have no standards dealing with flight safety of aircraft that is addressed by Federal Aviation Administration's standards and regulations.

Nevertheless, to deal with the rare case where there may be a conflict between an OSHA standard and a regulation of another agency, the final rule provides a mechanism for resolving that conflict; that is, informal coordination between the Secretary of Labor and the other affected agencies. Because conflicts of this type are rare, there is no need to include in the program elements the approach of Section 4(b)(1).

D. A question was raised concerning the definition of "employee" in § 1960.2(g), which is:

> The term "employee" as used in this part means any person, other than members of the Armed Forces, employed or otherwise suffered, permitted, or required to work by an "agency" * * *.

The question is whether the intention is to cover prisoners in Federal prisons and to give them the same recourse as Federal civilian employees. In that respect, the definition of "employee" is unchanged from the definition contained in the existing Part 1960. We purposely used a broad definition so that people like volunteers and prisoners would be protected under the safety and health program. The definition of employee with regard to the occupational safety and health program does not mean that prisoners are to be treated as employees for any other purpose. The occupational safety and health program is intended to deal with hazardous working conditions, and it is OSHA's opinion that where prisoners are employed in work similar to that outside prisons e.g., farming, laundries, machine operations, etc., all the protections open to anyone else in similar situations should apply, including the right to file a report of hazards with appropriate safety and health officials. The definition remains unchanged.

E. The Executive Order requires that agency heads shall comply with all standards issued under Section 6 of the Act, except where the Secretary approves compliance with alternative standards. Section 1960.17 of this part prescribes procedures for submitting an alternate standard to the Secretary, along with certain supporting materials, for consideration and approval. Several agencies suggested that there should be a mechanism to bypass the procedures for alternative standards where an agency chooses to apply a standard that is more stringent and, therefore, more protective of employees. We agree that in certain circumstances, where it is clear that a standard differs from a Section 6 standard only in a specific, quantitative element and provides employees greater protection, the justifications and supporting materials required in § 1960.17 should not be required as a matter of course. We have added language to § 1960.16 to omit, in certain specific and limited circumstances, automatic recourse to the approval procedures in § 1960.17. The most common situations involving limited differences are where an agency wishes to set a *lower* permissible exposure level (or threshold limit value) or where the agency wishes to monitor workplace exposures *more* frequently than the Section 6 standard requires. The third situation is where the agency wishes to apply a more recent edition of a reference standard; one newer than the existing standard incorporated into Section 6 standards (e.g., the National Electrical Code). This last exception is less clear-cut than the other examples because a reference standard in a newer edition is not always a more stringent or more protective standard; the protection may actually be weakened. Therefore, the revision to § 1960.16 requires that the Secretary be notified of these situations for several reasons. First, the Secretary's knowledge that a Federal agency is applying a stricter standard would be essential if the Secretary was making an inspection under the authority of the Executive Order. Second, the ability of an agency to comply with a more stringent standard may provide valuable information for our own standards-setting or revision processes. Also, since the newer reference-standards may, in fact, be less stringent, prior notification to the Secretary and consultation with employees will help prevent inadvertent lessening of employee protection. Finally, we have added language permitting the Secretary to require an agency to utilize the approval procedures when, after notification, by the agency, the Secretary determines that the protection afforded by the alternate standard may be inadequate. A similar approval process has also been added to § 1960.18 dealing with supplementary standards.

F. The Executive Order permits agency heads to voluntarily establish safety and health committees but requires only that, if established, the committees shall be established at the

national level and "other appropriate levels." The proposal, after consultation with the FACOSH, provided that in addition to the national level committee, committees shall be organized at individual establishments (or groupings of small establishments) and further provides that if an agency chooses to set up committees, it must establish them at *all* establishments and effectively cover *all* employees. Thus, if committees were not organized to cover *all* establishments within an agency—e.g., at every DOD installation—every establishment of that agency would be subject to unannounced inspections by the Secretary. Several agencies protested this "all or nothing" approach essentially on the grounds that it is inconsistent with the mandate of Executive Order 12196 to provide flexibility in the implementation of the agency program and it would inhibit the formation of committees. We believe that Federal employees will be adequately protected through either an establishment committee or unannounced inspections by the Secretary. Therefore, the "all or nothing" approach has been modified to preserve flexibility by permitting committees to be organized on an establishment basis with the result that only those establishments with committees will be largely free from OSHA unannounced inspections.

G. Several agencies expressed a concern that § 1960.28(b), which stated that employee reports of unsafe or unhealthful working conditions are not grievances, could be interpreted as interfering with existing collective bargaining agreements and grievance procedures. The intent of the provisions of this part is to provide workplace protection for the Federal workers as comparable as possible to that of private sector employees. The OSH Act, in the private sector, places primary responsibility for complying with OSHA standards on employers, not on employees. In the private sector, employee complaints of unsafe and unhealthful working conditions are essentially informational in nature. This information facilitates the Secretary's efforts to insure that employers comply with OSHA requirements. That principle of employer responsibility for complying with OSHA standards is carried over to the Federal employment sector. Because nothing should be included or construed as disturbing or altering that basic employer responsibility (agency-head responsibility), employee reports of unsafe or unhealthful working conditions must be treated as informational in nature. Whether or not an employee may also grieve on health and safety issues is a separate matter that does not alter the basic principle of employer responsibility to correct unsafe and unhealthful working conditions. This principle of comparability of protection is the historical basis for Executive Order 12196 and, therefore, constitutes the underlying theme for these regulations.

Therefore, our position remains unchanged in that a report of a hazardous working condition is not a grievance. However, to avoid possible confusion of a report with a grievance, we have deleted as superfluous, those references in paragraph (b) dealing with grievances.

3. Effective Date

This final rule is effective upon publication. However, agencies are given 30 days from the date of publication in which to determine whether or not to establish occupational safety and health committees pursuant to Executive Order 12196 and this Part. Within the 30 days, each agency head shall inform the Secretary, in writing, of the agency's decision to form committees or not to form committees. For those agencies which decide to establish committees, an additional period of 60 days is given in which to institute the committee structure. Within the 60 days, each agency head shall inform the Secretary, in writing, of the location and coverage of each committee. During the above time (30 days for all agencies and an additional 60 days for agencies choosing to utilize the committee system), the Secretary of Labor will not conduct unannounced inspections as provided in Section 1–401(i) of Executive Order 12196 except where the Secretary deems it necessary in the case of an imminent danger. Because Executive Order 12196 became effective October 1, 1980, and because this final rule provides the basic program elements needed by Federal agencies to implement occupational safety and health programs pursuant to the Order, it is necessary to make this final rule effective upon publication.

I find that the reasons stated above constitute good cause for making this rule effective immediately. This rule is therefore, effective on October 21, 1980.

4. Authority

This document was prepared under the direction of Eula Bingham, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, Third and Constitution Avenue, NW., Washington, D.C. 20210.

Accordingly, pursuant to Sections 19 and 24 of the Occupational Safety and Health Act of 1970 (84 Stat. 1609, 1614, 29 U.S.C. 668, 673), Secretary of Labor's Order No. 8–76 (41 FR 25059), and Executive Order 12196, Occupational Safety and Health Programs for Federal Employees, Part 1960, Chapter XVII of Title 29, Code of Federal Regulations is revised to read as follows.

Signed at Washington, D.C., this 15th day of October, 1980.

Eula Bingham,

Assistant Secretary of Labor for Occupational Safety and Health.

PART 1960—BASIC PROGRAM ELEMENTS FOR FEDERAL EMPLOYEE OCCUPATIONAL SAFETY AND HEALTH PROGRAMS AND RELATED MATTERS

Subpart A—General

Sec.

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1960.17 Alternate standards.
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1960.20–1960.24 [Reserved]

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1960.25 Qualifications of safety and health inspectors and agency inspections.
1960.26 Conduct of inspections.
1960.27 Representatives of officials in charge and representatives of employees.
1960.28 Employee reports of unsafe or unhealthful working conditions.
1960.29 Accident investigation.
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1960.31 Inspections by OSHA.
1960.32–1960.33 [Reserved]

Subpart E—General Services Administration and Other Federal Agencies

1960.34 General provisions.
1960.35 National Institute for Occupational Safety and Health.

Subpart F—Occupational Safety and Health Committees

1960.36 General provisions.
1960.37 Committee organization.
1960.38 Committee formation.
1960.39 Agency responsibilities.

1960.40 Establishment committee duties.
1960.41 National committee duties.
1960.42–1960.45 [Reserved]

Subpart G—Allegations of Reprisal

1960.46 Agency responsibility.
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1960.48–1960.53 [Reserved]

Subpart H—Training

1960.54 Training of top management officials.
1960.55 Training of supervisors.
1960.56 Training of safety and health specialists.
1960.57 Training of safety and health inspectors.
1960.58 Training of collateral duty safety and health personnel and committee members.
1960.59 Training of employees and employee representatives.
1960.60 Training assistance.
1960.61–1960.65 [Reserved]

Subpart I—Recordkeeping and Reporting Requirements

1960.66 Purpose, scope and general provisions.
1960.67 Record of log of Federal occupational injuries and illnesses.
1960.68 Supplementary record of Federal occupational injuries and illnesses.
1960.69 Annual summaries of Federal occupational injuries and illnesses.
1960.70 Reporting of serious accidents.
1960.71 Location and utilization of records and reports.
1960.72 Access to records by Secretary.
1960.73 Retention of records.
1960.74 Identification of reporting units.
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1960.76–1960.77 [Reserved]

Subpart J—Evaulation of Federal Occupational Safety and Health Programs

1960.78 Purpose and scope.
1960.79 Self-evaluations of occupational safety and health programs.
1960.80 Secretary's evaluations of agency occupational safety and health programs.
1960.81–1960.83 [Reserved]

Subpart K—Field Federal Safety and Health Councils

1960.84 Purpose.
1960.85 Role of the Secretary.
1960.86 Establishing councils.
1960.87 Objectives.
1960.88 Membership and participation.
1960.89 Organization.
1960.90 Operating procedures.
1960.91 [Reserved]

Authority: Secs. 19 and 24 of the Occupational Safety and Health Act of 1970 (84 Stat. 1609, 1614, (29 U.S.C. 668, 673)); Secretary of Labor's Order No. 8–76 (41 FR 25059); E.O. 12196.

Subpart A—General

§ 1960.1 Purpose and scope.

(a) Section 19 of the Occupational Safety and Health Act (the Act) contains special provisions to assure safe and healthful working conditions for Federal employees. Under that section, it is the responsibility of the head of each Federal agency to establish and maintain an effective and comprehensive occupational safety and health program which is consistent with the standards promulgated under section 6 of the Act. The Secretary of Labor (the Secretary), under section 19, is to report to the President certain evaluations and recommendations with respect to the programs of the various agencies, and the duties which section 24 of the Act imposes on the Secretary of Labor necessarily extend to the collection, compilation and analysis of occupational safety and health statistics from the Federal Government. The role of the General Services Administration in this area stems from its duties as the Government's principal landlord and from its specific safety and health responsibilities under 41 CFR Part 101, Subchapter D, Federal Property Management Regulations.

(b) Executive Order 12196, Occupational Safety and Health Programs for Federal Employees, issued February 26, 1980, prescribes additional responsibilities for the heads of agencies, the Secretary, and the General Services Administrator. Among other duties, the Secretary is required to issue basic program elements in accordance with which the heads of agencies shall operate their safety and health programs. The purpose of this part is to issue these basic program elements. Although agency heads are required to operate a program in accordance with the basic program elements, those elements contain numerous provisions which, by their terms, permit agency heads the flexibility necessary to implement their programs in a manner consistent with their respective missions, sizes, and organizations. Moreover, an agency head, after consultation with agency employees or their representatives and with appropriate safety and health committees may request the Secretary to consider approval of alternate program elements; the Secretary, after consultation with the Federal Advisory Council on Occupational Safety and Health, may approve such alternate program elements.

(c) Under Executive Order 12196, the Secretary is required to perform various services for the agencies, including consultation, training, recordkeeping, inspections, and evaluations. Agencies are encouraged to seek such assistance from the Secretary as well as advice on how to comply with the basic program elements and operate effective occupational safety and health programs. Upon the request of an Agency, the Office of Federal Agency Safety and Health Programs will review proposed agency plans for the implementation of program elements.

(d) Section 19 of the Act and the Executive Order require specific opportunities for employee participation in the operation of agency safety and health programs. The manner of fulfilling these requirements is set forth in part in these program elements. These requirements are separate from but consistent with the Federal Service Labor Management Relations Statute (5 U.S.C. 71) and regulations dealing with labor-management relations within the Federal Government.

(e) Executive Order 12196 and these basic program elements apply to all agencies of the Executive Branch. They apply to all Federal employees. They apply to all working conditions of Federal employees except those involving uniquely military equipment, systems, and operations.

(f) The Executive Order and this part do not apply to employees or working conditions of employees of private contractors performing work under government contracts, regardless of whether such privately employed workers perform their duties in government owned or leased facilities with government equipment or together with government personnel. Protection of employees of private contractors is assured under the other provisions of the Act, not under Section 19. No provision of the Executive Order or this part shall be construed in any manner to relieve any private employer, including Federal contractors, or their employees of any rights or responsibilities under the provisions of the Act, including compliance activities conducted by the Department of Labor or other appropriate authority.

(g) Federal employees who work in establishments of private employers are covered by their agencies' occupational safety and health programs. Although an agency may not have the authority to require abatement of hazardous conditions in a private sector workplace, the agency head must assure safe and healthful working conditions for his/her employees. This shall be accomplished by administrative controls, personal protective equipment, or withdrawal of Federal employees from the private sector facility to the extent necessary to assure that the employees are protected.

§ 1960.2 Definitions.

(a) The term "Act" means the Occupational Safety and Health Act of 1970 (84 Stat. 1590 et seq., 29 U.S.C. 651 et seq.).

(b) The term "agency" for the purposes of this part means an Executive Department, as defined in 5 U.S.C. 101, or any employing unit or authority of the Executive Branch of the Government. For the purposes of this part to the extent it implements section 19 of the Act, the term "agency" includes the United States Postal Service. By agreement between the Secretary of Labor and the head of an agency of the Legislative or Judicial Branches of the Government, these regulations may be applicable to such agencies.

(c) The term "agency liaison" means an agency person appointed with full authority and reponsibility to represent the occupant agency management with the official in charge of a facility or installation such as a GSA Building Manager.

(d) The term "building manager" means the person who manages one or several buildings under the authority of a Federal agency. For example, a building manager may be the GSA person who manages building(s) for GSA.

(e) As used in Executive Order 12196, the term "consultation with representatives of the employees thereof" shall include such consultation, conference, or negotiation with representatives of agency employees as is consistent with the Federal Service Labor Management Relations Statute (5 U.S.C. 71), or collective bargaining or other labor-management arrangements. As used in this part, the term "representative of employees" shall be interpreted with due regard for any obligation imposed by the aforementioned statute and any other labor-management arrangement that may cover the employees involved.

(f) The term "Designated Agency Safety and Health Official" means the individual who is responsible for the management of the safety and health program within an agency, and is so designated or appointed by the head of the agency pursuant to § 1960.6 and the provisions of Executive Order 12196.

(g) The term "employee" as used in this part means any person, other than members of the Armed Forces, employed or otherwise suffered, permitted, or required to work by an "agency" as the latter term is defined in paragraph (b) of this section.

(h) The term "establishment" means a single physical location where business is conducted or where services or operations are performed. Where distinctly separate activities are performed at a single physical location, each activity shall be treated as a separate "establishment." Typically, an "establishment" as used in this part refers to a field activity, regional office, area office, installation, or facility.

(i) The term "uniquely military equipment, systems, and operations" excludes from the scope of the order the design of Department of Defense equipment and systems that are unique to the national defense mission, such as military aircraft, ships, submarines, missiles, and missile sites, early warning systems, military space systems, artillery, tanks, and tactical vehicles; and excludes operations that are uniquely military such as field maneuvers, naval operations, military flight operations, associated research test and development activities, and actions required under emergency conditions. The term includes within the scope of the Order Department of Defense workplaces and operations comparable to those of industry in the private sector such as: Vessel, aircraft, and vehicle repair, overhaul, and modification (except for equipment trials); construction; supply services; civil engineering or public works; medical services; and office work.

(j) The term "incidence rates" means the number of injuries and illnesses, or lost workdays, per 100 full-time workers. Rates are calculated as

$$\frac{N \times 200{,}000.}{EH}$$

N = number of injuries and illnesses, or number of lost workdays.
EH = total hours worked by all employees during a month, a quarter, or a calendar year.
200,000 = base for 100 full-time equivalent workers (working 40 hours per week, 50 weeks per year).

(k) The term "inspection" means a comprehensive survey of all or part of a workplace in order to detect safety and health hazards. Inspections are normally performed during the regular work hours of the agency, except as special circumstances may require. Inspections do not include routine, day-to-day visits by agency occupational safety and health personnel, or routine workplace surveillance of occupational health conditions.

(l) The term "lost workday cases" means injuries and illnesses which involve days away from work and/or days of restricted work activity. "Lost workdays—away from work" means the number of workdays (consecutive or not) during which the employee would have worked but could not because of an occupational injury or illness. "Lost workdays—restricted work activity" means the number of workdays (consecutive or not) during which, because of injury or illness:

(1) The employee was assigned to another job on a temporary basis;

(2) The employee worked at a permanent job less than full time; or

(3) The employee worked at a permanently assigned job but could not perform all duties normally connected with the job.

(m) The term "representative of management" means a supervisor or management official as defined in the applicable labor-management relations program covering the affected employees.

(n) The term "medical treatment" includes treatment administered by a physician, or by licensed or registered professional personnel under standing orders of a physician, for an occupational injury or illness which does not result in days away from work or days of restricted work activity. "Medical treatment" does not include first aid treatment, even though provided by a physician or licensed or registered professional personnel. For further details and specific examples of what is considered first aid treatment versus medical treatment, see OSHA 2014, Recordkeeping and Reporting Guidelines for Federal Agencies.

(o) The term "recordable occupational injuries or illnesses" means any occupational injuries or illnesses which result in:

(1) Occupation-related deaths regardless of the time between injury and death, or the length of illness;

(2) Nonfatal occupational illnesses; or

(3) Nonfatal occupational injuries which involve one or more of the following: days away from work or days of restricted work activity; loss of consciousness; restriction of work or motion; transfer to another job; or medical treatment.

(p) The term "reporting unit" means an establishment, except as otherwise agreed between the agency and the Office of Federal Agency Safety and Health Programs, U.S. Department of Labor, as provided in § 1960.74.

(q) The term "Safety and Health Inspector" means a safety and/or occupational health specialist or other person authorized pursuant to Executive Order 12196, section 1-201(g), to carry out inspections for the purpose of Subpart D of this part, a person having equipment and competence to recognize safety and/or health hazards in the workplace.

(r) The term "Safety and Health Official" means an individual who manages the occupational safety and/or

occupational health program at organizational levels below the Designated Agency Safety and Health Official.

(s) The term "Safety and Health Specialist" means a person or persons meeting the Office of Personnel Management standards for such occupations, which include but are not limited to:

Safety Manager/Specialist GS–018
Safety Engineer GS–803
Fire Protection Engineer GS–804
Industrial Hygienist GS–690
Fire Protection Specialist/Marshal GS–081
Health Physicist GS–1306
Occupational Medicine Physician GS–602
Occupational Health Nurse GS–610
Safety Technician GS–019
Physical Science Technician GS–1311
Environmental Health Technician GS–699
Air Safety Investigation Officer GS–1815
Aviation Safety Specialist GS–1825
Chemist GS–1320
Health Technician GS–645
Highway Safety Manager GS–2125

or equally qualified military, agency, or nongovernment personnel. The agency head shall be responsible for determination and certification of equally qualified personnel.

(t) The term "workplace" means a physical location where the agency's work or operations are performed.

(u) The term "imminent danger" means any conditions or practices in any workplace which are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through normal procedures.

(v) The word "serious" as used in "serious hazard", "serious violation" or "serious condition" means a hazard, violation or condition such that there is a substantial probability that death or serious physical harm could result.

(w) The term "certified safety and health committee" means an agency safety and health committee that meets the provisions of section 1–3 of Executive Order 12196 and of this part, as listed and attested to by the head of each agency in writing to the Secretary.

(x) The term "reprisal" as used in this part means any act of restraint, interference, coercion or discrimination against an employee for exercising his or her rights under Executive Order 12196 and this part, or for participating in the agency's safety and health program.

§ 1960.3–1960.5 [Reserved]

Subpart B—Administration

§ 1960.6 Designation of agency safety and health officials.

(a) The head of each agency shall designate an official with sufficient authority and responsbility to represent effectively the interest and support of the agency head in the management and administration of the agency occupational safety and health program. This Designated Agency Safety and Health Official should be of the rank of Assistant Secretary, or of equivalent rank, or equivalent degree of responsibility, and shall have sufficient headquarters staff with the necessary training and experience. The headquarters staff should report directly to, or have appropriate access to, the Designated Agency Safety and Health Official, in order to carry out the responsibilities under this part.

(b) The Designated Agency Safety and Health Official shall assist the agency head in establishing:

(1) An agency occupational safety and health policy and program to carry out the provisions of section 19 of the Act, Executive Order 12196, and this part;

(2) An organization, including provision for the designation of safety and health officials at appropriate levels, with adequate budgets and staffs to implement the occupational safety and health program at all operational levels;

(3) A set of procedures that ensures effective implementation of the agency policy and program as required by section 19 of the Act, Executive Order 12196, and the program elements of this part, considering the mission, size, and organization of the agency;

(4) Goals and objectives for reducing and eliminating occupational accidents, injuries, and illnesses;

(5) Plans and procedures for evaluating the agency's occupational safety and health program effectiveness at all operational levels; and

(6) Priorities with respect to the factors which cause occupational accidents, injuries, and illnesses in the agency's workplaces so that appropriate corrective actions can be taken.

(c) The agency head shall assure that safety and health officials are designated at each appropriate level with sufficient authority and responsibility to plan for and assure funds for necessary safety and health staff, equipment, materials, and training required to ensure implementation of an effective occupational safety and health program.

§ 1960.7 Financial management.

(a) The head of each agency shall ensure that the agency budget submission includes appropriate financial and other resources to effectively implement and administer the agency's occupational safety and health program.

(b) The Designated Agency Safety and Health Official, management officials in charge of each establishment, safety and health officials at all appropriate levels, and other management officials shall be responsible for planning, requesting resources, implementing, and evaluating the occupational safety and health program budget in accordance with the regulations of the Office of Management and Budget Circular A–11 (sections 13.2(f) and 13.5(f)) and other relevant documents.

(c) Appropriate resources for an agency's occupational safety and health program shall include, but not be limited to:

(1) Sufficient personnel to implement and administer the program at all levels, including necessary administrative costs such as training, travel, and personal protective equipment;

(2) Abatement of unsafe or unhealthful working conditions related to agency operations or facilities;

(3) Safety and health sampling, testing, and diagnostic and analytical tools and equipment, including laboratory analyses;

(4) Any necessary contracts to identify, analyze, or evaluate unsafe or unhealthful working conditions and operations;

(5) Program promotional costs such as publications, posters, or films;

(6) Technical information, documents, books, standards, codes, periodicals, and publications; and

(7) Medical surveillance programs for employees.

§ 1960.8 Agency responsibilities.

(a) The head of each agency shall furnish to each employee employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm.

(b) The head of each agency shall comply with the Occupational Safety and Health Administration standards applicable to the agency.

(c) The head of each agency shall develop, implement, and evaluate an occupational safety and health program in accordance with the requirements of section 19 of the Act, Executive Order 12196, and the basic program elements prescribed in this part, or approved alternate program elements.

(d) The head of each agency shall acquire, maintain, and require the use of approved personal protective equipment, approved safety equipment, and other devices necessary to protect employees.

(e) In order to provide essential specialized expertise, agency heads shall authorize safety and health personnel to utilize such expertise from whatever source available, including but not limited to other agencies, professional groups, consultants, universities, labor organizations, and safety and health committees.

§ 1960.9 Supervisory responsibilities.

Employees who exercise supervisory functions shall, to the extent of their authority, furnish employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm. They shall also comply with the occupational safety and health standards applicable to their agency and with all rules, regulations, and orders issued by the head of the agency with respect to the agency occupational safety and health program.

§ 1960.10 Employee responsibilities and rights.

(a) Each employee shall comply with the standards, rules, regulations, and orders issued by his/her agency in accordance with section 19 of the Act, Executive Order 12196, and this part which are applicable to his/her own actions and conduct.

(b) Employees shall use safety equipment, personal protective equipment, and other devices and procedures provided or directed by the agency and necessary for their protection.

(c) Employees shall have the right to report unsafe and unhealthful working conditions to appropriate officials.

(d) Employees shall be authorized official time to participate in the activities provided for in section 19 of the Act, Executive Order 12196, this part, and the agency occupational safety and health program.

§ 1960.11 Evaluation of occupational safety and health performance.

Each agency head shall ensure that any performance evaluation of any management official in charge of an establishment, any supervisory employee, or other appropriate management official, measures that employee's performance in meeting requirements of the agency occupational safety and health program, consistent with the employee's assigned responsibilities and authority, and taking into consideration any applicable regulations of the Office of Personnel Management or other appropriate authority. The recognition of superior performance in discharging safety and health responsibilities by an individual or group should be encouraged and noted.

§ 1960.12 Dissemination of occupational safety and health program information.

(a) Copies of the Act, Executive Order 12196, program elements published in this part, details of the agency's occupational safety and health program, and applicable safety and health standards shall be made available upon request to employees or employee representatives for review.

(b) A copy of the agency's written occupational safety and health program applicable to the establishment shall be made available to each supervisor, each occupational safety and health committee member, and to employee representatives.

(c) Each agency shall post conspicuously in each establishment, and keep posted, a poster informing employees of the provisions of the Act, Executive Order 12196, and the agency occupational safety and health program under this part. The Department of Labor will furnish the core text of a poster to agencies. Each agency shall add the following items: (1) Details of the agency's procedures for responding to reports by employees of unsafe or unhealthful working conditions, and to allegations of discrimination or reprisal due to participation in safety and/or health activities; (2) the location where employees may obtain information about the agency's occupational safety and health program, including the full text of agency occupational safety and health standards, and (3) relevant information about any agency safety and health committees. Such posters and additions shall not be altered, defaced, or covered by other material.

(d) A copy of the agency's poster shall be provided to the Secretary. If the agency needs assistance and advice on the content and development of the poster, such shall be requested of the Secretary prior to printing and distribution.

(e) Agency heads shall promote employee awareness of occupational safety and health matters through their ordinary information channels, such as newsletters, bulletins and handbooks.

§§ 1960.13–1960.15 [Reserved]

Subpart C—Standards

§ 1960.16 Compliance with OSHA standards.

Each agency head shall comply with all occupational safety and health standards issued under section 6 of the Act, or with alternate standards issued pursuant to this subpart. In complying with section 6 standards, an agency may, upon prior notification to the Secretary, prescribe and enforce more stringent permissible exposure levels or threshhold limit values and may require more frequent monitoring of exposures without recourse to the approval procedures for alternate standards described in § 1960.17. In addition, after consultation with employees and safety and health committees and prior notification to the Secretary, an agency may utilize the latest edition of a reference standard if it is more stringent than the section 6 standard. After notification, the Secretary may require the use of the approval procedures for alternate standards for any of the situations described in this paragraph.

§ 1960.17 Alternate standards.

An agency head may apply an alternate standard where deemed necessary, and shall, after consultation with employees or their representatives, including appropriate occupational safety and health committees, notify the Secretary and request approval of such alternate standards.

(a) Any request by the head of the agency for an alternate standard shall be transmitted to the Secretary.

(b) Any such request for an alternate standard shall not be approved by the Secretary unless it provides equivalent or greater protection for affected employees. Any such request shall include:

(1) A statement of why the agency cannot comply with the OSHA standard or wants to adopt an alternate standard;

(2) A description of the alternate standard;

(3) An explanation of how the alternate standard provides equivalent or greater protection for the affected employees;

(4) A description of interim protective measures afforded employees until a decision is rendered by the Secretary of Labor; and

(5) A summary of written comments, if any, from interested employees, employee representatives, and occupational safety and health committees.

§ 1960.18 Supplementary standards.

(a) In addition to complying with emergency temporary standards issued under section 6 of the Act, an agency head shall adopt such emergency temporary and permanent supplementary standards as necessary and appropriate for application to working conditions of agency employees for which there exists no appropriate OSHA standards. In order to avoid any possible duplication of effort, the agency head should notify the Secretary of the subject matter of such standard when the development of the standard begins.

(b) The agency head shall send a copy of the final draft of the permanent supplementary standard to the Secretary prior to official adoption by the agency, along with any written comments on the standard from interested employees, employee representatives, and occupational safety and health committees. If the Secretary finds the permanent supplementary standard to be adopted inconsistent with OSHA standards, or inconsistent with OSHA enforcement practices under section 5(a)(1) of the Act, the Secretary shall have 15 working days in which to notify the head of the agency of this finding. In such a case, the supplementary standard shall not be adopted, but the agency will be afforded an opportunity to resubmit a revised standard that is designed to provide adequate protection and is consistent with OSHA standards. Upon request of the agency head, the Secretary shall offer to the agency technical assistance in the development of the supplemental standard.

§ 1960.19 Other Federal agency standards affecting occupational safety and health.

(a) Where employees of different agencies engage in joint operations, and/or primarily report to work or carry out operations in the same establishment, the standards adopted under § 1960.17 or § 1960.18 of the host agency shall govern.

(b) There are situations in which the head of an agency is required to comply with standards affecting occupational safety and health issued by a Federal agency other than OSHA. For example, standards issued by the Federal Aviation Administration, the Department of Energy, or the General Services Administration may be applicable to certain Federal workplaces. Nothing in this subpart affects the duty of any agency head to comply with such standards. In addition, agency heads should comply with other standards issued by Federal agencies which deal with hazardous working conditions, but for which OSHA has no standards.

(c) Although it is not anticipated that standards of other Federal agencies will conflict with OSHA standards, should such conflict occur, the head of the agency shall inform the other Federal agency and the Secretary so that joint efforts to resolve the issues may be undertaken. However, until conflicts are resolved, agencies shall comply with the more protective of the conflicting standards.

§§ 1960.20–1960.24 [Reserved]

Subpart D—Inspection and Abatement

§ 1960.25 Qualifications of safety and health inspectors and agency inspections.

(a) Executive Order 12196 requires that each agency utilize as inspectors "personnel with equipment and competence to recognize hazards." Inspections shall be conducted by inspectors qualified to recognize and evaluate hazards of the working environment and to suggest general abatement procedures. Safety and health specialists as defined in § 1960.2(s), with experience and/or up-to-date training in occupational safety and health hazard recognition and evaluation are considered as meeting the qualifications of safety and health inspectors. For those working environments where there are less complex hazards, such safety and health specializations as cited above may not be required, but inspectors in such environments shall have sufficient documented training and/or experience in the safety and health hazards of the workplace involved to recognize and evaluate those particular hazards and to suggest general abatement procedures. All inspection personnel must be provided the equipment necessary to conduct a thorough inspection of the workplace involved.

(b) Each agency which has workplaces containing information classified in the interest of national security shall provide access to safety and health inspectors who have obtained the appropriate security clearance.

(c) All areas and operations of each workplace, including office operations, shall be inspected at least annually. More frequent inspections shall be conducted in all workplaces where there is an increased risk of accident, injury, or illness due to the nature of the work performed. Sufficient unannounced inspections and unannounced follow-up inspections should be conducted by the agency to ensure the identification and abatement of hazardous conditions.

(d) When situations arise involving multiple agencies' responsibilities for conditions affecting employee safety and health, coordination of inspection functions is encouraged.

§ 1960.26 Conduct of inspections.

(a) *Preparation.* (1) Prior to commencement of the inspection, the Safety and Health Inspector shall be provided all available relevant information which pertains to the occupational safety and health of the workplace to be inspected, including safety and health hazard reports, injury and illness records, previous inspection reports, and reports of unsafe and unhealthful working conditions.

(2) The Safety and Health Inspector shall determine in advance, where possible, the actual work procedures and conditions to be inspected, in order to have the proper equipment available to conduct an effective inspection.

(b) *Inspection.* (1) For the purpose of assuring safe and healthful working conditions for employees of agencies, the head of the agency shall authorize safety and/or health inspectors: To enter without delay, and at reasonable times, any building, installation, facility, construction site, or other area, workplace, or environment where work is performed by employees of the agency; to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and to question privately any agency employee, and/or any agency supervisory employee, and/or any official in charge of an establishment.

(2) If there are no authorized representatives of employees, the inspector shall consult with a reasonable number of employees during the walkaround.

(3) When, in the opinion of the inspector, it is necessary to conduct personal monitoring (sampling) of employee's work environments, the inspector may request employees to wear reasonable and necessary personal monitoring devices, e.g., noise dosimeters and air sampling pumps, for periods determined by the inspector to be necessary for complete and effective sampling of the environment.

(4) Upon request of the inspector, the employer shall encourage employees to wear the personal environmental monitoring devices during an inspection.

(5) Whenever and as soon as it is concluded on the basis of an inspection that a danger exists which could reasonably be expected to cause death or serious physical harm immediately,

the inspector shall inform the affected employees and official in charge of the workplace of the danger. The official in charge of the workplace, or a person empowered to act for that official, shall undertake immediate abatement and the withdrawal of employees who are not necessary for abatement of the dangerous conditions. In the event the official in charge of the workplace needs assistance to undertake full abatement, that official shall promptly contact the Designated Agency Safety and Health Official and other responsible agency officials, who shall assist the abatement effort. Safety and health committees shall be informed of all relevant actions and representatives of the employees shall be so informed.

(6) At the conclusion of an inspection, the Safety and Health Inspector shall confer with the official in charge of the workplace or that official's representative, and with an appropriate representative of the employees of the establishment, and informally advise them of any apparent unsafe or unhealthful working conditions disclosed by the inspection. During any such conference, the official in charge of the workplace and the employee representative shall be afforded an opportunity to bring to the attention of the Safety and Health Inspector any pertinent information regarding conditions in the workplace.

(c) *Written reports and notices of unsafe or unhealthful working conditions.* (1) The inspector shall, in writing, describe with particularity the procedures followed in the inspection and the findings which form the basis for the issuance of any Notice of Unsafe or Unhealthful Working Conditions.

(2) Each agency shall establish a procedure for the prompt issuance of a Notice of Unsafe or Unhealthful Working Conditions. Such notices shall be issued not later than 15 days after completion of the inspection for safety violations or not later than 30 days for health violations. If there are compelling reasons why such notice cannot be issued within the 15 days or 30 days indicated, the persons described in paragraph (c)(1)(iii) of this section shall be informed of the reasons for the delay. Such procedure shall include the following: (i) Notices shall be in writing and shall describe with particularity the nature and degree of seriousness of the unsafe or unhealthful working condition, including a reference to the standard or other requirement involved; (ii) the notice shall fix a reasonable time for the abatement of the unsafe or unhealthful working condition; and (iii) a copy of the notice shall be sent to the official in charge of the workplace, the employee representative who participated in the closing conference, and/or the safety and health committee of the workplace, if any.

(3) Upon receipt of any notice of an unsafe or unhealthful working condition, the official in charge of a workplace shall immediately post such notice, or copy thereof, unedited, except for reason of national security, at or near each place an unsafe or unhealthful working condition referred to in the notice exists or existed. In addition, a notice shall be posted if any special procedures are in effect. Where, because of the nature of the workplace operations, it is not practicable to post the notice at or near each such place, such notice shall be posted, unedited, except for reason of national security, in a prominent place where it will be readily observable by all affected employees. For example, where workplace activities are physically dispersed, the notice may be posted at the location to which employees report each day. Where employees do not primarily work at or report to a single location, the notice may be posted at the location from which the employees operate to carry out their activities.

(4) Each notice of an unsafe or unhealthful working condition, or a copy thereof, shall remain posted until the unsafe or unhealthful working condition has been abated or for 3 working days whichever is later. A copy of the notice will be filed and maintained for a period of five years after abatement at the establishment and made available to the Secretary upon request.

§ 1960.27 Representatives of officials in charge and representatives of employees.

(a) Safety and health inspectors shall be in charge of inspections and may interview any employee in private if the inspector deems it necessary. A representative of the official in charge of a workplace and a representative of employees shall be given an opportunity to accompany Safety and Health Inspectors during the physical inspection of any workplace, both to aid the inspection and to provide such representatives with more detailed knowledge of any existing or potential unsafe or unhealthful working conditions. The representative of employees shall be selected by the employees. Additional representatives of the official in charge and additional representatives of employees may accompany the Safety and Health Inspectors if it is determined by the inspector that such additional representatives will further aid the inspection. Different representatives of the employer and employees may be allowed to accompany the Inspector during each different phase of an inspection.

(b) Safety and health inspectors shall be authorized to deny the right of accompaniment under this section to any person whose participation interferes with a fair and orderly inspection.

(c) With regard to facilities classified in the interest of national security, only persons authorized to have access to such facilities shall be allowed to accompany a Safety and Health Inspector in such areas.

(d) Safety and health inspectors shall consult with employees concerning matters of occupational safety and health to the extent deemed necessary for the conduct of an effective and thorough inspection. During the course of an inspection, any employee shall be afforded an opportunity to bring to the attention of the Safety and Health Inspector any unsafe or unhealthful working condition which the employee has reason to believe exists in the workplace.

§ 1960.28 Employee reports of unsafe or unhealthful working conditions.

(a) The purpose of employee reports is to inform agencies of the existence of, or potential for, unsafe or unhealthful working conditions. A report under this part is not a grievance.

(b) This section provides guidance in establishing a channel of communication between agency employees and those with responsibilities for safety and health matters, e.g., their supervisor, the agency safety and health officials, safety and health committees, safety and health inspectors, the head of the agency, or the Secretary. These channels of communication are intended to assure prompt analysis and response to reports of unsafe or unhealthful working conditions in accordance with the requirements of Executive Order 12196. Since many safety and health problems can be eliminated as soon as they are identified, the existence of a formal channel of communication shall not preclude immediate corrective action by an employee's supervisor in response to oral reports of unsafe or unhealthful working conditions where such action is possible. Nor should an employee be required to await the outcome of such an oral report before filing a written report pursuant to the provisions of this section.

(c) Any employee or representative of employees, who believes that an unsafe or unhealthful working condition exists in any workplace where such employee

is employed, shall have the right and is encouraged to make a report of the unsafe or unhealthful working condition to an appropriate agency safety and health official and request an inspection of such workplace for this purpose. The report shall be reduced to writing either by the individual submitting the report or, in the case of an oral notification, by the above official or other person designated to receive the reports in the workplace. Any such report shall set forth the grounds for the report and shall contain the name of the employee or representative of employees. Upon the request of the individual making such report, no person shall disclose the name of the individual making the report or the names of individual employees referred to in the report, to anyone other than authorized representatives of the Secretary. In the case of imminent danger situations, employees shall make reports by the most expeditious means available.

(d) *Reports received by the agency.* (1) Each report of an existing or potential unsafe or unhealthful working condition should be recorded on a log maintained at the establishment. If an agency finds it inappropriate to maintain a log of written reports at the establishment level, it may avail itself of procedures set forth in § 1960.71. A copy of each report received shall be sent to the appropriate establishment safety and health committee.

(2) A sequentially numbered case file, coded for identification, should be assigned for purposes of maintaining an accurate record of the report and the response thereto. As a minimum, each establishment's log should contain the following information: date, time, code/reference/file number, location of condition, brief description of the condition, classification (imminent danger, serious or other), and date and nature of action taken.

(3) Executive Order 12196 requires that agency inspections be conducted within 24 hours for employee reports of imminent danger conditions, within three working days for potentially serious conditions, and within 20 working days for other than serious safety and health conditions. However, an inspection may not be necessary if, through normal management action and with prompt notification to employees and safety and health committees, the hazardous condition(s) identified can be abated immediately.

(4) An employee submitting a report of unsafe or unhealthful conditions shall be notified in writing within 15 days if the official receiving the report determines there are not reasonable grounds to believe such a hazard exists and does not plan to make an inspection based on such report. A copy of each such notification shall be provided by the agency to the appropriate certified safety and health committee, where established under Executive Order 12196. An agency's inspection or investigation report, if any, shall be made available to the employee making the report within 15 days after completion of the inspection, for safety violations or within 30 days for health violations, unless there are compelling reasons, and shall be made available to the Secretary or the Secretary's authorized representative on request.

(e) *Reports received by the Secretary of Labor.* (1) Agency safety and health programs must have provisions for responding to employees' reports of unsafe or unhealthful working conditions and the Secretary encourages employees to use agency procedures as the most expeditious means of achieving abatement of hazardous conditions. It is recognized, however, that employee reports may be received directly by the Secretary.

(2) When such reports are received directly from an employee or employee representative, the Secretary shall, where a certified safety and health committee exists, forward the report to the agency for handling in accordance with procedures outlined in § 1960.28(d). A copy of the response to the originator shall be sent to the Secretary.

(3) Where there is no certified safety and health committee, or when requested by half the members of a committee, the Secretary may initiate an inspection or other appropriate action. When the Secretary determines that an inspection is warranted, the Secretary shall observe the same response times as required of the agencies under the Executive Order and § 1960.28(d)(3). When the Secretary determines not to make an inspection, the report shall be forwarded to the agency for handling in accordance with procedures outlined in § 1960.28(d). A copy of the response to the originator shall be sent to the Secretary.

§ 1960.29 Accident investigation.

(a) While all accidents should be investigated, including accidents involving property damage only, the extent of such investigation shall be reflective of the seriousness of the accident.

(b) In any case, each accident which results in a fatality or the hospitalization of five or more employees shall be investigated to determine the causal factors involved. Except to the extent necessary to protect employees and the public, evidence at the scene of an accident shall be left untouched until inspectors have an opportunity to examine it.

(c) Any information or evidence uncovered during accident investigations which would be of benefit in developing a new OSHA standard or in modifying or revoking an existing standard should be promptly transmitted to the Secretary.

(d) The investigative report of the accident shall include appropriate documentation on date, time, location, description of operations, description of accident, photographs, interviews of employees and witnesses, measurements, and other pertinent information. A copy of the investigative report required by this section shall be forwarded to the official in charge of the workplace, the appropriate safety and health committee, and the exclusive employee representative, if any. The investigative report shall be made available to the Secretary or his authorized representative on request.

§ 1960.30 Abatement of unsafe or unhealthful working conditions.

(a) The agency shall ensure the prompt abatement of unsafe and unhealthful conditions. Where a Notice of an Unsafe or Unhealthful Working Condition has been issued, abatement shall be within the time set forth in the notice, or in accordance with the established abatement plan.

(b) The procedures for correcting unsafe or unhealthful working conditions shall include a follow-up, to the extent necessary, to determine whether the correction was made. If, upon the follow-up, it appears that the correction was not made, or was not carried out in accordance with an abatement plan prepared pursuant to paragraph (c) of this section, the official in charge of the establishment and the appropriate safety and health committee shall be notified of the failure to abate.

(c) The official in charge of the establishment shall promptly prepare an abatement plan with the appropriate participation of the establishment's Safety and Health Official or a designee, if in the judgment of the establishment official the abatement of an unsafe or unhealthful working condition will not be possible within 30 calendar days. Such plan shall contain an explanation of the circumstances of the delay in abatement, a proposed timetable for the abatement, and a summary of steps being taken in the interim to protect employees from being injured as a result of the unsafe or unhealthful working condition. A copy of the plan shall be sent to the safety and health committee, and, if no committee exists, to the

representative of the employees. Any changes in an abatement plan will require the preparation of a new plan in accordance with the provisions of this section.

(d) When a hazard cannot be abated within the authority and resources of the official in charge of the establishment, that official shall request assistance from appropriate higher authority. The local safety and health official, any established committee and/or employee representatives, and all personnel subject to the hazard shall be advised of this action and of interim protective measures in effect, and shall be kept informed of subsequent progress on the abatement plan.

(e) When a hazard cannot be abated without assistance of the General Services Administration or other Federal lessor agency, the occupant agency shall act with the lessor agency to secure abatement. Procedures for coordination with the General Services Administration are contained in Subpart E of this part.

§ 1960.31 Inspections by OSHA.

(a) The Secretary or the Secretary's representatives are authorized to conduct, when the Secretary deems necessary, announced or unannounced inspections in the following situations:

(1) Where an agency has not established occupational safety and health committees or where committees no longer operate in conformance to the requirements of subpart F of this part;

(2) In response to a request from half the membership of record of any certified safety and health committee; and

(3) In response to an employee's report of an imminent danger situation, where there is a certified committee, but where the Secretary determines that neither the agency nor the committee has responded to the employee.

(b) The Secretary's inspectors or evaluators are authorized: to enter without delay, and at reasonable times, any building, installation, facility, construction site, or other area, workplace, or environment where work is performed by employees of the agency; to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment, and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and to question privately any employee, any supervisory employee, and/or any official in charge of an establishment.

(c) The Secretary may also make scheduled inspections as an integral part of OSHA's evaluation of an agency's safety and health program in accordance with Subpart J of this part.

(d) OSHA inspections shall follow the general format set forth for agency inspections in other applicable parts of this subpart.

§§ 1960.32-1960.33 [Reserved]

Subpart E—General Services Administration and Other Federal Agencies

§ 1960.34 General provisions.

Within six months of the effective date of this part, the Secretary of Labor and the Administrator of the General Services Administration (GSA) shall initiate a study of conflicts that may exist in their standards concerning Federal buildings, leased space, products purchased or supplied, and other requirements affecting Federal employee safety and health. Both agencies shall establish and publish a joint procedure for resolving conflicting standards. All other Federal agencies that have authority for purchasing equipment, supplies, and materials, and for controlling Government space, as well as the leasing of space, shall also be subject to the requirements of this subpart, including publication of a procedure for resolving conflicting standards.

(a) In order to assist agencies in carrying out their duties under section 19 of the Act, Executive Order 12196, and this part, the Administrator or the Administrator's designee shall:

(1) Upon an agency's request, furnish for any owned or leased space offered to a Federal agency for occupancy: (i) A report of a recent pre-occupancy inspection to identify serious hazards or serious violations of OSHA standards or approved alternate standards, and (ii) a plan for abatement of the hazards and violations discovered;

(2) Provide space which: (i) meets any special safety and health requirements submitted by the requesting agency, and (ii) does not contain either serious hazards or serious violations of OSHA standards or approved alternate standards which cannot be abated;

(3) Repair, renovate, or alter, upon an agency's request, owned or leased space in a planned and controlled manner to reduce or eliminate, whenever possible, any hazardous exposure to the occupant agency's employees;

(4) Accompany, upon request, the Secretary or the Secretary's designee on any inspection or investigation of a facility subject to the authority of the General Services Administration. Requests made for this purpose shall, whenever possible, be made at the GSA regional level in order to facilitate prompt assistance;

(5) Investigate, upon an official agency request, reports of unsafe or unhealthful conditions within the scope of GSA's responsibility. Such investigation, when requiring an on-site inspection, shall be completed within 24 hours for imminent danger situations, within three working days for potentially serious conditions, and within 20 working days for other safety and health risk conditions;

(6) Abate unsafe or unhealthful conditions disclosed by reports, investigation or inspection within 30 calendar days or submit to the occupant agency's designated liaison official an abatement plan. Such abatement plan shall give priority to the allocation of resources to bring about prompt abatement of the conditions. (GSA shall publish procedures for abatement of hazards in the Federal Property Management Regulations—41 CFR Part 101);

(7) Establish an occupancy permit program which will regulate the types of activities and occupancies in facilities in order to avoid incompatible groupings, e.g., chemical or biological laboratories in office space. GSA shall seek to consolidate Federal laboratory operations in facilities designed for such purposes;

(8) Ensure, insofar as possible, that agency safety and health problems still outstanding are resolved, or otherwise answered by acceptable alternatives prior to renegotiation of leases; and

(9) Ensure that GSA or other Federal lessor agencies' building managers maintain a log of reports of unsafe or unhealthful conditions submitted by tenants to include: date of receipt of report, action taken, and final resolution.

(b) *Product safety.* Agencies such as GSA, DOD, and others which procure and provide supplies, equipment, devices, and material for their own use or use by other agencies, except for the design of uniquely military products as set forth in § 1960.2(i), shall establish and maintain a product safety program which:

(1) Ensures that items procured will allow user agencies to use such products safely for their designed purpose and will facilitate user compliance with all applicable standards.

(2) Requires that products meet the applicable safety and health requirements of Federal law and regulations issued thereunder;

(3) Ensures that hazardous material will be labelled in accordance with current law or regulation to alert users, shippers, occupational safety and

health, and emergency action personnel, and others, to basic information concerning flammability, toxicity, compatibility, first aid procedures, and normal as well as emergency handling and disposal procedures;

(4) Ensures availability of appropriate safety rescue and personal protective equipment to supply user agencies. The writing of Federal procurement specifications will be coordinated by GSA with OSHA/NIOSH as needed to assure purchase of approved products;

(5) Ensures that products recalled by the manufacturer, either voluntarily or by order from a regulatory authority, are removed from inventory. Each recall notice or order shall be forwarded to all agencies which have ordered such product from or through the procuring/supplying Federal agency, e.g., GSA, DOD, etc.;

(6) Includes preparation of FEDSTD 313, Material Safety Data Sheets (MSDS), involving all interested agencies in review to keep the standard current. MSDS provided by agencies or contractors shall meet the requirements of FEDSTD 313 and be furnished to DOD for filing and distribution.

(c) In order to assist agencies in carrying out their duties under section 19 of the Act, Executive Order 12196, and this part, the DOD operates and maintains an automated system to receive, file, reproduce, and make available MSDS data to other Federal agencies through the Government Printing Office or the National Technical Information Services.

(d) All Federal agencies shall use MSDS either provided by DOD, or acquired directly from suppliers, when purchasing hazardous materials (as defined in FEDSTD 313) for local use. These data will be used to develop detailed procedures to advise employees in the workplace of the hazards involved with the materials and to protect them therefrom.

(e) *Safety and health services.* GSA will operate and maintain for user agencies the following services:

(1) Listings in the "Federal Supply Schedule" of safety and health services and equipment which are approved for use by agencies when needed. Examples of such services are: workplace inspections, training, industrial hygiene surveys, asbestos bulk sampling, and mobile health testing; examples of such equipment are: personal protective equipment and apparel, safety devices, and environmental monitoring equipment;

(2) Rules for assistance in the preparation of agency "Occupant Emergency Plans" (formerly called "Facility Self-Protection Plans"), to be published by GSA at 41 CFR Part 101;

(3) An effective maintenance program in the Interagency Motorpool System which will ensure the safety and health of Federal employees utilizing the vehicles. Critical items to be included are: Exhaust systems, brakes, tires, lights, steering, and passenger restraint or other crash protection systems; and

(4) A rapid response system whereby agencies can alert GSA to unsafe or unhealthful items purchased or contracted for by GSA, which in turn will evaluate the reports, initiate corrective action, as appropriate, and advise use agencies of interim protective measures.

§ 1960.35 National Institute for Occupational Safety and Health.

(a) The Director of the National Institute for Occupational Safety and Health (NIOSH) shall, upon request by the Secretary, assist in: (1) Evaluations of Federal agency safety and health programs; (2) investigations of possible safety and health hazards and (3) inspections resulting from employee or committee reports of unsafe or unhealthful working conditions.

(b) The Director of NIOSH shall provide a Hazard Evaluation (HE) program for Federal agencies. This program shall be designed to respond to requests for assistance in determining whether or not safety or health hazards are present in a Federal workplace. Requests for such Hazard Evaluations may be submitted to the Director by:

(1) The Secretary of Labor;

(2) The Head of a Federal agency;

(3) An agency safety and health committee if half the committee requests such service; and

(4) Employees who are not covered by a certified safety and health committee.

(c) The Director of NIOSH may assist agencies by providing hazard alerts, technical services, training materials and conducting training programs upon request by an agency and with reimbursement.

Subpart F—Occupational Safety and Health Committees

§ 1960.36 General provisions.

(a) The occupational safety and health committees described in this subpart are organized and maintained basically to monitor and assist an agency's safety and health program. These committees assist agencies to maintain an open channel of communication between employees and management concerning safety and health matters in agency workplaces. The committees provide a method by which employees can utilize their knowledge of workplace operations to assist agency management to improve policies, conditions, and practices.

(b) Agencies may elect to establish safety and health committees meeting the minimum requirements contained in this subpart. Where such committees are not established or fail to meet the minimum requirements established by the Secretary, the Secretary is authorized by section 1–401(i) of Executive Order 12196 to conduct unannounced inspections of agency workplaces when the Secretary determines them necessary.

§ 1960.37 Committee organization.

(a) For agencies which elect to utilize the committee concept, safety and health committees shall be formed at both the national level and, for agencies with field or regional offices, at appropriate levels within the agency. To realize exemption from unannounced OSHA inspections, an agency must form a committee at the national level and at any establishment or grouping of establishments that is to be exempt, keeping the Secretary advised of the locations and activities where such committees are functioning.

(1) The principal function of the national level committee shall be to consult and provide policy advice on, and monitor the performance of, the agency-wide safety and health program.

(2) Committees at other appropriate levels shall be established at agency establishments or groupings of establishments consistent with the mission, size and organization of the agency and its collective bargaining configuration. The agency shall form committees at the lowest practicable local level. The principal function of the establishment (or local) committees is to monitor and assist in the execution of the agency's safety and health policies and program at the workplaces within their jurisdiction. Any dispute over the meaning of the term "appropriate levels" shall be resolved by the Secretary.

(b) Committees shall have equal representation of management and nonmanagement employees, who shall be members of record.

(1) Management members of both national level and establishment level committees shall be appointed in writing by the person empowered to make such appointments.

(2) Nonmanagement members of establishment level committees shall represent all employees of the establishment and shall be determined according to the following rules:

(i) Where employees are represented under collective bargaining

arrangements, members shall be appointed from among those recommended by the exclusive bargaining representative;

(ii) Where employees are not represented under collective bargaining arrangements, members shall be determined through procedures devised by the agency which provide for effective representation of all employees; and

(iii) Where some employees of an establishment are covered under collective bargaining arrangements and others are not, members shall be representative of both groups.

(3) Nonmanagement members of national level committees shall be determined according to the following rules:

(i) Where employees are represented by organizations having exclusive recognition on an agency basis or by organizations having national consultation rights, some members shall be determined in accordance with the terms of collective bargaining agreements and some members shall be selected from those organizations having consultation rights, and

(ii) Where employees are not represented by organizations meeting the criteria of paragraph (b)(3)(i) of this section, members shall be determined through procedures devised by the agency which provide for effective representation of all employees.

(c) Committee members should serve overlapping terms. Such terms should be of at least two years duration, except when the committee is initially organized.

(d) The committee chairperson shall be nominated from among the committee's members and shall be elected by the committee members. Management and nonmanagement members should alternate in this position. Maximum service time as chairperson should be two consecutive years.

(e) Committees shall establish a regular schedule of meetings and special meetings shall be held as necessary; establishment level committees shall meet at least quarterly and national committees shall meet at least annually.

(f) Adequate advance notice of committee meetings shall be furnished to employees and each meeting shall be conducted pursuant to a prepared agenda.

(g) Written minutes of each committee meeting shall be maintained and distributed to each committee member, and upon request, shall be made available to employees and to the Secretary.

§ 1960.37 Committee formation.

(a) Upon forming such committees, heads of agencies shall submit information to the Secretary concerning the existence, location, and coverage, in terms of establishments and population, of such committees, certifying to the Secretary that such committees meet the requirements of this subpart. The information submitted should include the name and telephone numbers of the chairperson of each committee, and should be updated annually as part of the annual report required by § 1960.75 to reflect any changes that may have occurred.

(b) If, upon evaluation, the Secretary determines that the operations of a committee do not meet the requirements of this subpart, the Secretary shall notify the agency and identify the deficiencies to be remedied. If the agency does not satisfy the Secretary within 90 days that the committee meets the requirements of this subpart, the committee shall not be deemed a committee under Executive Order 12196 and this part.

§ 1960.39 Agency responsibilities.

(a) Agencies shall make available to committees all agency information relevant and necessary to their duties, except where prohibited by law. Examples of such information include, but are not limited to: The agency's safety and health policies and program; human and financial resources available to implement the program; accident, injury, and illness data; epidemiological data; employee exposure monitoring data; Material Safety Data Sheets; inspection reports; reprisal investigation reports; abatement plans; NIOSH hazard evaluation reports; and internal and external evaluation reports.

(b) Agencies shall provide all committee members appropriate training as required by subpart H of this part.

§ 1960.40 Establishment committee duties.

(a) The safety and health committee is an integral part of the safety and health program, and helps ensure effective implementation of the program at the establishment level.

(b) An establishment committee formed under this subpart shall, except where prohibited by law:

(1) Monitor and assist the safety and health program at establishments under its jurisdiction and make recommendations to the official in charge on the operation of the program;

(2) Monitor findings and reports of workplace inspections to confirm that appropriate corrective measures are implemented;

(3) When requested by the agency Safety and Health Official, or when the committee deems it necessary for effective monitoring of agency establishment inspection procedures, participate in inspections of the establishment;

(4) Review internal and external evaluation reports and make recommendations concerning the establishment safety and health program;

(5) Review, and recommend changes, as appropriate, to procedures for handling safety and health suggestions and recommendations from employees;

(6) When requested by the Designated Agency Safety and Health Official, or when the committee deems it necessary, comment on standards proposed pursuant to the provisions of Subpart C of this part;

(7) Monitor and recommend changes, as required, in the level of resources allocated and spent on the establishment safety and health program;

(8) Review agency responses to reports of hazardous conditions, safety and health program deficiencies, and allegations of reprisal;

(9) Report their dissatisfaction to the Secretary if half a committee determines there are deficiencies in the establishment's safety and health program or is not satisfied with the agency's reports of reprisal investigations; and

(10) Request the Secretary to conduct an evaluation or inspection if half the members of record are not satisfied with an agency's response to a report of hazardous working conditions.

§ 1960.41 National committee duties.

National committees established under this subpart shall, except where prohibited by law:

(a) Monitor performance of the agency safety and health program and make policy recommendations to the head of the agency on the operation of the program;

(b) Monitor and assist in the development and operation of the agency's establishment committees. As the committee deems appropriate, monitor and review: Reports of inspections; internal and external evaluation reports; agency safety and health training programs; proposed agency standards; agency plans for abating hazards; and responses to reports of hazardous conditions; safety and health program deficiencies; and allegations of reprisal;

(c) Monitor and recommend changes in the resources allocated to the entire agency safety and health program;

(d) Report their dissatisfaction to the Secretary if half a committee determines there are deficiencies in the agency's safety and health program or is not satisfied with the agency's reports of reprisal investigations; and

(e) Request the Secretary to conduct an evaluation or inspection if half the members of record are not satisfied with an agency's response to a report of hazardous working conditions.

§§ 1960.42–1960.45 [Reserved]

Subpart G—Allegations of Reprisal

§ 1960.46 Agency responsibility.

(a) The head of each agency shall establish procedures to assure that no employee is subject to restraint, interference, coercion, discrimination or reprisal for filing a report of an unsafe or unhealthful working condition, or other participation in agency occupational safety and health program activities, or because of the exercise by such employee on behalf of himself or herself or others of any right afforded by section 19 of the Act, Executive Order 12196, or this part. These rights include, among other, the right of an employee to decline to perform his or her assigned task because of a reasonable belief that, under the circumstances the task poses an imminent risk of death or serious bodily harm coupled with a reasonable belief that there is insufficient time to seek effective redress through normal hazard reporting and abatement procedures established in accordance with this part.

(b) Based on the Secretary's evaluation of agencies' procedures for protecting employees from reprisal, the Secretary shall report to the President by September 30, 1982 his findings and recommendations for improvements in procedures for the investigation and resolution of allegations of reprisal.

§ 1960.47 Results of investigations.

Each agency shall keep occupational safety and health committees advised of agency activity regarding allegations of reprisal and any agency determinations thereof. Agency officials shall provide copies of reprisal investigation findings, if any, to the Secretary and to the appropriate safety and health committee.

§§ 1960.48–1960.53 [Reserved]

Subpart H—Training

§ 1960.54 Training of top management officials.

Each agency shall provide top management officials with orientation and other learning experiences which will enable them to manage the occupational safety and health programs of their agencies. Such orientation should include coverage of section 19 of the Act, Executive Order 12196, the requirements of this part, and the agency safety and health program.

§ 1960.55 Training of supervisors.

(a) Each agency shall provide occupational safety and health training for supervisory employees that includes: supervisory responsibility for providing and maintaining safe and healthful working conditions for employees, the agency occupational safety and health program, section 19 of the Act, Executive Order 12196, this part, occupational safety and health standards applicable to the assigned workplaces, agency procedures for reporting hazards, agency procedures for reporting and investigating allegations of reprisal, and agency procedures for the abatement of hazards, as well as other appropriate rules and regulations.

(b) This supervisory training should include introductory and specialized courses and materials which will enable supervisors to recognize and eliminate, or reduce, occupational safety and health hazards in their working units. Such training shall also include the development of requisite skills in managing the agency's safety and health program within the work unit, including the training and motivation of subordinates toward assuring safe and healthful work practices.

§ 1960.56 Training of safety and health specialists.

(a) Each agency shall provide occupational safety and health training for safety and health specialists through courses, laboratory experiences, field study, and other formal learning experiences to prepare them to perform the necessary technical monitoring, consulting, testing, inspecting, designing, and other tasks related to program development and implementation, as well as hazard recognition, evaluation and control, equipment and facility design, standards, analysis of accident, injury, and illness data, and other related tasks.

(b) Each agency shall implement career development programs for their occupational safety and health specialists to enable the staff to meet present and future program needs of the agency.

§ 1960.57 Training of safety and health inspectors.

Each agency shall provide training for safety and health inspectors with respect to appropriate standards, and the use of appropriate equipment and testing procedures necessary to identify and evaluate hazards and suggest general abatement procedures during or following their assigned inspections, as well as preparation of reports and other documentation to support the inspection findings.

§ 1960.58 Training of collateral duty safety and health personnel and committee members.

Within six months after October 1, 1980, or on appointment of an employee to a collateral duty position or to a committee, each agency shall provide training for collateral duty safety and health personnel and all members of certified occupational safety and health committees commensurate with the scope of their assigned responsibilities. Such training shall include: The agency occupational safety and health program; section 19 of the Act; Executive Order 12196; this part; agency procedures for the reporting, evaluation and abatement of hazards; agency procedures for reporting and investigating allegations of reprisal, the recognition of hazardous conditions and environments; identification and use of occupational safety and health standards, and other appropriate rules and regulations.

§ 1960.59 Training of employees and employee representatives.

(a) Each agency shall provide appropriate safety and health training for employees including specialized job safety and health training appropriate to the work performed by the employee, for example: Clerical; printing; welding; crane operation; chemical analysis, and computer operations. Such training also shall inform employees of the agency occupational safety and health program, with emphasis on their rights and responsibilities.

(b) Occupational safety and health training for employees of the agency who are representatives of employee groups, such as labor organizations which are recognized by the agency, shall include both introductory and specialized courses and materials that will enable such groups to function appropriately in ensuring safe and healthful working conditions and practices in the workplace and enable them to effectively assist in conducting workplace safety and health inspections. Nothing in this paragraph shall be construed to alter training provisions provided by law, Executive Order, or collective bargaining arrangements.

§ 1960.60 Training assistance.

(a) Agency heads may seek training assistance from the Secretary of Labor, the National Institute for Occupational Safety and Health and other appropriate sources.

(b) After the effective date of Executive Order 12196, the Secretary shall, upon request and with reimbursement, conduct orientation for Designated Agency Safety and Health Officials and/or their designees which will enable them to manage the occupational safety and health programs of their agencies. Such orientation shall include coverage of section 19 of the Act, Executive Order 12196, and the requirements of this part.

(c) Upon request and with reimbursement, the Department of Labor shall provide each agency with training materials to assist in fulfilling the training needs of this subpart, including resident and field training courses designed to meet selected training needs of agency safety and health specialists, safety and health inspectors, and collateral duty safety and health personnel. These materials and courses in no way reduce each agency's responsibility to provide whatever specialized training is required by the unique characteristics of its work.

(d) In cooperation with OPM, the Secretary will develop guidelines and/or provide materials for the safety and health training programs for high-level managers, supervisors, members of committees, and employee representatives.

§§ 1960.61-1960.65 [Reserved]

Subpart I—Recordkeeping and Reporting Requirements

§ 1960.66 Purpose, scope and general provisions.

(a) The purpose of this subpart is to establish uniform requirements for the collection and compilation by agencies of occupational safety and health data, for proper evaluation and necessary corrective action and to assist the Secretary in meeting the requirement to develop and maintain an effective program of collection, compilation, and analysis of occupational safety and health statistics. The term "incident" as hereinafter used in this subpart, shall include all occupational injuries and illnesses.

(b) In order to perform his duties under section 19 of the Act and Executive Order 12196, particularly with respect to providing the President with current information about the Federal agency safety and health program, it is necessary that the Secretary be promptly informed of serious incidents involving agency employees as provided in § 1960.70. Assistance to agencies in the investigation of such incidents is available pursuant to the provisions of Executive Order 12196 and this subpart.

(c) Each agency shall utilize the information collected through its management information system to identify unsafe and unhealthful working conditions, and to establish program priorities.

(d) The Department of Labor shall provide Federal agencies with the forms and instructions for meeting the recordkeeping and reporting requirements specified in §§ 1960.67, 1960.68, and 1960.69.

(e) The provisions of this subpart are not intended to discourage agencies from utilizing recordkeeping and reporting forms which contain a more detailed breakdown of information than the forms provided by the Department of Labor.

(f) Information required to be submitted to the Department of Labor by this subpart may be submitted on media processable by electronic data processing equipment provided that such media comply with the requirements of the Office of Federal Agency Safety and Health Programs, U.S. Department of Labor.

(g) Information concerning occupational injuries and illnesses or accidents which, pursuant to statute or Executive Order, must be kept secret in the interest of national defense or foreign policy, shall be recorded on separate forms. Such records shall not be submitted to the Department of Labor, but may be used by the appropriate Federal agency in evaluating the agency's program to reduce occupational injuries, illnesses and accidents.

§ 1960.67 Record or log of Federal occupational injuries and illnesses.

(a) Each Federal agency shall maintain a record or log of all recordable occupational injuries and illnesses for each establishment. Except as provided in § 1960.71 (b) and (c), the log is to be maintained at the establishment.

(b) Within six working days after receiving information on a recordable occupational injury or illness, appropriate information concerning such injury or illness shall be entered on the record or log. For this purpose, OSHA Form No. 100F, or its equivalent, shall be used and shall be completed in the detail required by that form and the instructions contained therein.

(c) As a minimum, any occupational injury or illness reported by an employee on a Form CA-1 or CA-2 (except first aid cases) to the Office of Workers' Compensation Programs, Department of Labor, shall be considered recordable on the log.

§ 1960.68 Supplementary record of Federal occupational injuries and illnesses.

In addition to the record or log of Federal occupational injuries and illnesses provided for under § 1960.67, each Federal agency shall maintain a supplementary record for each occupational injury and illness. The record shall be completed within six working days after the receipt of information that a recordable occupational injury or illness has occurred. For this purpose, OSHA Form No. 101F, or its equivalent, shall be completed in the detail required by the form and the instructions therein.

§ 1960.69 Annual summaries of Federal occupational injuries and illnesses.

(a) Each Federal agency, on a calendar year basis, shall compile an annual summary of occupational injuries and illness for each reporting unit listed and submitted pursuant to § 1960.74. The summaries shall be based on the record or log of Federal occupational injuries and illnesses maintained pursuant to § 1960.67. OSHA Form No. 102F shall be used for this purpose, and shall be completed in the form and detail required by that form and the instructions contained therein.

(b) Each agency shall furnish the Department of Labor with a copy of its annual summaries compiled on the basis of reporting unit no later than 45 calendar days after the close of the calendar year.

§ 1960.70 Reporting of serious accidents.

(a) Within 48 hours after the occurrence of an employment accident, the head of the Federal agency shall report by telephone or telegraph to the Office of Federal Agency Safety and Health Programs:

(1) Any occupational accident which is fatal to one or more employees;

(2) Any occupational accident which results in the hospitalization of five or more employees;

(3) Any occupational illness which results in death;

(4) Any occupational accident involving both Federal and non-Federal employees which results in a fatality or the hospitalization of five or more such employees.

Accidents not immediately reportable, but which result in death within six months of the date of the accident, shall be reported within 48 hours of the time

the employer becomes aware of the death.

(b) The report shall relate the circumstances of the accident, names of individuals involved, any actions taken by the agency, the number of fatalities, and/or injuries and illnesses and the extent of any injuries. The Secretary may require such additional information in writing or otherwise, as he deems necessary.

§ 1960.71 Location and utilization of records and reports.

(a) The provisions of this section, dealing with the availability of information compiled pursuant to this subpart, are designed to guide agencies in providing agency employees and their representatives with the basic information necessary to assure that they can actively participate in an agency safety and health program. The provisions of this section are also designed to encourage agencies to allow agency safety and health inspectors to have direct access to the accident, injury and illness records of the establishments they are inspecting in order that they may better carry out their duties pursuant to subpart D of this part.

(b) The log and supplementary records required by §§ 1960.67 and 1960.68 shall be maintained at each establishment. Where, for reasons of efficient administration or practicality, an agency must maintain these records at a place other than at each establishment, such agency shall ensure that there is available at each establishment a copy of these records. These records shall be complete and as current as possible; in no case shall more than 45 days elapse after the recording of an illness or injury occurring in an establishment and the availability of records reflecting that injury or illness at that establishment.

(c)(1) For agencies engaged in activities such as agriculture, construction, transportation, communications, and electric, gas and sanitary services, which may be physically dispersed, the log and supplementary records, or copies thereof, may be maintained at a place to which employees report each day.

(2) For personnel who do not primarily report or work at a single establishment, and who are generally not supervised in their daily work, such as traveling employees, technicians, engineers, etc., the log and supplementary records, or copies thereof, may be maintained at the base from which personnel operate to carry out their activities.

(d) Each Federal agency shall post a copy of the annual summary of Federal occupational injuries and illnesses for an establishment, as compiled pursuant to §§ 1960.67 or 1960.69, at such establishment, not later than 45 calendar days after the close of the calendar year, or otherwise disseminate a copy of the annual summary for an establishment in written form to all employees of the establishment. Copies of the annual summary shall be posted for a minimum of 30 consecutive days in a conspicuous place or places in the establishment where notices to employees are customarily posted. Where establishment activities are physically dispersed, the notice may be posted at the location to which employees report each day. Where employees do not primarily work at or report to a single location, the notice may be posted at the location from which the employees operate to carry out their activities. Each Federal agency shall take necessary steps to ensure that such summary is not altered, defaced, or covered by other material.

(e) The head of each agency shall ensure access to establishment logs and annual summaries by establishment of Occupational Safety and Health Committees, and by that establishment's employees, former employees and employee representatives.

(f) Agency safety and health inspectors shall also have access to accident, injury and health records maintained under this subpart and in accordance with the provisions of § 1960.26(a)(1).

§ 1960.72 Access to records by Secretary.

The records required to be maintained under the provisions of this subpart shall also be available and made accessible to the Secretary or his authorized representative (including personnel of the National Institute for Occupational Safety and Health).

§ 1960.73 Retention of records.

The records and reports required to be maintained under the provisions of this subpart shall be retained by each agency for five years following the end of the calendar year to which they relate, at any location including a Federal record retention center, to which the Secretary or his authorized representative would have reasonable access. In addition, records required by OSHA standards shall be retained in accordance with those standards.

§ 1960.74 Identification of reporting units.

(a) Each Federal agency shall submit a new list identifying reporting units to the Department of Labor, ATTN: Office of Federal Agency Safety and Health Programs, no later than July 1, 1981, and shall update the list as changes occur. The list shall contain the following information:

(1) The names and addresses of each Federal reporting unit which will be covered in the records and reports required by this subpart.

(2) A brief description of any differences between an agency's internal recordkeeping and reporting system and the recordkeeping and reporting system provided by this subpart, including differing forms.

(b) Any Federal agency created or reorganized after July 1, 1981 shall submit the above information within sixty working days of commencement of operations as a new entity.

§ 1960.75 Agency annual reports.

(a) The Act and E.O. 12196 require all Federal agency heads to submit to the Secretary an annual report on their agency's occupational safety and health program, containing such information as the Secretary prescribes.

(1) Each agency shall submit to the Secretary by April 1 of each year a report describing the agency occupational safety and health program of the previous calendar year, and objectives for the current year. The report shall include a summary of the agency's self-evaluation findings as required by § 1960.78(b).

(2) The Secretary shall furnish guidelines to agency heads by January 1 each year concerning the preparation of this report for the coming year.

(3) The agency reports shall be used in the preparation of the Secretary's report to the President.

(b) The Secretary shall submit to the President by October 1 of each year a summary report of the status of the occupational safety and health of Federal employees, based on agency reports, evaluations of individual agency progress and problems in correcting unsafe and unhealthful working conditions, and recommendations for improving their performance.

§ 1960.76–1960.77 [Reserved]

Subpart J—Evaluation of Federal Occupational Safety and Health Programs

§ 1960.78 Purpose and scope.

(a) The purpose of this subpart is to establish a comprehensive program for the evaluation of Federal employee occupational safety and health programs. This subpart includes the responsibilities of agency heads in conducting self-evaluations of the effectiveness of their occupational safety and health programs, and the responsibilities of the Secretary in

evaluating the extent to which each agency head has developed and implemented agency programs in accordance with the requirements of Executive Order 12196 and this part.

(b) Agency heads shall develop and implement a program for evaluating the effectiveness of their agency's occupational safety and health program. An annual summary report shall be submitted to the Secretary covering self-evaluations conducted during the previous year.

(c) The Secretary shall conduct a comprehensive evaluation of each Federal agency's occupational safety and health program. Evaluations shall be conducted on a regular schedule to determine the performance levels of each agency's program. The Secretary shall submit to the President each year: A summary report of the status of the occupational safety and health of Federal employees; Department of Labor evaluations, together with agency responses, of individual agency progress and problems in correcting unsafe and unhealthful working conditions, and recommendations for improving agency's performance.

§ 1960.79 Self-evaluations of occupational safety and health programs.

Agency heads shall develop and implement a program of self-evaluations to determine the effectiveness of their occupational safety and health programs. The self-evaluations are to include qualitative assessments of the extent to which their agency safety and health programs are:

(a) Developed in accordance with the requirements set forth in Executive Order 12196 and this part and,

(b) Implemented effectively in all agency field activities.

Agencies needing assistance in developing a self-evaluation program should contact the Secretary.

§ 1960.80 Secretary's evaluations of agency occupational safety and health programs.

(a) In accordance with section 1-401(h), the Secretary shall develop a comprehensive program for evaluation an agency's occupational safety and health program. To accomplish this, the Secretary shall conduct:

(1) A complete and extensive evaluation of all elements of an agency's occupational safety and health program on a regular basis;

(2) Special studies of limited areas of an agency's occupational safety and health program as deemed necessary by the Secretary; and

(3) Field reviews and scheduled inspections of agency workplaces as deemed necessary by the Secretary.

(b) The Secretary shall develop and distribute to Federal agencies detailed information on the Department of Labor's evaluation program. The information shall include, but is not limited to:

(1) The major program elements included in a complete and extensive evaluation of an agency's occupational safety and health program;

(2) The methods and factors used to determine the effectiveness of each element of an agency's program;

(3) The factors used to define "large" or "more hazardous" Federal agencies, establishments, or operations;

(4) The procedures for conducting evaluations including field visits and scheduled inspections; and

(5) The reporting format for agency heads in submitting annual summaries of their self-evaluation programs.

(c) Prior to the initiation of an agency evaluation, and Department of Labor will review the annual agency self-evaluation summary report. The Secretary will then develop a program evaluation plan before the initiation of an agency evaluation. A copy of the plan shall be furnished to the agency to be evaluated at the time of the notification of the evaluation.

(d) To facilitate the evaluation process and to insure full understanding of the procedures to be followed and the support required from the agency, the Secretary, or the Secretary's representative, shall conduct an opening conference with the agency head or designee. At the opening conference, the Secretary's authority and evaluation plan will be explained.

(e) The agency evaluation should be completed within 90 calendar days of the date of the opening conference.

(f) A report of the evaluation shall be submitted to the agency head by the Secretary within 90 calendar days from the date of the closing conference.

(g) Agency heads shall respond to the evaluation report within 60 calendar days of receipt of the report.

§ 1960.81-1960.83 [Reserved]

Subpart K—Field Federal Safety and Health Councils

§ 1960.84 Purpose.

(a) Executive Order 12196 provides that the Secretary shall "facilitate the exchange of ideas and information throughout the Government about occupational safety and health."

(b) Consistent with this objective, the Secretary will continue to sponsor and/or provide guidance for those Field Federal Safety and Health Councils now established and in operation, and establish new field councils as necessary. The field councils will consist primarily of qualified representatives of local area Federal field activities whose duties pertain to occupational safety and health, and also of representatives of recognized local labor organizations, or other civilian employee organizations, at local area Federal field activities. For the purpose of this subpart the definition of field activity will be provided by each agency.

§ 1960.85 Role of the Secretary.

(a) The Secretary shall maintain liaison with agency heads to ensure that they encourage their field activities to participate actively in field council programs. To ensure maximum participation, the field councils' annual reports to the Secretary shall provide descriptions of the degree of management and employee participation by the defined Federal field activities. The Secretary shall annually furnish each agency head with a report consolidating the information received as to the participation of the agency's several field installations in field council activities.

(b) The Secretary shall provide leadership and guidance and make available necessary equipment, supplies, and staff services to the Field Federal Safety and Health Councils to assist them in carrying out their responsibilities. The Secretary shall also provide consultative and technical services to field councils. These services shall involve aid in any phase of developing and planning programs; and in sponsoring, conducting or supporting safety and health training courses.

§ 1960.86 Establishing councils.

(a) Those field councils established and in operation prior to the effective date of this subpart will continue to function without interruption provided they are operating in accordance with the provision of their charter and this subpart.

(b) The Secretary may establish a council in any area where ten or more Federal establishments totaling 300 or more employees are located within an area having a radius of 50 miles, and there is substantial agreement among the agencies that such a council would be useful. In any such area where there is no council already established, a field representative of the Secretary may, upon his own initiative or at the request of any establishment within the area, contact representatives of all

establishments within the area and encourage the organization of a field council.

(c) After a new council has been organized, officers elected, and articles of organization drafted and accepted by the council membership, a formal request for recognition as a field council shall be sent to the Secretary. Upon approval of the Articles of Organization, a charter will be issued.

(d) At the first general meeting of the council, committees should be appointed and the cooperation of all participants should be solicited to aid the functioning of committees and the successful accomplishment of the council's objectives.

§ 1960.87 Objectives.

The basic objective of field councils is to facilitate the exchange of ideas and information to assist agencies to reduce the incidence, severity and cost of occupational accidents, injuries, and illnesses. Field councils shall act on behalf of the Secretary or his designees on occupational safety and health activities in carrying out within their respective geographic areas the following functions:

(a) To act as a clearinghouse on information and data on occupational accidents, injuries, and illnesses and their prevention.

(b) To plan, organize and conduct field council meetings or programs which will give technical advice and information on occupational safety and health to representatives of participating agencies and employee organizations.

(c) To promote improvement of safety and health programs and organizations in each Federal agency represented or participating in council activities.

(d) To promote coordination, cooperation, and sharing of resources and expertise to aid agencies with inadequate or limited resources. These objectives can be accomplished in a variety of ways. For example, field councils could organize and conduct training programs for employee representatives, collateral duty and professional safety and health personnel, coordinate or promote programs for inspections, or, on request, conduct inspections and evaluations of the agencies' safety and health programs.

(e) To provide Federal Executive Boards, Federal Executive Associations, labor union organizations and other employee representatives with information on the administrative and technical aspects of safety and health programs.

(f) To evaluate the safety and health problems peculiar to local conditions and facilitate solutions to these problems through council activities.

(g) To develop a cooperative relationship with local community leaders by informing them of the existing functions and objectives of the council and by calling on them for support and participation in council meetings and activities.

§ 1960.88 Membership and participation.

(a) Each field council shall consist of the designated representatives of local Federal activities appointed by their respective activity heads, after consultation with appropriate employee representatives and appropriate certified safety and health committees.

(b) Federal agency heads should encourage each field activity having responsibility for the safety and health of agency employees to participate in the programs of these councils.

(c) Each activity head shall appoint an equal number of officially designated representatives (with designated alternates), from management and from nonmanagement employees, consistent with applicable collective bargaining arrangements.

(d) Representatives shall be selected from individuals in the following categories:

(1) Federal occupational safety and health professionals.

(2) Related Federal professionals, or collateral duty personnel. This includes persons employed in professions or occupations related to or concerned with safety and health of employees.

(3) Line management officials.

(4) Representatives of recognized Federal labor or other employee organizations.

(i) Where certified occupational safety and health committees exist, nonmanagement members of the committees shall be given the opportunity to select one individual for official appointment to field councils by the activity head.

(ii) Where employees are represented by collective bargaining arrangements, but no committee exists, nonmanagement members of field councils shall be selected from among those recommended by the exclusive bargaining representatives for official appointment to field councils by the activity head.

(iii) Where some employees in an activity are represented by collective bargaining arrangements and others are not, the agency head should solicit nominations for the agency's designated nonmanagement representative and alternate both from lawful labor organization(s) with collective bargaining status and from employees not represented through collective bargaining and should select from the nominees for official appointment as designated employee representatives on the field council.

(e) Representatives from non-Federal organizations. Associate membership may be granted to any non-Federally employed person who demonstrated interest in occupational safety and health. An associate member has no voting rights and may not hold any office.

(f) No maximum limitation shall be imposed by a council on itself, in regard to the numbers of personnel in any of the above categories that may attend meetings and/or participate in field council activities. An agency is free to have any number of individuals, in addition to the officially designated representatives participate in council activities.

(g) Only officially designated agency representatives or their alternates shall have voting privileges. All representatives and participants shall serve without additional compensation.

(h) Travel funds shall be made available equally to management and nonmanagement employee representatives.

§ 1960.89 Organization.

(a) Field council officers shall include, as a minimum, a chairperson, vice chairperson, and secretary. Officers shall be elected for a one or two-year term on a calendar year basis by a majority vote of the designated representatives. Election of officers shall be held at least 60 days before the beginning of a calendar year. The election may be conducted at a regularly scheduled meeting or by letter ballot.

(b) Each council shall notify the appropriate OSHA Regional Office and the Office of Federal Agency Safety and Health Programs of the name, agency address, and telephone number of each newly elected official.

(c) Each council shall have an Executive Committee consisting of all elected officers, chairpersons of appointed committees and the immediate past chairperson of the field council.

(d) In addition to the Executive Committee, each council shall have either a membership committee, a program committee and a finance committee, or a council official designated responsibility in these areas. Additional committees may be appointed by the chairperson for specific purposes as warranted.

§ 1960.90 Operating procedures.

(a) The Executive Committee of each council shall meet at least 45 days before the beginning of each calendar year to approve an annual program for the council designed to accomplish the objectives and functions stated in § 1960.87. In addition, the Executive Committee shall meet periodically to ensure that the meetings and other activities of the council are being conducted as outlined in the council schedule.

(b) The council program shall include at least four meetings or activities per year dealing with occupational safety and health issues.

(c) Each field council shall submit to the Secretary or his designee by March 15 of each year a report describing the activities and programs of the previous calender year and plans for the current year. In addition, the report shall address the participation and attendance of designated representatives of the council. The Office of Federal Agency Safety and Health Programs, OSHA, shall furnish guidelines to field councils concerning the preparation of this report.

(d) Upon determination that a council is not operating in accordance with its charter and the provisions of this subpart, and after consultation with appropriate OSHA regional officials, the Secretary shall revoke the council's charter. Upon revocation of a charter, the council shall surrender all its government property to the appropriate OSHA regional official. Any continuing or future organization in the same geographical area shall not use the title Field Federal Safety and Health Council, or any derivation thereof, unless formally rechartered by the Secretary. Notification of revocation of a council's charter shall be sent to the chairperson, where identifiable, and to the appropriate OSHA Regional Office.

§ 1960.91 [Reserved]

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federal register

Tuesday
October 21, 1980

Part VI

Department of Health and Human Services

Food and Drug Administration

Soda Water; Standard of Identity, and—Caffeine; Deletion of GRAS Status, Proposed Declaration That No Prior Sanction Exists, and Use on an Interim Basis Pending Additional Study; Proposed Regulations

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 165

[Docket No. 80N-0439]

Soda Water; Amendment to Standard

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) proposes to amend the standard of identity for soda water to accomplish the following: (1) Designate kola nut extract, rather than caffeine from this extract or from other extracts that naturally contain caffeine, as the mandatory ingredient in "cola-" and "pepper-" type soda water beverages; (2) provide for decaffeinated "cola" or "pepper" soda water beverages under the standard of identity; (3) continue to permit the use of added caffeine in these beverages as an optional ingredient.

DATES: Comments must be received on or before December 22, 1980.

ADDRESS: Written comments, data, or information to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: F. Leo Kauffman, Bureau of Foods (HFF-214), Food and Drug Administration, 200 C St., SW, Washington, DC 20204, 202-245-1164.

SUPPLEMENTARY INFORMATION: The current standard of identity for soda water (21 CFR 165.175) describes "cola-" and "pepper-" type soda water beverages as follows:

> * * * Soda water designated by any name which includes the word 'cola' or 'pepper' shall contain caffeine from kola nut extract and/or other natural caffeine-containing extracts. Caffeine may also be added to any soda water. The total caffeine content in the finished food shall not exceed 0.02 percent by weight * * *

The intent of the current standard is to require caffeine from kola nut extract or other natural sources as a mandatory ingredient in "cola-" or "pepper-" type soda waters and to allow added caffeine in these beverages as an optional ingredient. The standard sets the upper limit on the total amount of caffeine that may be present—both naturally occurring and added—at 0.02 percent by weight. The standard does not set a minimum amount of naturally occurring or added caffeine that must be present.

In conjunction with its review of the safety of caffeine as an added ingredient in food (the results of which are discussed in a notice of proposed rulemaking published elsewhere in this issue of the Federal Register, FDA has reviewed the standard of identity for soda water to determine whether the provisions of the standard relating to caffeine remain appropriate under section 401 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 341). Section 401 provides for the promulgation of food standards that "promote honesty and fair dealing in the interest of consumers."

As originally promulgated in 1966 (see 31 FR 1066; Jan. 27, 1966), the provisions of the standard of identity for soda water that relate to caffeine were based apparently on the assumptions that (1) consumers expect "cola" and "pepper" beverages to contain kola nut extract and its naturally occurring caffeine, and (2) the naturally occurring caffeine is, in some undefined sense, a characterizing ingredient of such beverages. As long as these assumptions are valid, it would be appropriate under section 401 of the act to make caffeine a mandatory ingredient in these beverages. It was not clear in 1966, however, nor is it clear now, precisely how caffeine (as opposed to the kola nut flavoring extract in which caffeine naturally occurs) actually affects the characteristics of "cola" and "pepper" soda waters, if at all.

In recent years, consumers have questioned whether it is appropriate to require "caffeine from kola nut extract and/or other natural caffeine-containing extracts" as a mandatory ingredient in "cola" and "pepper" soda waters. In 1974, Consumers Union argued that requiring caffeine in these beverages is contrary to the public health and that manufacturers should be free to produce, and consumers free to choose, decaffeinated cola and pepper drinks (Ref. 1). (See 40 FR 26266; June 23, 1975). In 1979, the Federation of Homemakers petitioned FDA on safety grounds to prohibit the use of added caffeine in all soda water beverages and to allow caffeine in "cola" and "pepper" beverages only in "trace amounts" as a natural constituent of kola nut extract or other caffeine-containing extracts (Ref. 2).

FDA has reevaluated the standard of identity for soda water and, for the reasons discussed below, the agency is proposing to amend the standard to delete the requirement that "cola" and "pepper" beverages contain "caffeine from kola nut extract and/or other natural caffeine-containing extracts." As amended, the standard would designate kola nut extract per se as the mandatory, characterizing ingredient in "cola" and "pepper" beverages and allow explicitly for these beverages to be decaffeinated. The amended standard would continue to allow the use of naturally occurring and added caffeine as optional ingredients up to a maximum total level of 0.02 percent by weight.

The primary reason for FDA's proposal is that there appears to be little or no basis for regarding caffeine per se to be a characterizing ingredient of "cola" or "pepper" beverages. First, as currently written, the standard sets no minimum level at which caffeine must be present and thus already allows the production of "cola" and "pepper" beverages that are virtually (though not completely) free of caffeine. FDA is unaware of evidence demonstrating that the minute amounts of caffeine necessary to satisfy the current standard have any functional or other characterizing effect in the beverages.

Second, at least one manufacturer, the Royal Crown Bottling Co., is marketing with apparent success a "cola" beverage that is claimed to be caffeine-free. This product, called RC-100, is not subject to the standard of identity for soda waters because it is artificially sweetened (see 21 CFR 165.175(a)) and thus a food for special dietary use (see 21 CFR 105.3(a)(2)). Nevertheless, the fact that a manufacturer can gain consumer acceptance of a "caffeine-free" cola belies the notion that consumers expect colas to contain caffeine.

Third, to an increasing extent, soda water beverages other than "cola" and "pepper" beverages contain caffeine as an optional ingredient in amounts equal to or greater than the amount of caffeine ordinarily present in the natural extract used in flavor "cola" and "pepper" beverages (Ref. 3). This fact makes it increasingly difficult to conclude that caffeine characterizes "cola" or "pepper" beverages, any more than it characterizes other soda water beverages to which it is added.

In the absence of convincing evidence that caffeine per se, rather than the kola nut extract in which it naturally occurs, is a characterizing and thus necessary ingredient of "cola" and "pepper" beverages, FDA believes it is appropriate under the standard established in section 401 of the act for promulgating food standards to allow consumers maximum opportunity to choose whether the "cola" and "pepper" beverages they buy should contain caffeine.

Individual consumers may wish to avoid caffeine for any number of personal reasons. By amending the soda water standard to provide for decaffeinated "cola" and "pepper"

beverages, as proposed here, FDA would leave to consumers the decision on whether to purchase decaffeinated "cola" and "pepper" drinks.

FDA is proposing to allow the continued use of caffeine as an ingredient in soda water beverages, but that use of caffeine, as well as other food uses, may be affected in the future by the ultimate outcome of FDA's evaluation of caffeine's safety, referred to above. The changes FDA is proposing to make in the standard of identity for soda water are not intended to imply that FDA has made any final judgments about caffeine's safety, or lack of it. Those judgments will be made through the process initiated elsewhere in this issue of the **Federal Register** in which FDA has raised some questions about the safety of caffeine and has proposed to require the performance of additional studies needed to resolve the questions. If FDA should conclude that caffeine can no longer be used safely in soda water, it will, of course, take appropriate action to amend the standard of identity acordingly. If, on the other hand, caffeine's safety is affirmed, the changes FDA has proposed in the standard of identity would still be justified for the reasons discussed in this document.

In addition to any other aspect of this proposal on which interested persons wish to comment, FDA specifically solicits comments on the following questions:

1. Are any natural flavoring extracts other than kola nut extract used in making "cola" or "pepper" beverages? FDA knows of none and thus is proposing in the amended standard to designate only kola nut extract as the mandatory ingredient.

2. What processes are used, or may be used, in decaffeinating natural caffeine-containing extracts? What degree of decaffeination (in percentage terms) is achieved by each of these processes?

3. What additional nomenclature should be allowed, or required, to describe "cola" or "pepper" beverages that contain no added caffeine and have been made from decaffeinated kola nut extract? What degree of decaffeination should trigger the use of any additional nomenclature?

FDA periodically announces by notice in the **Federal Register** mandatory uniform effective dates for compliance with food labeling requirements. The current mandatory uniform effective date is July 1, 1981 (43 FR 44830; Sept. 29, 1978). The agency proposes that any final regulation based upon this proposal become effective in accordance with a new mandatory uniform effective date for compliance with food labeling requirements to be announced in a future **Federal Register** notice, but not sooner than 1 year after publication in the **Federal Register** of any final regulation based upon this proposal.

The agency has determined under 21 CFR 25.24(b)(13) (proposed December 11, 1979; 44 FR 71742), that this proposed action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

References

1. Letter from Marsha B. Cohen, Attorney, Washington Office, Consumers Union, to Hearing Clerk, Food and Drug Administration, dated July 23, 1974.

2. Citizen petition submitted to Hearing Clerk, FDA, by the Federation of Homemakers (Docket No. 79P-0344/CP), dated August 30, 1979.

3. Letters (with attachments) from Dr. Howard R. Roberts, National Soft Drink Association, to Mr. Robert W. Moore, Bureau of Foods, FDA, dated September 18 and 20, 1979.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 401, 701(e), 52 Stat. 1046 as amended, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), it is proposed that Part 165 be amended by revising § 165.175 to read as follows:

§ 165.175 Soda water.

a. *Description.* Soda water is the class of beverages made by absorbing carbon dioxide in potable water. The amount of carbon dioxide used is not less than that which will be absorbed by the beverage at a pressure of one atmosphere and at a temperature of 60° F. It either contains no alcohol or only such alcohol, not in excess of 0.5 percent by weight of the finished beverage, as is contributed by the flavoring ingredient used. Soda water designed by any name which includes the word "cola" or "pepper" shall contain Kola nut extract, which may be decaffeinated. Caffeine may also be added to any soda water. The total caffeine content in the finished food shall not exceed 0.02 percent by weight. Soda water may contain any safe and suitable optional ingredient, except that vitamins, minerals, and proteins added for nutritional purposes and artificial sweeteners are not suitable for food encompassed by this standard.

(b) *Nomenclature.* (1) The name of the beverage for which a definition and standard of identity is established by this section, which is neither flavored nor sweetened, is soda water, club soda, or plain soda.

(2) The name of each beverage containing flavoring and sweetening ingredients shall appear as "soda" or "water," or "carbonated beverage," the blank to contain the word or words that designate the characterizing flavor of the soda water as prescribed in § 101.22 of this chapter.

(3) If the soda water is one generally designated by a particular common name, for example, ginger ale, rootbeer, or sparkling water, that name may be used in lieu of the name prescribed in paragraph (b)(1) and (2) of this section. For the purpose of this section, a proprietary name that is commonly used by the public as the designation of a particular kind of soda water may be used in lieu of the name prescribed in paragraph (b)(1) and (2) of this section.

(c) *Label declaration.* Each of the optional ingredients used shall be declared on the label as required by the applicable sections of Part 101 of this chapter.

Interested persons may, on or before December 22, 1980, submit to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the above office betwee 9 a.m and 4 p.m., Monday through Friday.

Executive Order 12044 does not apply to regulations issued in accordance with the formal rulemaking provisions of the Administrative Procedure Act (5 U.S.C. 556, 557). Food standards promulgated under 21 U.S.C. 341 and 371(e) fall under this exemption.

Dated: October 16, 1980.

Mark Novitch,

Acting Commissioner of Food and Drugs.

[FR Doc. 80-32776 Filed 10-20-80; 8:45 am]

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21 CFR Parts 180 and 182

[Docket No. 80N-0418]

Caffeine; Deletion of GRAS Status, Proposed Declaration That No Prior Sanction Exists, and Use on an Interim Basis Pending Additional Study

AGENCY: Food and Drug Administration.

ACTION: Proposed Rule.

SUMMARY: The Food and Drug administration (FDA) is proposing to

delete caffeine used as an added food ingredient from the list of substances that are generally recognized as safe (GRAS), to declare that no prior sanction exists for the use of caffeine as an added food ingredient, to restrict the use of caffeine as an added food ingredient to current uses and levels, and to require that the presence of caffeine as an added ingredient be reflected on the product label in the ingredient declaration. Under this proposal, the current uses of added caffeine would be permitted under an interim food additive regulation pending the completion of studies that are considered necessary to resolve questions about the safety of caffeine added to food. These questions include the potential fetotoxic and teratogenic properties of caffeine, the comparative metabolism and pharmacokinetic handling of caffeine in humans and experimental animals, the potential behavioral affects of caffeine, particularly in children, the potential reproductive effects of caffeine, and the potential carcinogenicity of caffeine. The studies FDA proposes to require include both animal studies and human epidemiological studies. In addition, there are questions that need to be addressed about the purpose for which caffeine is added to foods, especially soft drinks. This proposal does not directly affect the caffeine that occurs naturally in such foods as coffee and tea. In a related proposal published elsewhere in this issue of the **Federal Register**, FDA is proposing to amend the soda water standard to allow for decaffeinated cola- and pepper-type soda waters.

DATE: Comments must be received on or before December 22, 1980.

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Corbin I. Miles, Bureau of Foods (HFF–335), Food and Drug Administration, 200 C St. SW, Washington, DC 20204, 202–472–4750.

SUPPLEMENTAL INFORMATION:

I. Introduction

Caffeine has been a widely consumed constitutent of the food supply for many years, both as a naturally occurring constituent of such foods as coffee, tea, and chocolate and as an added ingredient in a variety of foods and beverages, most prominently cola-type soft drinks. Despite caffeine's well-known stimulant properties, its use as an added ingredient in soft drinks and other foods has been regarded by the food industry to be generally recognized as safe (GRAS); and FDA's regulations formally list added caffeine as a GRAS ingredient in cola-type soft drinks. The GRAS status of caffeine has exempted it over the years from the food additive sections of the law and their requirement that its safety be proven to FDA by a sponsor. As part of its program to review the safety of all substances listed in its regulations as GRAS, FDA has reviewed the safety of caffeine and has identified several questions about its safety that need to be addressed. Based on these questions, FDA proposes that the use of caffeine as an added ingredient in food should no longer be considered GRAS and that a variety of scientific studies be conducted to address the safety questions. In addition, there are questions about the purpose for which caffeine is added to food, especially soft drinks, that need to be addressed.

After a background discussion on the GRAS review program and the current legal status of caffeine, this document presents the data on caffeine that raise safety questions, explains the basis for FDA's proposal to remove added caffeine from the GRAS list, and describes the studies FDA considers necessary to resolve the existing questions about caffeine's safety and function as an added food ingredient.

II. Background

A. The GRAS Review

Since 1970, FDA has been conducting a comprehensive review of the safety of those human food ingredients that are currently listed in FDA regulations as either generally recognized as safe (GRAS) (21 CFR Part 182) or subject to a prior sanction (21 CFR Part 181). This ongoing review program, commonly referred to as the "GRAS review," has resulted to date in the initiation by FDA of approximately 65 rulemaking proceedings in which the agency has proposed either to affirm the GRAS status of the substance under review (see 21 CFR Part 184) or, where appropriate, to take action to restrict or prohibit use of the substance. The actions proposed in this document with respect to caffeine are, in part, a product of the GRAS review program.

The GRAS and "prior-sanctioned" categories of food substances were established by Congress in 1958 when it enacted the Food Additives Amendment of 1958 (Pub. L. 85–929, 72 Stat. 1784–1789). In that amendment to the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 et seq.), Congress defined the term "food additive," in section 201(s) of the act (21 U.S.C. 321(s)), as follows:

> (s) The term "food additive" means any substance the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food (including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food; and including any source of radiation intended for any such use), if such substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in food prior to January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use; except that such term does not include—
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> * * * * *
>
> (4) any substance used in accordance with a sanction or approval granted prior to the enactment of this paragraph pursuant to this Act, the Poultry Products Inspection Act (21 U.S.C. 451 and the following) or the Meat Inspection Act of March 4, 1907 (34 Stat. 1260), as amended and extended (21 U.S.C. 71 and the following); . . .
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> * * * * *

Under this definition of "food additive," substances that are GRAS, or that are subject to a prior sanction as defined in section 201(s)(4) of the act, are not food additives and, thus, are not subject to the premarketing safety review made applicable to food additives by the Food Additives Amendment (see section 409 of the act, (21 U.S.C. 348)). Prior-sanctioned substances remain subject, however, to the general adulteration provisions in section 402 of the act, 21 U.S.C. 342, which prohibit the use of added substances that "may render [the food] injurious."

In order to clarify the food additive status of many substances that were being used in food at the time the Food Additives Amendment was enacted, and thus facilitate implementation of the new provisions requiring premarket approval of food additives, FDA established lists of substances that the agency considered to be GRAS (21 CFR Part 182) or subject to a prior sanction (21 CFR Part 181). The regulations establishing the original, partial lists of GRAS and prior-sanctioned substances became final in 1959 (see 24 FR 9368; Nov. 20, 1959) and 1960 (see 25 FR 866; Feb. 2, 1960), respectively. The law, however, did not then, nor does it now, preclude manufacturers from making their own decisions concerning the GRAS status of ingredients prior to marketing them. If FDA disagrees with a

manufacturer's determination that a substance is GRAS (and thus eligible for marketing without the FDA safety review and approval required for food additives), it is FDA's legal burden to take the appropriate steps to end its use as a GRAS substance.

FDA's decisions to place substances on the original GRAS lists were based on the data available at the time the lists were established and on the then current state of knowledge in the field of toxicology. Likewise, the pre-1958 approvals by FDA and the U.S. Department of Agriculture that qualified substances for prior-sanctioned status reflected the best safety judgments that could be made at the time based on existing knowledge. During the ensuing years, however, as more data became available on the properties of particular substances and as the science of toxicology developed, it became apparent that, in order to ensure the safety of the food supply, the agency's earlier safety determinations should be reviewed and modified where appropriate. To this end, FDA initiated the GRAS review program in 1970.

To carry out the GRAS review, FDA conducted surveys of food manufacturers and searched the scientific literature to collect current data on the levels of consumption and the toxicity of substances that are listed as GRAS or subject to a prior sanction. Under a contract with FDA, the Federation of American Societies for Experimental Biology (FASEB), acting through its Select Committee on GRAS Substances (SCOGS), compiled and evaluated the data and made recommendations to the agency concerning the appropriate action to take with respect to each substance under review. In preparing its recommendations on particular substances, FASEB held public hearings to provide an opportunity for interested persons to submit additional information and to express their views about the proper regulatory status of the substance under review. A detailed discussion of the role FASEB plays in the GRAS review is provided in *Federation Proceedings*, Vol. 36, No. 11 (October 1977) (Ref. 1).

FDA reviews FASEB's evaluation of the data and its recommendations and considers any additional information not available to FASEB. The agency then makes its own determination concerning the GRAS status of the substance. The procedures and the substantive criteria FDA applies in determining and affirming the GRAS status of food ingredients are set forth in §§ 170.30, 170.35, 184.1, and 186.1 (21 CFR 170.30, 170.35, 184.1, and 186.1). (The substantive criteria will be discussed below as they apply to the use of added caffeine.)

If FDA concludes that the substance under review is GRAS, it proposes to delete the substance from the original GRAS list in Part 182 (21 CFR Part 182) and proposes a regulation for inclusion in Part 184 (21 CFR Part 184) or Part 186 (21 CFR Part 186) affirming the substance's GRAS status and specifying the conditions of use for which the substance is considered GRAS. If FDA concludes that a substance can no longer be considered GRAS, the agency's usual course of acton is to propose to delete the substance from the GRAS list and to declare that the substance is a food additive that cannot be used in food unless approved as a food additive under section 409 of the act (21 U.S.C. 348).

There is, however, an intermediate step the agency can take, under appropriate circumstances, when it decides that a substance can no longer be considered GRAS. Under Part 180 of its regulations (21 CFR Part 180), FDA can permit the use of such a substance on an interim basis, notwithstanding the safety question(s) that preclude affirming GRAS status, if the agency finds that "* * * there is a reasonable certainty that the substance is not harmful and that no harm to the public health will result from the continued use of the substance for a limited period of time while the question raised is being resolved by further study." (21 CFR 180.1(a)). Substances approved on this basis are referred to as "interim food additives." Under Part 180, FDA can condition the continued use of an interim food additive upon a commitment by interested persons to conduct the studies necessary to resolve questions about the safety or functionality of the substance.

As part of the rulemaking process FDA uses to implement the conclusions reached in the GRAS review process, FDA routinely determines whether a prior sanction exists for the substance under review. If a prior sanction for a particular use is found to exist, then, of course, the substance is exempt from regulation as a food additive, on an interim basis or otherwise.

B. Caffeine

1. *Uses and resulting human exposure.* Caffeine is a member of a class of nitrogen-containing substances known as alkaloids. Its chemical name is 1,3,7-trimethylxanthine, and its empirical formula is $C_8H_{10}N_4O_2$. In the pure state, caffeine is a white powder or a mass of glistening, white needles. Food grade caffeine is listed in the Food Chemicals Codex (2d ed., 1972) (Ref. 2) and its First Supplement (Ref. 3) as containing not less than 98.5 percent $C_8H_{10}N_4O_2$, calculated on the anhydrous basis. The limits established in the Food Chemicals Codex for impurities in food grade caffeine are arsenic (as As), not more than 3 parts per million (ppm); heavy metals, not more than 20 ppm; and lead, not more than 10 ppm. Food grade caffeine should also pass a specified test for the presence of other alkaloids.

Caffeine occurs naturally, but it can also be made synthetically. In nature, it is present at up to 1.5 percent in seeds of coffee (*Coffea arabica* L.) and up to 5 percent in the leaves of tea (*Camellia sinensis*). Caffeine is also a natural component of chocolate (*Theobroma cacao* L.) and the kola nut (*Cola acuminata* Schott and Endl. and related species). Caffeine frequently occurs in nature in association with other chemical substances related to it, such as theobromine and theophylline. Caffeine can be prepared for commercial use by extraction from coffee or tea wastes, by partial synthesis from theobromine, or by total synthesis from various starting materials. One synthetic method uses urea and chloroacetic acid as starting materials, and another uses dimethyl carbamide and malonic acid. According to the Encyclopedia of Food Technology, the primary source of the caffeine that is used as an added ingredient in food is methylation of theobromine obtained from cocoa wastes. A secondary source is solvent or water extraction from coffee beans or tea leaf waste (Ref. 4).

Caffeine is a pharmacologically active substance that is used in a number of prescription and over-the-counter drugs. The major pharmacological effect of caffeine is on the central nervous system, but it can also stimulate the heart and increase cardiac output. Caffeine with sodium benzoate is given by physicians subcutaneously or intramuscularly in dosages of 0.5 to 1.0 grams as a central nervous system stimulant. In addition to its use in prescription drugs, caffeine is the active ingredient in many over-the-counter drugs used to maintain wakefulness. The dosage level in these over-the-counter (OTC) stimulants is usually 100 mg or 200 mg per tablet. Caffeine also is used in a variety of OTC analgesic, diuretic, cold, and diet-aid preparations at single dose levels ranging from approximately 30 to 200 mg.

Caffeine is used on a limited basis as an added ingredient in several categories of nonbeverage foods, including baked goods, frozen dairy

desserts, gelatin puddings and fillings, and soft candy, reportedly as a flavoring agent. The overwhelmingly predominant use of caffeine as an added ingredient in food, however, is in soda water beverages ("soft drinks"); and most of that use (approximately 80–90 percent) is in cola-type soft drinks (Ref. 5). FDA believes that the soft drink use of caffeine accounts for the vast majority of the estimated 2 million pounds of caffeine added to food annually in the United States. (This 2 million pounds does not include the caffeine that occurs naturally in coffee, tea, etc.) Under the current version of FDA's standard of identity for soda water beverages (21 CFR 165.175), caffeine from kola nut extract and/or other natural caffeine-containing extracts is a mandatory ingredient in "cola" or "pepper" type soda water beverages, and additional caffeine from any source, natural or synthetic, may be used as an optional ingredient in any soda water beverage (up to 0.02 percent of the finished food).

In its report to FDA on caffeine (Ref. 6), FASEB presented data concerning the levels of exposure to caffeine experienced by consumers of soft drinks. Using survey data on the frequency of consumption of these beverages among various age groups and the average serving size, and assuming a caffeine level in the beverage of 0.01 percent, FASEB reported the mean consumption of caffeine from soft drinks, among those who consume them, to be 0.17 mg/kg body weight/day in the 0 to 11 month age group; 0.49 mg/kg/day in the 1 to 5 year age group; 0.31 mg/kg/day in 6 to 11 year age group; 0.21 mg/kg/day in the 12 to 17 year age group; and 0.18 mg/kg/day in the 18 and older age group (Table III, Ref. 6). Among the heaviest consumers of soft drinks (those in the 90th to 100th percentile), FASEB found the exposure levels to be significantly higher: 1.8 mg/kg/day in the 1 to 5 year age group; 1.1 mg/kg/day in the 6 to 11 year age group; 0.71 mg/kg/day in the 12 to 17 year age group; and 0.66 mg/kg/day in the 18 and older age group (Table IV, Ref. 6). It is noteworthy that the highest exposure to caffeine from soft drinks on a mg/kg/day basis is among young children, especially those in the 1 to 5 year age group. FDA considers the FASEB data to provide reasonable estimates of the levels of human exposure to caffeine from soft drinks.

FASEB also presented data comparing the levels of caffeine exposure from soft drinks with levels of caffeine exposure from all food sources, including coffee, tea, chocolate, etc. (Ref. 6). These data show that the proportion of total caffeine exposure from soft drinks varies both among the age groups and between average and heavy consumers of soft drinks. For example, persons in the 18 and older category who consume an average amount of soft drinks get the smallest proportion of their total dietary exposure to caffeine from soft drinks: 0.18 mg/kg/day of their total 2.4 mg/kg/day exposure (or 7.5 percent) is from soft drinks (Table III, Ref. 6). On the other extreme, children in the age category of 1 to 5 years who are in the 90th to 100th percentile of consumption of soft drinks get 1.8 mg/kg/day of their total 3.0 mg/kg/day exposure (or 60 percent) from soft drinks (Table IV, Ref. 6). Limited data exist concerning exposure to caffeine among pregnant women. Based on data collected by the Market Research Corporation of America, the mean consumption of caffeine among pregnant women from coffee alone is estimated to be approximately 2.9 mg/kg/day (Ref. 7).

2. *Regulatory status of caffeine as a food ingredient.* Caffeine is one of the substances FDA included on the original GRAS list following enactment of the Food Additives Amendment of 1958 (see 26 FR 938; Jan. 31, 1961). FDA listed caffeine as GRAS for use as a multiple purpose ingredient in cola-type beverages at a level not to exceed 0.02 percent of the beverage (21 CFR 182.1180). The only other formal FDA recognition of caffeine as a human food ingredient is in the standard of identity for soda water (21 CFR 165.175), where, as mentioned above, "caffeine from kola nut extract and/or other natural caffeine-containing extracts" is included as a mandatory ingredient in all "cola"- and "pepper"-type soda water beverages. Caffeine from other sources is also permitted as an optional ingredient in all soda water beverages, at a level not to exceed 0.02 percent.

The Flavor Extract Manufacturers' Association (FEMA) lists caffeine among the substances it considers to be GRAS for general use as a flavor substance (Ref. 8).

Until now, FDA has not taken issue with the FEMA determination; and it is on the basis of its presumed GRAS status as a general use flavor substance that caffeine is currently being used on a limited basis as a flavoring agent in the nonbeverage food categories mentioned above.

As noted above, FDA heretofore has allowed the addition of caffeine to foods and beverages based on its GRAS status. Since FDA proposes in this rulemaking to declare added caffeine no longer GRAS and to regulate added caffeine as an interim food additive under section 409 of the act, the agency must resolve whether any uses of added caffeine are the subject of a prior sanction as defined in section 201(s)(4) of the act. As explained earlier, any use of caffeine that has a prior sanction is excluded from the definition of the term "food additive" and thus cannot legally be included in the interim food additive regulation FDA is proposing to adopt. Such uses would remain lawful, subject only to the general adulteration provisions of the act (see section 402(a)(1) of the act (21 U.S.C. 342)).

Although FDA was aware of the use of caffeine in cola-type soft drinks prior to enactment of the Food Additives Amendment in 1958 and, after 1911, took no regulatory action against that use, the agency does not believe that it explicitly approved that, or any other, food use of added caffeine prior to September 6, 1958. In preparing this proposal, FDA searched its files for documents that relate to the question of whether it granted a prior sanction for caffeine in food (Ref. 9). Several documents, including a March 7, 1940 FD&C Act Trade Correspondence (TC/144), support FDA's tentative conclusion that no prior sanction exists because they discourage the use of caffeine as a food ingredient. Other pre-1958 documents are more equivocal about caffeine, acknowledging its long-time use in cola beverages or stating that there is no scientific evidence that caffeine is hazardous to health as ordinarily consumed in cola drinks.

As a part of this rulemaking proceeding, FDA specifically solicits the submission of comments on the several documents discussed above (Ref. 9) as well as any other evidence relating to whether a prior sanction exists for any uses of added caffeine in food. At this time, FDA proposes to declare that no prior sanction exists for any specific use of added caffeine in food, because FDA has no evidence of the explicit approval of added caffeine that is necessary to constitute a prior sanction (see 21 CFR Part 181).

Persons who intend to assert or rely on a prior sanction for added caffeine must submit proof of its existence in response to this proposal. Under § 181.5(d) (21 CFR 181.5(d)), FDA will consider the failure of any person to come forward with proof of an applicable prior sanction in response to this proposal to constitute a waiver of the right to assert or rely on such prior sanction at any time. If, however, FDA receives acceptable new evidence of a prior sanction, or convincing comments on the documents identified above, it will modify the proposed interim food additive regulation to exclude the prior-

sanctioned use from coverage by the regulation and propose a rule to recognize the prior sanction or sanctions.

The presence of caffeine in food as an added food ingredient (as in cola-type beverages and certain other, nonbeverage foods) is to be distinguished for purposes of this document from the presence of naturally occurring caffeine in such foods as coffee, tea, and chocolate. Although the consumption of foods containing naturally occurring caffeine is widespread and, as discussed above, very significant in terms of overall human exposure to caffeine, this document deals only with the regulatory status of the added uses of caffeine. Limiting the scope of this document to added caffeine is appropriate for a number of legal and practical reasons, which are discussed in a later section of this document.

III. FASEB Report on Caffeine

Consistent with the purpose of the GRAS review program, the task assigned to FASEB by FDA was to review the existing data on caffeine and make a recommendation to FDA on whether caffeine as an added ingredient in cola-type beverages should remain on FDA's list of GRAS substances (see 21 CFR 182.1180). As noted earlier, that use of caffeine is the only one listed in FDA's GRAS regulations.

FASEB submitted its report on caffeine to FDA in May 1978. Relying on a scientific literature review on caffeine prepared under FDA's sponsorship, as well as other sources, the FASEB report summarized the available data on caffeine consumption and on the biological properties of caffeine, including data on caffeine's toxicity. Copies of the scientific literature review and the FASEB report are on file with the FDA Hearing Clerk (HFA–305), Rm. 4–65, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857 (Refs. 10 and 6, respectively). Copies may be purchased from the National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161. The NTIS Order No. for the literature review is PB–234–894/AS; the price code is A16. For the FASEB report on caffeine, the NTIS Order No. is PB–283–441/AS, and the price code is A05.

In the opinion section of its report (Section V, Ref. 6), FASEB referred to the existing data concerning the potential mutagenicity, teratogenicity, and carcinogenicity of caffeine, as well as the data concerning other possible effects of long-term exposure to caffeine. FASEB noted that in some animal test systems, generally involving very high dosage levels, some adverse effects of these kinds have been associated with exposure to caffeine. FASEB concluded, however, that the available data concerning these effects do not demonstrate a risk to humans from exposure to caffeine as currently used in soft drinks (which the FASEB report referred to collectively as "cola-type beverages").

In explaining its ultimate conclusion that caffeine in "cola-type beverages" should no longer be considered GRAS, FASEB placed primary emphasis on the potential behavioral effects of caffeine in children. FASEB pointed out that the concerns about the behavioral effects of caffeine are less for adults "* * * than for children where there can be chronic consumption of caffeine in cola-type beverages during the period of brain growth and development. It is during this period of plasticity that the developing central nervous system is most sensitive to the effects of all aspects of the environment. The estimated levels of caffeine intake at these ages are near those levels that are known to cause central nervous system effects in adults."

Although it acknowledged that the available data are not adequate to answer the question of whether chronic exposure to caffeine in "cola-type beverages" poses a potential hazard to children and others, FASEB stated that it "* * * views with concern the continued addition of caffeine to cola-type beverages, representing as it does a unique addition to food of a pharmacologically active central nervous system stimulant." FASEB said: "* * * there is a possibility that behavioral effects in children from infancy through adolescence exist, even though these potential effects are neither adequately documented nor are their consequences clear." FASEB said further that: "A series of rigorously controlled chronic studies in appropriate species, including fetal, neonatal, and growing animals, of the immediate and ultimate behavioral and cardiovascular effects of caffeine added to the diet and given in cola-type beverages, would reduce areas of speculation."

FASEB then stated its formal conclusions as follows:

A. While no evidence in the available information on caffeine demonstrates a hazard to the public when it is used in cola-type beverages at levels that are now current and in the manner now practiced, uncertainties exist requiring that additional studies be conducted.

B. It is inappropriate to include caffeine among the substances generally recognized as safe (GRAS). At current levels of consumption of cola-type beverages, the dose of caffeine can approximate that known to induce such pharmacological effects as central nervous system stimulation.

One member of the FASEB committee that considered caffeine filed a minority report. That report will be discussed in a later section of this document.

IV. FDA's concerns About Added Caffeine

A. Introductions

FDA has carefully considered the data on caffeine discussed in the FASEB report, as well as additional data not available to FASEB at the time it prepared its report. FDA shares FASEB's concern about the addition to food of a pharmacologically active agent, including FASEB's uncertainty about the potential behavioral effects of caffeine, especially in young children. FDA also is proposing to adopt FASEB's basic conclusion that, due to questions about the safety of caffeine, it is no longer appropriate to continue the listing of added caffeine as a GRAS substance.

However, due to recently developed evidence concerning the capacity of caffeine to cause birth defects in rats, FDA's primary concern about caffeine has shifted from caffeine's potential behavioral effects to its potential teratogenicity. As explained below, much uncertainty still exists about whether caffeine actually increases the risk of birth defects in humans, but the data now available from animal studies are significant enough to be of serious concern and to justify additional research directed toward resolving as soon as possible the uncertainties about caffeine's potential teratogenicity in humans.

In addition, due for the most part to a lack of the data normally required to support the safety of a food additive rather than affirmative evidence demonstrating a potential health risk FDA is proposing to require studies addressing the capacity of caffeine to cause adverse behavorial effects, reproductive effects, and cancer. These additional studies, coupled with the studies on caffeine's potential teratogenicity, should resolve the question of caffeine's safety as a human food ingredient. Finally, FDA proposes to resolve the question of caffeine's functionality as an added ingredient in food by requiring manufacturers to identify the purpose or purposes for which caffeine is used and demonstrate that the amounts used are necessary and effective for the intended purpose(s).

The following subsections of this document present the data and information that support FDA's proposal to remove added caffeine from the

GRAS list and that justify the studies FDA is proposing to require.

B. Teratology

1. *Animal data prior to 1979.* In 1979, FDA published a review of the reproduction and teratology studies on caffeine completed and available as of that time (Ref. 11). That review cited a number of investigations, utilizing different methods of dosing and various species and strains of animals, which have indicated that caffeine may have fetotoxic and teratogenic potential.

For example, caffeine injected intraperitoneally into pregnant mice at dose levels of 200–250 mg/kg was embryotoxic and affected palate and limb development of the fetuses (Refs. 12, 13, 14, 15). A single subcutaneous injection of mice with 200 mg/kg caffeine produced cleft palate, micrognathia, hematoma, clubfoot, and digital defects in mice (Ref. 15). Mice given a single subcutaneous injection of 300 or 400 mg/kg had offspring that exhibited digital deformities, shortened extremities, muscular development disorders, cleft palate, facial deformities, and tail and spinal column curvative (Ref. 16). Oral administration of caffeine at 50 mg/kg by intubation produced skull and facial deformities and cleft palates (Ref. 17) and digital deformities (Ref. 18), but no ectrodactyly (partly or completely missing digits) in Swiss mice (Ref. 19); 75 mg/kg caused facial deformities, anophthalmia (missing eyes), and exencephaly (Ref. 20).

Dosing of rats by intubations of caffeine gave evidence of toxicity but produced variable teratogenic responses. At 0.2 to 22.5 mg/kg, no dose-related effects were seen (Ref. 21); 30 mg/kg resulted in decreased litter size and delayed bone ossification in the offspring (Ref. 22). Offspring of rats given 125 to 150 mg/kg showed missing digits and phalanges (Refs. 18, 19); 130 mg/kg caused cleft palates (Ref. 23), and 180 mg/kg caused toxicity and cleft palates (Ref. 23) and abnormalities of an unspecified type (Ref. 24), while 240 mg/kg reportedly was lethal to the fetus (Ref. 23).

Hamsters administered with up to 30 mg/kg caffeine by intubation at days 6 to 10 of gestation showed no frank terata (Ref. 21), but rabbits dosed with 100 mg/kg caffeine exhibited ectrodactyly (Ref. 19).

Caffeine given to rats daily in tap water at 30 mg/kg produced ossification problems and underdevelopment of kidney pelvis (Ref. 22). However, 40 to 50 mg/kg appeared to have neither teratogenic nor growth-retarding effects on the offspring (Ref. 25). Caffeine given daily to mice in drinking water at up to 39 mg/kg caused no dose-related effects, although at 12 to 18 mg/kg some offspring from treated animals were underweight at weaning, and one complete litter was ectrodactylous (Ref. 26).

Caffeine in coffee at up to 38 mg/kg produced fetotoxic effects in rats, such as delayed ossification of rib and skull bones, kidney pelvis underdevelopment, decreased organ to total body weight ratio of brain, lungs, and liver, and decreased bone density of the humerous (Ref. 22).

Rats fed a dietary level of 120 mg/kg of caffeine showed reduced litter size and birth weight (Ref. 27); dietary levels up to 330 mg/kg caused increases in skeletal defects as well as soft-tissue anomalies (Reg. 28).

The FDA review (Ref. 11) noted that many of the studies had deficiencies (e.g., lack of proper control animals, small number of animals, lack of concurrent control animals, insufficient information on procedures). Moreover, many of them were conducted a decade or more ago when teratology study techniques were less developed. Despite these deficiencies, the animal studies available at the time the review was published, taken together, demonstrate clearly that, at sufficiently high levels of exposure, well above what humans are exposed to in the diet, caffeine can cause birth defects in animals. The studies were not adequate, however, to determine with any confidence a no-effect level for the teratogenic effects of caffeine in animals, i.e., the level of exposure at which no teratogenic effects are observed.

2. *FDA study.* Due to the uncertainties left by the existing animal data, FDA initiated in 1979 two teratology studies of caffeine in laboratory animals using up-to-date teratology test methods. The purpose of the two studies was to confirm whether caffeine is an animal teratogen, and, if it is, to further refine the value of the no-effect level.

Both of FDA's teratology studies of caffeine used Osborne-Mendel rats of the FDA strain. The primary difference between the two studies is in the method by which the caffeine was administered to the animals. In the first study, which is now complete, the caffeine was administered by gavage, i.e., by forced feeding of measured amounts through a stomach tube. The advantage of this method is that it permits delivery to the animal of a precise amount of the test substance. One difficulty with the gavage method of administration is that by delivering the daily dose of the test substance in one large amount, it may not accurately reflect the way humans are exposed to the test substance. In the second study, the results of which are not yet available, the caffeine was administered via drinking water consumed *ad libitum*.

In the FDA gavage study of caffeine, animals were randomly assigned to each of six dose levels: 0, 6, 12, 40, 80 and 125 mg/kg/day. Initially, 61 presumably pregnant animals were assigned to each group to allow for a final minimum of 50 pregnant dams per group. Use of excess numbers of animals to allow for false pregnancies or mating failures is normal practice. Caffeine was administered daily by oral intubation on days 0 through 19 of gestation. Concurrent control animals were administered distilled water by intubation on the same days. Six of the pregnant animals died at the highest dose level. A dose-related decrease was seen in the total maternal weight gain during gestation at all dose levels.

On day 20, the pregnant animals were sacrificed and the fetuses delivered by caesarean section. Observations recorded included the number and position of resorption sites (i.e., places in the uterus where post-implantation death has occurred), the number of fetuses (dead and alive), the number of corpora lutea, and the number of implantation sites. Two litters were totally resorbed at 80 mg/kg dose levels. Significant decreases were observed in fetal weights and crown-rump distances in both makes and females at 80 and 125 mg/kg and 4 litters were resorbed at 125 mg/kg. Other increases in resportion also were observed at the 80 and 125 mg/kg and in female fetal weight and crown-rump distance at 40 mg/kg. Extrodactyly (partially or completely missing digits) was observed only at the 80 and 125 mg/kg dose levels. The highest observed no-effect level for ectrodactyly in this study was 40 mg/kg.

Also seen at the 80 and 125 mg/kg levels were assorted skeletal anomalies including misshapen centra, missing centra, reduced dorsal arch, reduced pubis, missing hind phalanges, reduced metacarpals and reduced metatarsals. In addition, delayed ossification of the sternebrae was seen at all dose levels. No soft-tissue variations appeared to be related to caffeine intake. A manuscript describing the results of this study in full detail (Ref. 29) has been accepted for publication by the *Journal of Environmental Pathology and Toxicology*. Complete copies of the protocols on the FDA caffeine teratology studies are included in the record as Refs. 30 and 31.

The gavage study has been completely analyzed by FDA and reviewed by two groups of teratology experts from

outside the Bureau of Foods. The first group of scientific reviewers consisted of Dr. Joseph F. Holson of the National Center for Toxicological Research and Dr. Richard M. Hoar of Hoffman-LaRoche, Inc. (also President of the Teratology Society). These reviewers concluded that the two FDA teratology studies "were designed and are bing conducted by knowledgeable personnel in a thorough and professional manner. Indeed, the size of the studies makes them more 'robust' than most studies of this nature. We conclude that these studies would be judged acceptable by a peer group for an initial teratological screen." The second group of scientific reviewers consisted of Dr. Carole A. Kimmel of the National Center for Toxicological Research and Dr. K. S. Khera of the Food and Drug Directorate of Canada. These reviewers observed that "discussion * * * and a review of the manuscript describing data from the gavage study, failed to uncover any sources of error in the design or conduct of the study. This is a conventional straightforward teratorlogy study conducted in a controlled manner * * *. Inter-observer bias was controlled since Dr. Welsh alone scored all the fetal skeletons and had no prior knowledge of the dose group to which the fetuses belonged. Uniformity in subjective judgment of the subtle sternebral changes was attempted by following a diagrammatic guide * * *. The collection of food consumption data, the large sample size, the relatively wide range and the number of test doses and the highly qualified scientists involved, are all considered strong points."

The FDA gavage study raises serious concerns about caffeine because it is the first large, well-designed and controlled teratology study on caffeine to show irreversible terata (e.g., missing digits) at levels as low as 80 mg/kg, and other adverse, but probably reversible, effects at levels as low as 6 mg/kg. The levels of caffeine exposure at which these effects occurrred in the rats are not significantly greater than those humans might be exposed to in the food supply. The daily doses of 40 mg/kg (the highest observed no-effect level for ectrodactyly) and 80 mg/kg fed to the rats in the FDA gavage study equate on a body weight basis to the amount of caffeine a human female might consume in approximately 12 and 24 strong cups of coffee, respectively; six mg/kg equates to two cups (Ref. 32). in determining the significance of the FDA gavage study for humans, however, it is necessary to consider whether animal teratology studies in general and rat studies on caffeine in particular are reliable indicators of human risk.

3. *Relevance of animal teratology studies to humans.* A fundamental assumption in the estimation of the human health risks posed by chemicals is the ability to extrapolate animal test results to human response. This assumption is the cornerstone of most of FDA's decisions regarding the safety of substances in the food supply. In accepting this assumption, however, FDA does not assume that responses in animal models reflect exactly what will occur quantitatively or qualitatively in humans. What is assumed is the ability of well-designed animal studies to provde an indication of potential risk to humans. Only after careful analysis of experimental results from multiple species can a degree of confidence be ascribed to the probability that this potential risk will materialize in the human population. If it can be demonstrated scientifically, however, that a result from a particular animal study is not relevant as a predictor of human risk, then that result would not be employed in making safety assessments no matter how drastic the animal results. Ultimately, conclusions regarding the precise risk to humans for any substance can only be arrived at by using appropriate human data.

Animal cancer studies are particularly well-suited to predicting human response. This is true for a number of reasons that have come to be understood from the extremely large body of scientific evidence that has been developed for substances having the ability to induce cancer. For the purpose of this document, however, it is necessary to focus on the problem of extrapolating teratology data from animals to humans.

Interpretation of the relevance of teratology studies to human is affected by many considerations, which combine to make the interpretation of teratology studies complex, difficult, and uncertain (Ref. 33). These considerations, which are the same whenever one attempts to extrapolate from an observed teratologic response in one species to what might be expected to occur in another, include:

1. Physiological and biochemical differences that affect the absorption, metabolism, and excretion of the substance.

2. Variability in placental barriers.

3. Differences in susceptibility to chemical interactions at the cell, tissue, organ, and organ system levels.

4. Variability in background incidence of disease.

5. Variability in the gestational development sequence.

These factors must be taken into account, to the extent the available data permit, when one attempts to assess the relevance to humans of any specific teratology study conducted in a particular species on a particular chemical. They will be discussed below as they relate to the animal studies on caffeine.

In an effort to better understand as a general matter the relevance of animal teratology studies to humans, several investigators have examined the literature to determine the extent to which known or suspected human teratogens have also been found to be teratogenic in animals (Refs. 34, 35, 36). FDA's review of the literature reveals a group of 38 compounds for which there are reports of birth defects in humans associated with intake of these compounds during pregnancy (Refs. 36, 37, 38, 39). Of these compounds, all except one have a positive study in at least one animal test species. Furthermore, over 80 percent of the compounds are positive in multiple species. The one exception is a compound that causes otological deficits in humans that would not normally be discovered in test animals at the time of caesarian sacrifice.

Among the most widely tested individual species, a positive teratologic response to the substances identified as known or suspected human teratogens was exhibited 85 percent of the time in the mouse, 80 percent in the rat, 60 percent in the rabbit, 45 percent in the hamster, and only 30 percent in the monkey. Other species have been used to test only a small number of these substances. Nevertheless, there has been a greater than 80 percent correlation with the positive human data for the dog, pig, cow, and cat.

The correlations between human response and the responses of specific species are not as good for the compounds that do not appear to be human teratogens. Of the 165 compounds for which human teratologic effects have not been reported, 28 percent appeared negative in all animal species tested and 50 percent appeared negative in multiple species. However, 41 percent of these 165 compounds appeared to be positive in more than a single animal species. For the most commonly tested species, a non-positive response to the substances for which human teratologic effects have not been reported was observed 80 percent of the time for the monkey, 70 percent for the rabbit, but only 50 percent for the rat, 35 percent for the mouse, and 35 percent for the hamster.

Taken together, these correlations between human and animal teratologic

response tend to support the assumption that, as a general matter, positive animal teratology studies are at least suggestive of a positive human response. However, the correlations between the human and animal data on the substances that appear negative in humans suggest the limits that likely exist on the predictive power of positive animal studies. In addition, it must be emphasized that the degree of reliance that can be placed on these correlations to support the assumption that animal studies are relevant to humans is limited by the uncertainties that exist in the human data used to identify the 38 known or suspected human teratogens used in the comparisons. Most of the 38 were identified only from a limited number of adverse reactions reported by physicians. Very few have been the subject of rigorous, large-scale epidemiology studies, which provide the only basis for concluding unequivocally that a substance is a human teratogen. Similarly, the data available on the 165 substances for which teratologic effects have not been reported are not of sufficient quantity and quality to establish conclusively that all 165 are not human teratogens.

As revealed by the data just cited, a factor that complicates the use of animal studies to predict potential teratogenic response in humans is the apparent variability in response to teratogenic agents among animal species. The reasons for the apparent variability and its relevance to the reliability of animal studies for predicting human response are not well understood. It is important to realize, however, that the endpoint that is being measured (teratology) is not a single response. Unlike other toxicities, which have clear expressions (such as death, cancer, tumor, or organ damage), teratologic responses are numerous and varied and result from a continuous series of pathologic alterations during fetal development. Whether or not a particular chemical will induce a teratologic response in the fetus is dependent on a variety of factors and influences (listed above) that change from species to species. The mechanism of action in each species can also vary.

It is known that one major source of variability among species derives from the influence of the maternal organism on the way the fetus is affected by a chemical the mother ingests. The site of a chemical's teratogenic action can be primarily in the embryo, in the maternal organism and only secondarily in the embryo, or in both. Wherever the primary site of action is, however, the maternal organism always exerts some influence in determining the teratogenic or other embryotoxic effect of a substance with which it comes into contact, because it is through the mother that the substance is delivered to the fetus. The route and rate of maternal absorption are the initial determinants of the concentration in the maternal bloodstream, but of equal or greater importance is what happens to a foreign chemical after it gets into the maternal blood. For example, it may be excreted by the kidney, metabolized by the liver, kidney, or other organs, bound to protein, stored in various tissues, or it (and/or its metabolites) may simply remain in the blood plasma at varying concentrations for some period of time. The level of concentration in the blood as well as the lengths of time for which various levels are maintained are important in determining the total dosage that will be available for transfer by the placenta to the embryo or fetus.

In conclusion, it is reasonable to conclude that positive animal teratology studies are at least suggestive of potential human response. Well-conducted animal studies that show teratogenic effects at levels of exposure not substantially greater than humans might experience are sufficient to raise substantial questions about the potential risk to humans. However, at this time, no single test species can be said to predict accurately the true human response to a given chemical. Tests in multiple species may increase the predictive reliability of animal test data, but specific differences between the test species and the human system must be considered in evaluating the relevance of particular tests to humans. It is for the latter reason that FDA has reviewed carefully the available data on the comparative metabolism of caffeine, especially between humans and the rat—the species used in FDA's gavage study.

4. *Comparative metabolism of caffeine.* As the previous section indicates, well-designed animal studies that show positive results in more than one species are at least suggestive of the potential teratogenic response of a given substance in humans. As also noted above, however, there are a number of considerations that may limit the ability of any single animal teratology study to predict the response in humans. One of these considerations is the existence of physiological and biochemical differences between species that may affect the absorption, metabolism, and excretion of a substance. In the specific case of caffeine, there are preliminary indications of significant differences between the metabolism of caffeine in humans and experimental animals, although the entire range of these differences has not been thoroughly established.

The available data indicate that there are both major metabolic and pharmacokinetic differences among various species of experimental animals in which caffeine has been reported to cause teratogenic effects, and between those species and humans. For example, following a single oral dose of caffeine in humans, the major urinary metabolite is 7-methylxanthine (Refs. 40). In the rat and mouse, this metabolite is not detected, the major metabolite being 1,3,7-trimethyluric acid, a minor metabolite in man and the rabbit.

In humans, it is clear that most caffeine is first subject to 3-*N*-demethylation to yield paraxanthine (1,7-dimethylxanthine). About 1 to 2 percent of a given dose of caffeine is recovered in human urine as 4-amino-5-(*N*-methylformylamino)-1,3-dimethyluracil (Ref. 41) Callahan and colleagues have recovered 10 to 30 percent of caffeine administered to various individuals as the acetylated diaminouracil derivative (Ref. 42). This metabolite may be produced from another, as yet unidentified, metabolite.

Several factors may influence the metabolism of caffeine in humans. Smoking, which stimulates the elimination of caffeine (Ref. 43), and pregnancy, which slows the elimination of caffeine (Refs. 44, 45, 46), have yet to be investigated with regard to effects on metabolite pattern. Age is also an important factor in caffeine metabolism. The newborn human, as it develops the capacity to dispose of caffeine, also develops the adult metabolite pattern (Ref. 47).

In rats, caffeine appears to be subject to a wider array of metabolic transformations than in humans. Important reactions include oxidation at the 8-position, demethylation at *N*-1, *N*-3, and *N*-7, and hydrolytic ringclearage to the uracil derivative 4-amino-5-(*N*-methylformylamino)-1,3-dimethyluracil (Refs. 41, 48). The production in the rat of the diaminouracil derivative (30 to 40 percent of recovered metabolites or 18 to 25 percent of administered dose) and 1,3,7-trimethyluric acid (14 percent of recovered metabolites) attests to the differences in metabolic pathways and extent of conjugation of diaminouracil between the rat and human. The differences in extent of conjugation are likely to influence the rate at which the metabolites of caffeine are eliminated from the body.

Perhaps more significant than the difference in caffeine metabolite patterns between the rat and man is the

fact that the rat exhibits an apparently different time profile of caffeine elimination from the plasma compared to humans. Specifically, studies on the pharmacokinetics of caffeine suggest that the rat is more likely to accumulate caffeine in the blood after repeated treatment at dose levels higher than 5 mg/kg than is the mouse, rabbit, or human. Dose-dependent kinetics in the plasma disappearance of caffeine are apparent in the rat, resulting in rapid clearance at the lower doses of 5 to 25 mg/kg. At higher doses, however, somewhere between 25 and 50 mg/kg, the time profiles of caffeine elimination by the rat and human appear to cross-over so that the rat actually appears to eliminate caffeine more slowly than the human. This comparison assumes that caffeine elimination in humans continues at a constant rate up to dose levels that are difficult to achieve experimentally in humans. In practical terms, this would mean that at dose levels on the order of those that caused irreversible terata in the FDA gavage study, the rat would maintain higher blood plasma levels of caffeine for longer periods of time than the human, and thereby increase the level and duration of the fetus' exposure to caffeine, as compared to humans.

Caffeine metabolism and pharmacokinetics also have been investgated to some extent in animals other than the rat. The mouse appears to eliminate caffeine from the plasma faster than humans at all dose levels studied (Refs. 40, 41, 44, 49). The rabbit initiates caffeine metabolism by demethylation at the *N*-3 position as in humans, but it also exhibits a dose dependent rate of caffeine elimination similar to rats (Refs. 40, 41, 44, 49). The subhuman primate *Macaca cynomolgus* initiates caffeine metabolism by demethylation of the *N*-7 position, in contrast to humans (Refs. 41, 44).

In sum, similar doses of caffeine in humans and experimental animals will result in exposure of the maternal animal and the developing fetus not only to widely different levels of caffeine, but also to different kinds and amounts of caffeine metabolites. It is not known to what extent these differences in metabolism and pharmacokinetics relate to the observed teratogenic effects in experimental animals. They do raise serious questions, however, about the ability of the animal studies—particularly in the rat—to predict the response of humans to caffeine.

At this time, there are insufficient data to determine whether caffeine *per se* and/or one of its metabolites is the causative agent for the teratogenic effects observed in experimental animals. In the absence of an answer to that question and more complete information on the comparative metabolism and pharmacokinetic handling of caffeine in human and animals, especially the rat, it is not possible to determine with confidence what, if any, potential risk exists for humans based on the existing animal teratology data on caffeine.

5. *Human teratology data.* FDA has reviewed six human epidemiological studies that deal at least in part with the teratological effects of caffeine (Refs. 50, 51, 52, 53, 54, 55). All of these studies to some degree were directly or incidentally concerned with exposure to caffeine and an increased risk of complications of pregnancy. Unfortunately, most, if not all, of these studies have methodological problems associated with them that make it difficult if not impossible to draw any reasonably valid inferences from the results. In general, these studies are flawed by a failure to control important variables that could alter study results. These variables include adequate measures of exposure (amount and length of time of caffeine consumption), intake of alcohol, smoking habits, age at pregnancy, and level of pre-natal care.

Of the six human studies, four were concerned with the dietary intake of caffeine in coffee, while the remaining two were concerned with caffeine exposure as a result of drug usage.

Nelson and Forfar (1971) (Ref. 50) report the results of a retrospective study to compare the drug consumption during pregnancy of mothers of infants with congenital abnormalities (458) compared to the drug consumption of mothers with normal infants (911). No attempt was made to determine caffeine exposure other than caffeine contained in drugs. The authors report that there was no statistically significant difference in caffeine use between the mothers who had malformed infants and those who had normal infants.

In a prospective study of some 50,000 pregnant women, Heinonen et al. (1977) (Ref. 53) identified 5,773 pregnant females who were exposed to caffeine in drug products that also contained aspirin and phenacetin. The study was not designed to address the exposure of the females to caffeine consumed as a dietary ingredient. Although the authors report an increase in birth defects in infants born to mothers who consumed caffeine with aspirin and phenacetine during pregnancy, the increase was not statistically significant, and the authors report that caffeine itself could not be associated with any of the observed effects.

In a study of the effects of tobacco, coffee, and alcohol on prematurity in pregnancy, Van den Berg (1977) (Ref. 52) found that heavy coffee drinking (seven cups or more per day) occurred in 13 percent of the study population of 8,514 pregnant females, while the incidence of such consumption among mothers of low-birth-weight infants was 21.4 percent. However, among heavy coffee drinkers, there is a large proportion of smokers (65.3 percent), and the author concluded that the coffee effect appears to be explainable by the association with smoking. No significant difference was observed in mortality rates or rates of severe congenital anomalies in the infants of females who consumed seven or more cups of coffee per day compared to those who consumed less than seven cups per day.

Mau and Netter (1974) (Ref. 50) reported the results of a study of 5,200 females who were asked to record their coffee consumption on a recall basis as none, seldom, or frequent. No attempt was made to quantify the amount of coffee consumed by number of cups or type of coffee consumed. Results of the study indicated that coffee consumption as reported was associated with a slight increase in the incidence of low birth weight infants (6.6 percent) compared to controls (4.2 percent). The authors report no significant relationship associating coffee consumption with duration of pregnancy, frequency of abortions, or birth defects.

In a study reported by Streissguth et al. (1980), (Ref. 47), some 1,529 pregnant women were observed for the effects of a variety of substances, including coffee, alcohol and tobacco, on pregnancy outcome. The study was conducted through the use of a questionnaire in which the women were asked to recall their caffeine consumption during pregnancy. Although the authors report an incidence of 4 percent for breech presentations, and an incidence of 4 percent for a previous history of spontaneous abortions and stillbirth, associated with caffeine consumption, other variables such as age of mother were no controlled for. The authors did not ascribe any significance to this finding. In addition, the finding of a history of reproductive loss in previous pregnancies may well be associated with a risk factor unrelated to caffeine exposure and certainly requires additional explanation.

In a study by Borlee, et al. (1978) (Ref. 54), which involved 202 malformed children and 175 controls matched for age, sex, and socioeconomic status, the analysis was conducted on 185 cases and 157 controls; no mention is made of

those study subjects lost to followup. A statistically significant association was observed between cases and controls for a history of coffee drinking by mothers. The difference can be isolated, however, to those who drank over eight or more cups a day. Unfortunately, the statistical procedures are not discussed in the paper so it is difficult to determine their adequacy. However, from the number of paired comparisons presented, it appears that simple tests were used that are not suitable for this analysis in many cases. FDA attempted to utilize the proper statistical methods, but the insufficiency of the data presented in the paper made it impossible to perform the proper statistical analysis. Attempts by FDA to obtain from the authors the additional data needed to properly evaluate the study's results have not been successful to date.

From an epidemiological viewpoint, the study's consideration of a possible interaction with smoking appears incomplete. The investigators considered only the percentage of smoking mothers of malformed children; they did not consider the percentage of smoking mothers of normal children. The analysis considering medications only considers the number of medications, not the type of medications. Obviously, the type may be more important.

In a followup to this paper, published in *Science* (1980) in the form of a letter (Ref. 58), the authors of the study have gone to great lengths to advise caution in interpreting its results, citing the preliminary nature and incompleteness of the data. They feel that the data have been interpreted inappropriately by some who have placed great significance on the results.

As indicated previously, the existing human studies are severely weakened by a variety of methodological problems, which become most apparent when attempts are made to use their results to answer questions that the studies are not specifically designed to address. Attempts to quantify caffeine exposure and to relate such exposure to pregnancy outcome, without controlling for a wide variety of other variables that may represent additional risk factors for adverse pregnancy outcomes, appear to confuse rather than clarify the issues. The Interagency Epidemiologic Working Group on Special Problems in Cancer Epidemiology (IEWG) also reviewed these studies and reached the same conclusions about their adequacy as has the agency (Ref. 7).

In summary, FDA concludes that the available human studies, whether taken as a group or singly, do not conclusively determine the relationship between caffeine consumption and teratological effects.

6. *Conclusion.* The available data on the potential of caffeine to cause birth defects clearly raise substantial questions that need to be resolved by further research, but the data do not provide a sufficient basis to conclude that caffeine actually presents a risk of birth defects in humans. The source of the questions about caffeine's potential teratogenicity is the FDA gavage study in rats, which, when viewed against the background of previous animal data, clearly demonstrates that caffeine is capable of causing irreversible terata and other effects in the fetus of the rat at levels of exposure not substantially greater than human might experience from foods and drugs. However, the additional data concerning differences in the pharmacokinetics and metabolism of caffeine in animals and human raise questions about whether animal studies in general, and rat studies in particular, give a reliable indication of caffeine's potenial risk to humans. These data, coupled with the generally inconclusive results obtained in the available human data, make it premature for FDA to conclude that caffeine actually poses a risk to humans. FDA and other public health agencies have consistently urged pregnant women to be cautious in their consumption during pregnancy of any pharmacologically active substances, and this caution extends to caffeine. There is, however, insufficient evidence to conclude that caffeine will cause birth defects in humans.

C. Reproductive Function

In addition to considering data on the potential teratogenic effects of caffeine, which involve effects on the offspring, FDA has evaluated the available data relating to caffeine's potential effect on the reproductive function itself. Like the teratology data, the reproductive data raise questions that require further study, but they do not demonstrate any actual risk to humans.

1. *Animal and human data.* Several investigators have reported that caffeine has no adverse reproductive effects in animals at dose levels of 30 to 50 mg/kg body weight. Thayer and Kensler (Ref. 26) exposed four generations of male and female mice continuously to caffeine in the drinking water at levels of 4 to 5, 12 to 18, and 25 to 39 mg/kg body weight/day. No consistent, dose-related effects of caffeine on fertility, age at sexual maturity, mean litter size, weight of offspring at weaning, sex ratio, or fetal abnormalities were observed. Bachmann et al. (Ref. 25) tested the influence of chronic exposure to caffeine on the reproductivity of albino rats given a sweetened caffeine-containing beverage as the only liquid in the diet for as long as 3.5 years. The average dose was about 40 to 50 mg/kg/day. Mated at 100 days of age, the pairs were kept until the female produced no offspring for a period of 3 months after the last litter. No evidence of sterility or unusual histological changes in the male testes were observed.

In a two-generation rat study (Ref. 27) at a much higher daily dose level of caffeine (125 mg/kg body weight incorporated in the diet), progressive reduction in litter size was observed; birth weights, postnatal survival, and growth rates through lactation were decreased, but growth and survival subsequent to lactation were not affected.

Friedman et al. (Ref. 57) reported that the feeding of 0.5 percent caffeine (about 500 mg/kg) to immature Osborne-Mendel rats for 3 to 16 months can produce severe testicular atrophy and aspermatogenesis in 85 to 100 percent of the animals. However, it is to be noted that no significant testicular atrophy or dose-related pathological effects were observed in a 2-year study of rats receiving dilutions of freshly brewed coffee as the only source of liquid; doses of caffeine were equivalent to about 54, 32, and 14 mg/kg (Refs. 58 and 59).

Ax et al. (Refs. 60, 61, 62) studied the effects of dietary caffeine on the fertility, embryonic loss, and testes of the domestic fowl. Fertility was not impaired in pullets fed 0.05 percent caffeine (estimated to be about 80 mg/kg/day) but embryonic loses were about 16 percent compared to 5 percent in controls. Percentage fertility of eggs from untreated pullets inseminated with semen from mates fed continuously a diet containing 0.1 percent caffeine was measured. Semen from roosters at the start of caffeine feeding produced 30.8 percent fertile eggs. After 14 days of caffeine feeding, egg fertility was 3.3 percent. Semen output and sperm concentration also were markedly affected: by 25 days semen volume was less than one-half the volume at the start of the study and sperm count was depressed by a factor of more than 100. No semen could be collected from roosters that had received caffeine for 30 days. Removal of dietary caffeine resulted in resumption of semen production and return of egg fertility to normal levels.

A recent report by Palm et al. (Ref. 22) suggests the occurrence of some adverse reproductive effects in rats at oral dose levels of 30 to 38 mg/kg body weight. In this study, groups of 20 pregnant Sprague-Dawley rats were given

approximately 9, 19, or 38 mg/kg/day caffeine (as diluted coffee in drinking water) 5 weeks prior to and during gestation; another group was given 30 mg/kg/day caffeine in the drinking water during pregnancy; and another group was given a similar dose of caffeine by oral intubation. Most pregnant animals were killed on day 19 of gestation and evaluated for teratogenicity, as discussed earlier. In addition, 5 pregnant animals from each treatment group and concurrent controls were allowed to deliver and rear their young. During the nursing period, only the coffee-treated females continued to receive caffeine. Following weaning, the F_1 generation offspring were not treated, but were bred to evaluate their ability to reproduce. The F_2 pups were examined as to gross abnormalities, mean body weight, and post-weaning survival. In the coffee-treated animals sacrificed on day 19, there was a statistically significant decrease in organ to total body weight ratio of fetal brain, lungs, and liver at the 38 mg/kg caffeine level. Fetal liver weights and lung weights were also reduced in the caffeine-gavage and caffeine-drinking water groups, respectively. Malformations were found in both control and treated animals with a small but statistically significant increase in cryptorchidism (failure of the testes to descend into the scrotum) in the groups receiving caffeine. The reproductive performance suggested that the percentage of F_1 females becoming pregnant was less than controls, but not statistically so. However, the mean number of days required to achieve pregnancy was statistically greater for the two high dose coffee groups and for the two caffeine groups when compared to the time required for control females. The etiology of this apparent reproductive effect is unclear.

Weathersbee et al. (Ref. 63) made a retrospective survey of 800 households identified by random sampling of medical records of women who had been obstetric patients in hospitals in Utah. Responses were obtained from 489 households. Approximately 75 percent of the individuals were Mormons whose use of alcohol, caffeine, and tobacco is proscribed. In 356 of the 489 households where presumably no caffeine, alcohol, or tabacco was used, there were 33 spontaneous abortions, 38 stillbirths, and 6 premature births, including 3 deaths. In 16 of the 489 households, when the woman's estimated mean daily caffeine intake was 686 mg (approximately 11 mg/kg/day) and the man's 566 mg, there were 8 spontaneous abortions, 5 stillbirths, and 2 premature births with no deaths. In 13 of the 489 households, where the woman's estimated mean daily caffeine intake was less than 400 mg (about 6.7 mg/kg/day) and the man's more than 600 mg, there were 4 spontaneous abortions, 2 stillbirths, and 2 premature births, with 1 death. In 23 of the 489 households, where mean daily caffeine intake by the man or woman was no more than 450 mg (about 7 mg/kg/day), there were no abortions, stillbirths or premature births.

Several factors weaken this study. There is a lack of attention to the fact that 311 of the 800 households selected did not participate. A variety of variables that could affect the results were not analyzed, including a comparision of Mormon women versus non-Mormon women and the differences between women who gave birth in hospitals and those who did not. In addition, the lack of a specific determinatin of caffeine consumption by women makes reliance on this study questionable. The authors concluded that a cause-and-effect relationship could not be established by this study, but suggested that excessive intake of caffeine might be a factor in spontaneous abortion and perinatal mortality.

2. *Conclusion.* The effects of caffeine on reproductive functions vary from study to study. In most of the animal studies, effects were seen only at levels of exposure significantly higher than humans would experience. The exception is the Palm study (Ref. 22). The effects seen in the Palm study at dose levels of 30 to 38 mg/kg deserve further research, but, because the animal used in the Palm study was the rat, the same questions apply here as were discussed above regarding the ability of rat data on caffeine to predict human response. The human study cited above, though adequate to raise questions worthy of further research, is also inconclusive. In sum, there is insufficient evidence to conclude that caffeine adversely affects the reproductive function in humans.

D. Carcinogenicity

1. *Animal and human data.* In a recent (1978) study by Takayama et al. (Ref. 64), the administration of 0.1 percent and 0.2 percent synthetic caffeine in the drinking water to groups of 50 male and 50 female Wistar rats was associated with a significantly increased incidence of tumors in caffeine-treated rats as compared to control animals receiving no caffeine. Significant increases in mammary adenomas and carcinomas and pituitary adenomas were observed in females given 0.2 percent caffeine. There was also a significant increase in mammary adenomas and pituitary adenomas in females given 0.1 percent caffeine. Males given 0.1 percent caffeine had a significant increase in pituitary adenomas. The incidence of adenomas and carcinomas of the thyroid was increased at both dose levels of caffeine in both sexes. There was a high incidence of uterine adenomas and carcinomas in females given 0.1 percent and 0.2 percent caffeine.

FDA has sought additional information on this study and has learned from the author that pneumonia seriously affected the survival rates of the test animals. The author also concluded that there was a nonlinear dose response found in the 0.1 and 0.2 percent test groups and that the results can only be considered preliminary. This study is being repeated (Ref. 65). FDA's Cancer Assessment Committee, located in FDA's Bureau of Foods, has reviewed this study and other available chronic studies of caffeine. FDA does not consider the Takayama study to be a conclusive study on the carcinogenicity of caffeine due to a lack of data relating to the design and conduct of the study. The reported nonlinearity of the results and the increased mortality among the test animals are not, however, sufficient reasons for rejecting the study. In the case of the dose response, the doses were close together and the early mortality from pneumonia among the test animals may have only lessened the chances for development of cancer in that group. FDA asked for additional information on the design, conduct, and results of this study from its author, but has not received sufficient information to permit reliance on the study as a definitive study on the carcinogenicity of caffeine.

In another recent study (Ref. 66), no increase in neoplastic or preneoplastic lesions was observed in groups of 20 male Osborne-Mendel rats given 0.5 percent caffeine in the diet for up to 75 weeks. The animals in this experiment were sacrificed after 75 weeks, and thus the time for tumor formation may not have been long enough for carcinogenicity to be expressed. The quality and power of the study is further undermined by the fact that only one sex was studied and that the number of animals used was not sufficient by contemporary standards for carcinogenicity testing.

In two other studies, no increase in carcinogenicity was found in rats given rations containing instant coffee (Refs. 67, 68). The animals were on test for 2 years, and their rations contained up to

about 0.18 percent caffeine. In a lifetime study, mice given fresh brewed coffee instead of drinking water did not show an increased incidence of cancer (Ref. 69).

Human epidemiology studies have not demonstrated a causal relationship in humans between coffee drinking and cancer (Refs. 70, 71, 72, 73). Kihlman (Ref. 74) believes that most of the available evidence suggests that caffeine may have anticarcinogenic effects rather than being a carcinogen or co-carcinogen. However, a higher incidence of bladder cancer has been detected among coffee drinkers as compared to matched controls (Ref. 75), and a correlation has been perceived between coffee consumption and national mortality rates from carcinoma of the kidney (Ref. 76).

2. *Conclusion.* The data concerning the potential carcinogenicity of caffeine are inadequate and incomplete. There are no lifetime feeding studies available on caffeine that meet currently accepted toxicological testing criteria. The results of the unpublished study by Takayama, et al. (Ref. 64) suggest an association between exposure to caffeine and an increased incidence of tumors in rats, but, as noted earlier, the study is being repeated because of the problems the author identified. FDA agrees that the study should be repeated.

Other chronic and long-term animal studies have been performed, involving both caffeine and coffee as test substances, that, although not fully adequate by current standards, suggest that caffeine is not carcinogenic. Moreover, there are no acceptable epidemiological data linking human exposure to caffeine with a significant increased incidence of cancer. As explained further below, the agency believes that, in order to resolve the question of whether caffeine is carcinogenic, chronic feeding studies meeting current toxicological testing standards should be carried out in two rodent species.

Based on the currently available data, FDA cannot determine conclusively whether caffeine is, or is not, carcinogenic in animals. There is no adequate basis at this time, however, for concluding that caffeine poses any risk of cancer in humans.

E. Behavioral Effects

1. *Animal and human data.* The neuropharmacologic properties of caffeine have been under investigation for several decades. Numerous behavioral, neurochemical, and neurophysiological studies have been conducted to characterize the neuropharmacologic effects of caffeine in humans and in animals (Refs. 77, 78, 79). Most of these studies were designed to consider caffeine as a drug and have dealt with the acute or short-term (generally not longer than several weeks) effects of caffeine in the mature, adult organism. There is only limited information about the neurobehavioral effects of chronic or long-term exposure or about the effects on the young, immature organism.

In studies with adult animals, caffeine has been shown to exert varying effects on the neurochemical and neurophysiological systems and to influence such behaviors as learning and memory, motor performance, sensory function, and emotional reactivity at acute dose levels as low as 0.5 to 2.5 mg/kg (Refs. 80, 81, 82, 83). Recently, evidence of physiological withdrawal has been reported in rats following several weeks of parenteral exposure to caffeine (Ref. 84). Many of these neurobehavioral effects, with the notable exception of effects on intellectual ability, have also been shown to occur to some extent in humans following acute or short-term dosing. The usual active oral dose in man is approximately 200 to 240 mg caffeine (3 to 4 mg/kg). Its effects range from those considered therapeutically "desired," such as improved motor performance, decreased fatigue, enhanced sensory acuity, mild cerebral stimulation, or increased alertness, to those that are considered nominal or inconsequential side effects, such as irritability, nervousness, or prolonged time to fall asleep. In their review of the clinical literature, Weiss and Laties (Ref. 78) pointed out that, after acute doses of about 240 mg of caffeine and above, which clearly enhance performance, adult human subjects variably report such symptoms as nervousness, feverishness, irritability, headache, and disturbed sleep. There also occurred a significant increase in tremor. Several clinical reports described mild symptoms of withdrawal, primarily headache, following exposure to caffeine over a period of several weeks (Refs. 85, 86, 87).

Little experimental attention has been given to the consequences of prolonged dietary exposure to caffeine on the functional capacity of the nervous system. In a single study recently reported by Estler, *et al.*, (Ref. 88), caffeine was given in the drinking water to mice for 6 weeks at a daily dose of 150 mg/kg. In contrast to the effects of a single dose, prolonged exposure to the caffeine resulted in detrimental effects, including diminished capacity to perform exhaustive work (swimming) under stressful conditions, impaired thermoregulation, as well as reduced weight gain. Spontaneous activity was unaffected, and motor coordination was even facilitated. Similar detrimental effects on work capacity had been reported earlier (Ref. 89) following prolonged exposure to coffee.

Some additional insight into the potential health effects of prolonged use of caffeine or related xanthines in adult subjects can be obtained from the acute pharmacologic studies. For example, the fact that the physiological and psychological effects of a single dose of caffeine in humans were different for regular coffee drinkers and for abstainers suggests that some form of habituation or tolerance develops to the effects of caffeine from repeated exposure (Refs. 85, 86).

There are only limited empirical data that deal with the effects of caffeine on children and even less dealing with experimental animals exposed to caffeine early in life during the period of development. Most of the pediatric data have been obtained from studies attempting to determine whether caffeine, as a central nervous system stimulant, was useful in the treatment of the hyperkinetic disorder of childhood. Caffeine was usually given in capsule at daily doses of 150 to 240 mg for periods of 1 day to 3 weeks. The therapeutic efficacy of caffeine in comparison to other medication for hyperkinesis has, thus far, not been impressive. Notably, however, most of the investigators reported no accompanying adverse effects of the caffeine in the hyperkinetic subjects nor in normal children, who were included in a study by Reichard and Elder (Ref. 90) as a matched group of control subjects. one group of investigators (Ref. 91) did note slight pharmacological effects (undescribed) from caffeine. Neims and Aranda (Ref. 92) reported a study in which caffeine was given to treat apnea (temporry suspension of respiration) in premature infants over a period of several weeks. They concluded that high plasma concentrations of caffeine (5 to 18 mg per liter, and occasionally as high as 85 mg per liter) during the treatment of apnea do not predispose to neurological or intellectual impairment, and that infants are not more susceptible to the effects of caffeine than adults. This latter conclusion conflict, however, with the report by Levitt and O'Hearn (Ref. 93) that children appear to be relatively more sensitive than adults to the excitant effects of caffeine.

Only recently has any experimental information begun to appear about the

neurobehavioral effects of caffeine exposure in animals during the period of growth and development. A study in rats reported some variable effects on physical development and behavioral changes in the offspring of dams exposed to caffeine in drinking water during gestation and lactation (Ref. 94). In a similar study using mice, Dews (Refs. 95) reported only nominal treatment effects. Several clinical and experimental animal studies are currently underway, or in varying stages of completion, to investigate the consequences of short-term as well as long-term exposure to caffeine on the functional neurobehavioral development of the immature organism.

As discussed more fully above, in explaining its ultimate conclusion that caffeine in "cola-type beverages" should no longer be considered GRAS, FASEB placed primary emphasis on the potential behavioral effects of caffeine in children. FASEB pointed out that the concerns about the behavioral effects of caffeine are less for adults "* * * than for children where there can be chronic consumption of caffeine in cola-type beverages during the period of brain growth and development. It is during this period of plasticity that the developing central nervous system is most sensitive to the effects of all aspects of the environment. The estimated levels of caffeine intake at these ages are near those levels that are known to cause central nervous system effects in adults."

Although it acknowledged that the available data are not adequate to answer the question of whether chronic exposure to caffeine in "cola-type beverages" poses a potential hazard to children and others, FASEB stated that it "* * * views with concern the continued addition of caffeine to cola-type beverages, representing as it does a unique addition to food of a pharmacologically active central nervous system stimulant." FASEB said: "* * * there is a possibility that behavioral effects in children from infancy through adolesence exist, even though these potential effects are neither adequately documented nor are their consequences clear. " FASEB said further that: "A series of rigorously controlled chronic studies in appropriate species, including fetal, neonatal, and growing animals, of the immediate and ultimate behavioral and cardiovascular effects of caffeine added to the diet and given in cola-type beverages, would reduce ares of speculation."

2. *Conclusion.* The discussion above concerning behavioral effects raises questions concerning the possibility that chronic exposure to caffeine in soft drinks may cause behavioral effects in children. These questions must be answered. Caffeine is the only pharmacologically active food ingredient known to FDA that is added to foods at levels that approximate those required to accomplish its pharmacological effect, in this case stimulation of the central nervous system. As FASEB pointed out, the presence of this ingredient in beverages to which children may be chronically exposed during their early developmental years raises substantial questions from a health point of view. Data from animal studies suggest that even very low (0.5 to 2.5mg/kg) acute dosage levels can influence such behaviors in test animals as learning and memory, motor performance, sensory functions, and emotional reactivity (Refs. 80, 81, 82, 83).

The problem, of course, it that very little is known about what type of behavioral effects, if any, actually occur in human infants and young children as a result of chronic, low-level exposure to caffeine; and even less is known about what significance such effects would have, if any, in terms of actual harm to children. Methods for identifying and measuring such effects and assessing their significance are not as well developed as those used to identify and assess the more conventional toxicities (e.g., acute toxicity, mutagenicity, teratogenicity, and carcinogenicity). This is due in part to the fact that, traditionally, toxicologists simply have not focused much of their attention on the potential behavioral effects of food ingredients. Another reason for the lack of attention and knowledge in this area is that pharmacologically active substances, which are most likely to pose concerns about behavioral effects, are rarely added intentionally to food; as noted earlier, caffeine may be unique in this regard. For these reasons, a broad range of additional studies is needed to identify more completely the neurophysiological effects of chronic, low-level exposure to caffeine in the young and to determine the impact of these effects on children's development and behavior.

F. Functionality

Questions must be resolved not only about the safety of caffeine but also about its functional effect as an added food ingredient. Questions about the functional effect of caffeine must be addressed because it is the policy enunciated by Congress (section 409(c)(4), 21 U.S.C. 348(c)(4)) and FDA's regulations (§ 172.5(a)(1) (21 CFR 172.5(a)(1))) that substances not be used in food in an amount that exceeds that reasonably required to accomplish the intended physical, nutritive, or other technical effect. In practice, this means that caffeine must have an identified purpose or function as an added ingredient in soft drinks and other foods and be capable of accomplishing that purpose or function at the levels at which it is used. The health purpose underlying this requirement is to preclude the needless addition of chemicals to food.

The questions that must be answered about added caffeine's functionality stem from the uncertainty about the purpose for which added caffeine is used in soft drinks and other foods. Food manufacturers, responding to the NAS/NRC survey of food manufacturers, report that caffeine is used as a flavor enhancer, flavoring agent, and synergist in soda water beverages (Ref. 96). All three of these functions are recognized by FDA's regulations (§ 170.3(e)(11), (12), and (31) (21 CFR 170.3(o)(11)(12), and (31), respectively)). In addition FDA knows that kola nut extract, which contains about 2.35 percent caffeine, is used as a flavor ingredient in cola-type soft drinks (Ref. 97). However, the amount of kola nut extract needed for flavoring provides less that 10 percent of the caffeine normally present in colas. It is not known whether the other 90 percent or more of the caffeine added to cola beverages has any flavoring effect. The only other known functional effect of caffeine in food is central nervous system stimulation. This function was not identified by food manufacturers in the NAS/NRC survey as an intended function, but the Food Chemicals Codex (2d Ed., 1972) lists the functional use of caffeine as a "central stimulation in cola-type beverages." (Ref. 2).

As discussed above, caffeine is a drug. In addition, it is the only pharmacologically active food ingedient known to FDA that is added to foods at levels that approximate those required to stimulate the central nervous system. Although it is inclear whether FDA has authority under the law to prohibit the use of a food ingredient solely because the ingredient is a stimulant, the use of any pharmacologically active substance as a food ingredient raises serious public health questions, especially where, as in the case of caffeine, the foods involved are consumed widely by children. Given these facts, FDA places great importance on identifying all the intended uses of added caffeine, especially in soft drinks, and determining whether the amount of caffeine being added to foods is

necessary, or even useful, to accomplish the intended physical, nutritive, or other technical effects. Thus, as a condition to the continued use of caffeine in soft drinks and other foods, manufacturers will be required under the regulation FDA is proposing in this document to develop and submit to FDA data that (1) fully describe the purposes for which caffeine is added (including a delineation of the claimed "synergistic" effect), and (2) demonstrate that the amounts of caffeine being added are necessary and effective for these purposes.

V. Discussion of Options and Rationale for Proposed Action

After evaluating the existing data concerning caffeine as an added food ingredient, FDA considered which of several possible regulatory actions would be most appropriate. As discussed briefly in Section II above, the law provides the agency with three options. It can propose to affirm the GRAS status of caffeine as an added food ingredient, essentially maintaining the status quo. Alternatively, it can propose to delete added caffeine from the GRAS list and declare that added caffeine is an unapproved food additive that cannot be used in food until a regulation authorizing its use is promulgated in accordance with section 409 of the act, effectively banning added caffeine until the questions about its safety have been resolved. Finally, the agency can propose to delete added caffeine from the GRAS list but permits its continued use as an interim food additive under Part 180 (21 CFR Part 180) pending completion of the studies required to resolve the questions raised about its safety and functionality. The availability of these last two options depends as a legal matter, of course, on FDA's conclusion that the current uses of caffeine are not subject to any prior sanctions and thus that if added caffeine loses its GRAS status, it is a food additive. As noted earlier in this document, FDA is proposing to declare that no prior sanctions exist for added caffeine; but, if acceptable evidence of a prior sanction for a specific use of added caffeine is submitted in response to this proposal, FDA will propose to recognize that prior sanction and will not include that use of added caffeine in any final version of the proposed interim food additive regulation.

Based on the existing data, including the data specifically discussed in this document, FDA concludes that it would be inappropriate to affirm the GRAS status of caffeine as an added food ingredient. Under the statute, 21 U.S.C. 201(s), and FDA's regulations, 21 CFR 170.30, GRAS status is reserved for those food ingredients for which adequate data to establish safety not only exist but are commonly known throughout the segment of the scientific community that is knowledgeable about the safety of substances added to food. Under this standard, a substance cannot be GRAS if the existing data are not adequate to resolve substantial questions of safety raised by knowledgeable scientists. Although the existing data do not demonstrate a hazard to consumers from caffeine as an added food ingredient, they do raise substantial safety-related questions that must be resolved by further study. Moreover, if caffeine were to retain its GRAS status, FDA would have no mechanism for compelling the resolution of the safety questions discussed above. For these reasons, FDA is not proposing to affirm the GRAS status of added caffeine.

FDA has considered whether it would be appropriate, at this time, to prohibit future use of added caffeine by declaring it to be an unapproved food additive. The agency is proposing to reject that course. Although the existing data raise questions about the safety of caffeine, they do not demonstrate that a hazard to the public actually exists. As science progresses and as new studies are performed, it is common for questions to be raised about the safety of food ingredients. In most cases, these questions can be resolved satisfactorily by additional studies. As long as there is a reasonable certainty that no harm to the public will result from the continued use of the substance for the limited period of time required to resolve the questions, it would be inappropriate to ban the substance while the questions are being resolved. Otherwise, bans could become common occurrences, severly disrupting the food supply without a substantial likelihood of enhancing public health protection. In the case of added caffeine, FDA's judgment is that the public will be protected adequately without an immediate ban. As explained in Section IV, the existing data on caffeine raise questions about its safety, but do not demonstrate any actual risk to humans.

This leaves the last option, which FDA is proposing to adopt (assuming no prior sanction exists): deletion of added caffeine from the GRAS list and regulation of it as an interim food additive pending completion of the necessary studies. See 21 CFR 180.1 *et seq.* In proposing this course of action, FDA has carefully analyzed all the safety and functionality data available to it and, for the reasons discussed in Section IV, has concluded that substantial questions have been raised, but there is a reasonable certainty that the substance is not harmful and that no harm to the public health will result from the continued use of the substance for a limited period of time.

A primary advantage of interim regulation is that it permits FDA to require the sponsor of a substance about which questions have been raised to perform the studies necessary to resolve the questions. Performance of the studies is a condition to continued use of the substance under the interim regulation (21 CFR 180.1(c)(2)). The studies the agency is proposing to require on caffeine are described in Section VII below. These studies should resolve the existing questions about both the safety and functional effect of caffeine as an added food ingredient. The legality of FDA allowing continued use of a food additive on an interim basis while required studies are being performed has been reviewed by both the U.S. District Court and the U.S. Court of Appeals for the District of Columbia. Both have held that such an approval, given certain factual findings, is an appropriate exercise of FDA's authority. *Jacobson* v. *Edwards*, No. 445–71 (D.D.C. 1971); *aff'd* No. 71–2046 (D.C. Cir. 1972) (reported at ¶ 40,817, CCH F.D. Cosm. L. Rep.).

As mentioned above, added caffeine is currently being used in several nonbeverage food categories on the basis of an independent determination by the Flavor Extract Manufacturers' Association that caffeine is GRAS for those uses. In the course of its safety review of caffeine as an added ingredient in soft drinks, FDA has evaluated the GRAS status of caffeine for its nonbeverage uses and concludes that those uses can no longer be considered GRAS. This conclusion is based on the same data and safety concerns that justify removing caffeine in soft drinks from the GRAS list and regulating it as an interim food additive. Thus, the interim food additive regulation the agency is proposing will include the current nonbeverage uses of caffeine. When the interim food additive regulation becomes final, any uses of caffeine as an added food ingredient that are not included in the regulation will be considered unlawful.

In addition to requiring the performance of specified studies concerning the safety and functionality of caffeine, the interim regulation will require that the label of any finished food product containing added caffeine include "caffeine" in the statement of ingredients. FDA recognizes that flavors

are generally not required to be identified by name in ingredient statements (see sections 403(g) and (i) of the act (21 U.S.C. 343(g) and (i)) and §§ 101.6(b) and 101.22(h) (21 CFR 101.6(b))) and 101.22(h) and that caffeine is claimed to be used for a flavoring purpose. The food additive provisions of the act, however, authorize the agency to impose whatever labeling requirements it deems necessary to ensure safe use of an additive (see section 409(c)(1)(A) of the act, 21 U.S.C. 348(c)(1)(A)). The ingredient labeling requirement for caffeine will help ensure safety because it will make it easier for consumers to limit their exposure to caffeine in food. This can be particularly important from a safety standpoint for consumers who are already experiencing significant exposure to caffeine in coffee, tea, or chocolates, or in drug products, or who may need to exercise particular caution about consuming any pharmacologically active substances, such as pregnant women. As will be discussed further in response to a citizen's petition FDA has received concerning caffeine, the agency does not believe that the data raising safety questions are strong enough to justify requiring warning labels at this time for all food products containing caffeine. FDA is thus limiting its proposal dealing with the labeling of food products containing caffeine to that discussed above.

In an action that is related to the proposal to delete added caffeine from the GRAS list, FDA is proposing (in a separate document published elsewhere in this issue of the Federal Register) to amend the soda water standard in § 165.175 (21 CFR 165.175) to make caffeine an optional, rather than mandatory, ingredient in cola- and pepper-type soft drinks. This amendment is intended to encourage the reduction or elimination of caffeine use in these types of soft drinks.

FDA is proposing no action in this document regarding the drug products that contain caffeine, though the agency recognizes that substantial exposure to caffeine can result from the use of these drugs. The agency is in the process of considering what, if any, action is appropriate regarding caffeine-containing drug products, including possible labeling changes, based on the information currently available.

VI. Response to Minority Opinion

One member of the FASEB committee that reported to FDA on caffeine, Dr. Ralph G. H. Siu, submitted a minority opinion in which he differed with the majority's evaluation of the existing data on caffeine in soft drinks and argued that any official regulatory action concerning caffeine should be deferred pending completion of a comprehensive review of the safety of caffeine consumption from all sources, including coffee and tea (Appendix, Ref. 6). This section responds to Dr. Siu's views.

Based on its review of the biological data on caffeine, the FASEB majority concluded: "While no evidence in the available information on caffeine demonstrates a hazard to the public when it is used in cola-type beverages at levels that are now current and in the manner now practiced, uncertainties exist requiring that additional studies be conducted." Dr. Siu, however, expressed a somewhat greater degree of concern about the potential hazards posed by the use of added caffeine than the majority expressed. Like the majority, Dr. Siu did not conclude that the use of caffeine in "cola-type beverages" does in fact pose a hazard to the public. He found, instead, that: "The evidence on caffeine in cola-type beverages is insufficient to determine that the adverse effects reported are not deleterious to the public health when it is used at levels that are now current and in the manner now practiced."

As the basis for this conclusion, Dr. Siu cited several factors that parallel the concerns cited by the majority: caffeine is a widely used, psychotropic drug that acts as a central nervous system stimulant; it is the only drug consumed chronically in food at pharmacologically active levels; it has been shown in animal studies to affect a "broad array of biochemical and physiological processes;" and it is "embroiled in a number of disagreements over its potential contributions to clinical disorders." In discussing potential "clinical disorders," Dr. Siu placed more emphasis on the potential cardiovascular effects of caffeine than did the majority. In addition, Dr. Siu noted that caffeine "participates in metabolic processes in a broad and central sense in its influence on the equilibrium content of adenosine 3', 5'-cyclic monophosphate (cyclic-AMP) in the tissues." The majority did not report this effect on cyclic-AMP as one of the factors bearing on its conclusions about caffeine.

In each instance, Dr. Siu stopped short of finding that the data demonstrate an actual hazard to the public from the consumption of "cola-type beverages," but he identified several areas in which he felt existing data left particularly large areas of uncertainty. For example, in discussing the effects caffeine has on various biochemical and physiological processes, Dr. Siu said: "When singly assessed, most of these changes may with some justification be looked upon as innocuous. * * * Yet the uncertainty keeps gnawing away at the safety assurances that can be offered in the face of potential synergistic concatenations of alterations, one or more of which may initiate an unhealthy cascade." Addressing another area of concern, Dr. Siu agreed that no cause and effect relationships had been definitively established between exposure to caffeine and such "clinical disorders" as heart ailments, ulcerogenesis, mutagenicity, teratogenicity, and carcinogenicity. He spoke, however, of the need for further study to resolve the question of caffeine's potential to cause adverse effects among those who are especially susceptible to a particular effect or experience an unusually high level of exposure to caffeine.

FDA finds nothing in Dr. Siu's discussion of the available evidence on caffeine that is inconsistent with the agency's decision to propose deleting caffeine from the GRAS list and regulating it as an interim food additive. Indeed, Dr. Siu's discussion of the data supports FDA's conclusion that caffeine should no longer be considered GRAS and that additional studies are needed to resolve certain safety questions. The agency believes that the additional studies it proposes to require will provide answers to most, if not all, of the questions raised by Dr. Siu.

Ironically, Dr. Siu's apparently more serious reservations about the safety of added caffeine do not lead him to recommend more stringent regulatory actions than the FASEB majority recommended. Instead, Dr. Siu recommends that the agency defer any action on the GRAS status of caffeine as an added food ingredient: "Official reevaluation of the potential health hazard of caffeine in cola-type beverages alone should be kept open until an assessment of the safety of its consumption in all foodstuffs, individually and collectively, is completed with appropriate participation by all interested parties." (Appendix, Ref. 6). Dr. Siu makes two points in support of this recommendation.

He notes first that "cola-type beverages" are only one source of caffeine exposure and, in fact, by his estimate, account for only about a fourth of total caffeine exposure from foodstuffs (the other primary sources being, of course, foods such as coffee, tea, and chocolate that contain naturally occurring caffeine). Based on that fact,

he contends that considering the safety of caffeine only as it is consumed from soft drinks "constitutes such an artifically bounded abstraction that the resulting conclusions can only be of limited, and even misleading, operational meaningfulness in real life." Dr. Siu's point here seems to be that ultimate judgments about the safety of dietary caffeine should be based on a consideration of caffeine exposure from all dietary sources.

Dr. Siu's second point is that "to pass judgment on cola-type beverages alone at this time may be prejudicial to coffee and other caffeine-containing foodstuffs, representatives of which had not been explicitly forewarned and who, as a consequence, had not come forward with their own data and opinion." Dr. Siu contends that any agency judgment on the safety of caffeine as an added food ingredient effectively (and unfairly) prejudges the safety of other foods, such as coffee and tea, that contain naturally occurring caffeine.

For the reasons discussed below, FDA considers the action being proposed in this document to be an appropriate and significant step toward Dr. Siu's, and the agency's, goal of a comprehensive resolution of the caffeine question.

As noted in Section II above, the purpose of the GRAS review process, out of which this document arises, is to reevaluate by modern toxicological standards, and in light of the data now available, the safety of substances that FDA had placed on the original GRAS list in the late 1950's and the early 1960's. Caffeine as an added ingredient in cola-type beverages was one such substance (see 21 CFR 182.1180); naturally occurring caffeine was not. It was thus appropriate, and in keeping with its mandate from FDA, for FASEB to focus in its recommendations on the added uses of caffeine.

As Dr. Siu correctly suggests, however, the data that make necessary a change in the regulatory status of added caffeine also raise questions about the safety of caffeine as a natural constituent of coffee, tea, chocolate, etc. These are questions that FDA must be, and is, concerned about, especially since, as Dr. Siu points out, coffee and tea account for a very substantial portion of total dietary exposure to caffeine. However, the agency faces difficulties in dealing with naturally occurring caffeine.

One of the difficulties the agency faces, and one of the primary reasons this document deals only with added caffeine, is that naturally occurring caffeine is subject to regulation by FDA on a singificantly different legal basis than is added caffeine. Unlike added caffeine, naturally occurring caffeine is not itself subject to regulation under the food additive provisions of the law (21 U.S.C. 321(s) and 409). Thus, the question of GRAS status, which FASEB and FDA have considered and answered in this proceeding with respect to added caffeine, is simply not legally relevant to naturally occurring caffeine.

FDA's traditional practice has been to regulate inherent constituents of food, such as naturally occurring caffeine, as naturally occurring "poisonous or deleterious substances" under the general adulteration provisions in section 402(a)(1) of the act (21 U.S.C. 342(a)(1)). Under those provisions, the question is not whether naturally occurring caffeine is GRAS but whether FDA can show that caffeine renders the foods in which it naturally occurs "ordinarily injurious to health." That is a burden the agency does not believe it can sustain on the basis of existing data because the data do not establish that foods containing naturally occurring caffeine cause injury when consumed in ordinary amounts by the average consumer. Thus, it would be premature for the agency to propose action now involving naturally occurring caffeine as a "poisonous or deleterious" substance.

In recommending that FDA defer any regulatory action involving added caffeine, the FASEB minority report overlooks the legal distinction between added and naturally occurring caffeine and fails to consider the limited nature of the action recommended by FASEB and proposed here by FDA. FDA proposes no restrictions on the current marketing of caffeine in any form, but rather proposes to require additional studies that will address and hopefully resolve the question of caffeine's safety as both an added and naturally occurring constituent of food. FDA's authority to require studies flows from the food additive provisions of the act, which apply directly only to the added uses of caffeine. It is thus appropriate that the legal focus of this proposal be on added caffeine.

The minority report's concern that this action on caffeine might amount to an unfair prejudgment on the safety of naturally occurring caffeine is unwarranted. The deletion of added caffeine from the GRAS list and regulation of it as an interim food additive is, by its very nature, an intermediate step. It is intended to lead to, but it is not based upon, final judgments about the safety of caffeine, whether added or naturally occurring. Final judgments about added caffeine will likely not be made at least until the required studies are completed. At that time, any interested person, including those concerned about the legal status of naturally occurring caffeine, will have an opportunity to participate and to present their views. At this point, the important concern is to begin the necessary studies.

For the foregoing reasons, FDA declines to adopt Dr. Siu's recommendation that the proposed action on added caffeine be deferred.

VII. Response to Citizen Petitions

During the course of FDA's review of the safety and regulatory status of added caffeine, which FDA initiated as part of its GRAS review program, the agency received several citizen petitions, filed unde 21 CFR 10.30, urging that certain regulatory actions be taken regarding caffeine. At the time these citizen petitions were received, FDA was actively reviewing added caffeine's regulatory status, and therefore each petitioner received a proper tentative response pursuant to 21 CFR 10.30(e)(2)(iii). Those responses generally advised each petitioner that the substance of their requests was already under active review by FDA and that the appropriate decisions would be forthcoming from the agency when the ongoing review was completed. FDA's proposals to issue an interim food additive regulation for added caffeine and to amend the standard of identity for soda water represent the agency's proposed regulatory actions resulting from that review. FDA will now provide further responses to several pending citizen petitions.

The Federation of Homemakers, Arlington, Virginia, submitted two petitions on caffeine. The first petition (No. 79P–0343/CP) requested FDA to "remove, delete and strike caffeine from the list of GRAS Food Substances, because it is not generally recognized as safe." The petition quoted the conclusion of the FASEB report on caffeine in support of the requested action (Ref. 98).

FDA indicated earlier in this document that, based on its own careful evaluation of the available safety data on caffeine, it proposes to concur with the majority conclusions of the FASEB report on caffeine, including FASEB's conclusion that caffeine added to soft drinks should no longer be considered GRAS. Therefore, FDA is proposing to delete caffeine from the list of GRAS substances in Part 182 (21 CFR Part 182), thereby granting the Federation of Homemakers first petition to the extent it can consistent with the rulemaking requirements of the administrative Procedures Act and FDA's own

procedures. A final agency decision on the GRAS status of added caffeine must, of course, await completion of this rulemaking process (see 21 CFR 170.3 et seq.). As set out in detail in this document, FDA not only proposes to remove added caffeine from the GRAS list as the Federation of Homemakers requests, but also to place it in the correct regulatory status as an interim food additive (21 CFR 180.1).

The second petition from the Federation of Homemakers (No. 79P–0344/CP) seeks to change the standard of identity for soda water (21 CFR 165.175) so as to remove added caffeine from all soda water and to limit the caffeine content of cola-type beverages to that present in kola nut extract and/or other natural caffeine-containing extracts. Under the petition, such caffeine would be an optional ingredient present in only "trace" amounts (Ref. 99).

FDA is proposing amendments to the soda water standard in a notice appearing elsewhere in this issue of the **Federal Register.** These proposed amendments are intended to accomplish the following: (1) declare that kola nut extract, not caffeine, is the mandatory ingredient in "cola" and "pepper" beverages; (2) provide for a caffeine-free "cola" or "pepper" beverage consistent with the standard; and (3) clarify the fact that added caffeine as such is an optional ingredient rather than a mandatory one, but that, as an optional ingredient, it may continue to be used.

Food standards are promulgated under section 401 of the act, 21 U.S.C. 341. The statutory standard that applies to the promulgation of any such standard is that such action " * * * will promote honesty and fair dealing in the interest of consumers * * *." The process by which a food standard is developed or amended does not normally encompass fundamental safety assessments of the proposed ingredients. The food and color additive provisions provide the statutory mechanism for the safety evaluation of such ingredients (21 U.S.C. 348 and 376, respectively). Only ingredients that are in compliance with those sections, or are otherwise exempt due to their GRAS or prior-sanctioned status, are lawful in foods for which a standard has been promulgated. FDA is proposing in this document to allow the continued use of added caffeine pursuant to an interim food additive regulation. Because added caffeine will, if the proposal is finalized, still be lawful, FDA does not believe that an adequate basis exists at this time to preclude the use of added caffeine as an optional ingredient under the standard of identity and therefore denies the Federation of Homemakers petition seeking that result.

Despite FDA's belief that added caffeine should still be allowed as an optional ingredient in these beverages, the proposed amendments to the standard of identity will allow consumers more choice in the types of "cola" or "pepper" beverages available. Even if the safety questions regarding this use of caffeine are resolved in favor of its continued use, there is an unquestioned stimulant effect from the substance. This is an effect that some consumers may wish to avoid. Allowing those consumers the freedom to choose caffeine-free "cola" or "pepper" beverages under the soda water standard clearly promotes honesty and fair dealing in the interest of consumers.

The Center for Science in the Public Interest (CSPI), Washington, DC, also has submitted a petition (No. 79P–0443/CP) concerning caffeine. The petition requests that FDA (1) issue a regulation requiring that all packages of tea and coffee that contain caffeine carry a plainly visible warning advising that consumption of the product may be harmful to the unborn children of pregnant women, and (2) initiate an educational campaign designed to inform pregnant women about the ability of caffeine to interfere with reproduction (Ref. 100). The petitioner submitted selected data on caffeine consumption by pregnant women, as well as animal and human epidemiologic data on caffeine, that the petitioner believes is an ample basis upon which to require a warning label for coffee and tea. Without such a warning, the petitioner contends that all these products are misbranded since their labels are false and misleading pursuant to 21 U.S.C. 343(a). The petition contends that the potential teratologic effects of caffeine are a "material" fact within the meaning of 21 U.S.C. 321(n) and thus that without a warning concerning this effect, these labels are, at least, misleading. FDA disagrees with this conclusion both as a matter of fact and law. As discussed below, the agency does not feel that sufficient data exist, at this time, to require such a warning.

FDA's legal authority to require a warning label on packages of coffee and tea is derived from the misbranding provisions of the Federal Food, Drug, and Cosmetic Act, which deem unlawful, among other things, any food that bears a label which is either false or misleading (21 U.S.C. 343(a)). In further defining the term "misleading," the statute states (21 U.S.C. 321(n)):

> (n) If an article is alleged to be misbranded because the labeling or advertising is misleading, then in determining whether the labeling or advertising is misleading there shall be taken into account (among other things) not only representations made or suggested by statement, word, design, device, or any combination thereof, *but also the extent to which the labeling or advertising fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling or advertising relates under the conditions of use prescribed in the labeling or advertising thereof or under such conditions of use as are customary or usual.* [Emphasis added].

The statute provides the agency with the discretionary authority to enforce these provisions in a reasonable manner as it sees fit. The agency can either take judicial enforcement action against such products under sections 302, 303, and 304 of the Act (21 U.S.C. 331, 333 and 334) or initiate a rulemaking proceeding to require labeling to ensure that the food is not in violation of these statutory provisions. In either case, the burden of proof is on the agency to establish that the labeling is justified or the judicial relief requested is appropriate. This situation, where the agency has the ultimate burden of proof, must be contrasted with those statutory provisions where the agency need only raise questions or "new evidence" before the ultimate burden of proof shifts to the manufacturer. (See, for instance, the provisions for removal of a new drug, 21 U.S.C. 355(e) or new animal drug, 21 U.S.C. 360b(e).

As discussed earlier in this document, FDA does not believe that sufficient evidence exists at this time to link caffeine and an increased risk of birth defects in humans, but the agency is proposing to require the additional studies it feels are needed to better understand the human response to caffeine. Due to the state of the currently available evidence and the fact that more conclusive evidence is in the process of being obtained, FDA does not consider it appropriate at this time to require the type of warning label on caffeine-containing coffee and tea products requested in the CSPI petition.

This is not to say that the data presented by the petitioner, as well as the additional data discussed in this document, do not raise health-related questions concerning the use of caffeine, especially by pregnant women. They do raise such questions, and it is for that reason that FDA is proposing to take the regulatory action described in this document. These questions must and will be answered. Comments received on FDA's proposed regulatory action or the additional studies the agency is

proposing to require may well provide the basis for the type of warning suggested by the petitioner. At this time, however, based on available data, the agency does not feel that it would be a reasonable or justifiable exercise of its discretion to require a warning label.

As for CSPI's second request, which is to initiate an education program directed at pregnant women to educate them concerning caffeine, FDA has concluded that certain such steps are appropriate at this time. As just discussed, the requirement of warning labels on each specific caffeine-containing coffee and tea product requires a level of evidence FDA does not believe exists on caffeine. However, the fact that the questions concerning the safety of caffeine do not provide a basis for specific product labeling does not preclude the agency from providing the public, especially pregnant women, with cautionary advice based on the scientific evidence available to date concerning caffeine. The public has an inherent right to be informed fully about the food they ingest so that they may, if they so decide, avoid foods about which safety questions have been raised. To that end, the Commissioner of Food and Drugs announced on September 4, 1980, a campaign to provide the public with information concerning the possible adverse effects of caffeine (Ref. 101). the Commissioner announced the following:

> Advice about caffeine use during pregnancy will be communicated through all PHS programs that serve pregnant women, maternal and child health projects, community health centers, migrant health and Indian health programs, and in PHS hospitals and clinics.
>
> The Surgeon General will write to health professional organizations such as the American Medical Association and the American College of Obstetricians and Gynecologists to urge them to notify their members of the latest scientific information.
>
> The Food and Drug Administration will carry this same message to health professionals through its Drug Bulletin and to the public through publications such as FDA Consumer magazine.

In addition, other mechanisms of disseminating this information, as well as ways to assess the effectiveness of this program, are being explored. FDA agrees with the petitioner that information on caffeine should be made publicly available, and it is acting accordingly.

VIII. Required Studies

The continued use of added caffeine under the proposed interim food additive regulation is conditioned on the performance of studies necessary to resolve questions concerning the safety and functionality of caffeine as an added food ingredient. The studies that must be performed are described in proposed § 180.15(e). Additional studies may be required at a later date if they are found necessary to resolve questions raised, or not completely resolved, by the studies described in proposed § 180.15(e). FDA attaches particular importance to resolution of the question of the teratogenic potential of caffeine in humans (§ 180.15(e)(2)). The currently existing information relating to the teratogenic effects of caffeine provides an insufficient basis to determine whether caffeine *per se* and/or one of its metabolites is the causative agent for the teratogenic effects observed in experimental animals. Studies addressing this question need to be conducted. It is also important to determine through appropriate pharmacokinetic and metabolic studies the differences between the ways caffeine is handled by humans and animals, and specifically, whether any of the known metabolites of caffeine that may be teratogenic in experimental animals are formed by humans. Also, if unique metabolites are formed by humans, it is important to determine whether these compounds are teratogenic or otherwise toxic in experimental animals. During the period that these studies are being carried out, FDA also will require that appropriate epidemiology studies be carried out (§ 180.15(e)(6)). The details of the design and performance of these studies should be worked out in consultation with the FDA.

It is recognized that this will require an extensive program of synthesis and testing of a large number compounds. The precise sequence and design of the studies is a matter on which FDA specifically solicits comments. The agency is prepared to work closely with those conducting the needed research to ensure that it is done in a logically ordered, well-focused manner calculated to resolve the outstanding questions as efficiently and promptly as possible.

FDA shares the concern of FASEB about the neurobehavioral effects of caffeine consumption in young children. Information is needed concerning the immediate and latent effects of prenatal and postnatal exposure to caffeine on the functional development of the immature nervous system (§ 180.15(e)(3)). Special attention should be given to the effects of prolonged or continous exposure to caffeine in the developing offspring. The neurobehavioral testing should consider multiple criteria of nervous system function, including behavioral, neurophysiological, and morphochemical measures. Both clinical studies with children and experimental studies with suitable animal species should be conducted. Clinical studies should identify and make use of intake levels of caffeine. In addition to data on the effects of caffeine in the developing organism, additional clinical and experimental information is needed concerning the neurobehavioral sequellae of prolonged or continuous exposure to caffeine in the adolescent, adult, and aged organisms, with some attention being given to the withdrawal phenomenon. Selection of the appropriate animal models for these studies should await completion of the studies needed to better understand the coparative metabolism and pharmacokinetics of caffeine in animals and humans.

In order to reflect the usual mode of exposure in man, the studies should use the diet (i.e., feed or drinking water) as the principal route of administration of caffeine. However, some attempt should be made to determine whether the neurobehavioral effects from prolonged dietary intake, whch generally results in exposure being spread out over the entire day, are substantially different from those resulting from repeated intubation, as might occur when one rapidly drinks a bottle of a caffeine-containing soft drink.

FDA understands that several studies of the possible carcinogenicity of caffeine are currently underway. Thus, rather than require that additional studies be undertaken immediately, the agency is proposing to require initially that persons who intend to rely on the ongoing studies to demonstrate the safety of caffeine submit details of the design and conduct of the studies to FDA (proposed § 180.5(e)(4)). This will allow the agency to determine if the on-going studies are found to be deficient by current standards, additional studies will be required.

To adequately resolve the carcinogenicity question, and also determine whether caffeine can cause other long-erm effects (proposed § 180.15(e)(5)), chronic feeding studies meeting current toxicological testing standards must be carried out in two appropriate species. Such studies should be designed to test for carcinogenicity as well as other possible chronic pathologic effects. At least one of the studies should involve in utero exposure, and both studies should include feeding of at least three dose levels of caffeine. In addition, a 1-year feeding study involving feeding of at least three dose levels of caffeine should

be carried out in the dog or other appropriate nonrodent species.

Due to the uncertainty about the purpose(s) for which caffeine is added to various foods and about whether caffeine is effective for its claimed flavoring purpose, the agency is proposing to require that data be developed and submitted to FDA that (1) fully describe the purpose(s) for which caffeine is added to each food covered by the interim regulation, and (2) demonstrate that the amount of caffeine added to each food is necessary and effective for each purpose(s) (proposed § 180.15(e)(7)). In the case of cola- and pepper-type soft drinks, in which kola nut extract is a mandatory ingredient, the functionality data should distinguish clearly between the caffeine that is present as a component of the kola nut extract and the caffeine that is added over and above that present in kola nut extract. It is the latter caffeine whose functionality must be demonstrated.

In accordance with § 180.1 (21 CFR 180.1), the primary responsibility for performing the required studies on caffeine rests on interested persons outside the agency. FDA will, however, work closely with those who agree to undertake the required studies to help ensure that the studies are designed and executed in a way that will be most likely to produce the scientific evidence needed to resolve the existing safety questions about caffeine. If the appropriate commitment to undertake the required studies, or submit the required data and information, are not made to FDA within 60 days after the effective date of a final regulation based on this proposal, an order shall be published immediately in the Federal Register revoking the interim food additive regulation effective upon publication (see § 180.1(c)(2)). Similarly, the interim regulation will be revoked if persons performing the required studies fail to submit the twice-yearly progress reports required in § 180.1(c)(3).

The agency has determined under 21 CFR 25.24(b)(6) (proposed December 11, 1979; 44 FR 71742) that this proposed action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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99. Citizen Petition, dated 8–30–79, from Federation of Homemakers, P.O. Box 5571, Arlington, VA 22205, FDA Hearing Clerk No. 78P–0344/CP.

100. Citizen Petition, dated 11–15–79, from Center for Science in the Public Interest, 1755 S St., N.W., Washington, D.C., FDA Hearing Clerk No. 79P–0443/CP.

101. Goyan, J.E. statement by the Commissioner of Food and Drugs, September 4, 1980, (P80–36), page 3.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348, 371(a))) and under authority delegated to the Commissioner of Food and Drug (21 CFR 5.1), it is proposed that Parts 180 and 182 be amended as follows:

PART 180—FOOD ADDITIVES PERMITTED IN FOOD ON AN INTERIM BASIS OR IN CONTACT WITH FOOD PENDING ADDITIONAL STUDY

1. Part 180 is amended in Subpart B by adding new § 180.15 to read as follows:

§180.15 Caffeine.

(a) Caffeine ($C_8H_{10}N_4O_2$ CAS Reg. No. 58–08–2) is the alkaloid 1,3,7-trimethylxanthine. Caffeine is prepared by extraction from coffee or tea, by partial synthesis from theobromine, by total synthesis from uria and cyanoacetic acid or by total synthesis from dimethyl carbamide and malonic acid.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 2d ed. (1972),[1] as amended by the First Supplement (1974),[1] which is incorporated by reference.

(c) The ingredient is used directly in food, as served, at levels not to exceed the following maximum levels:

Food categories	Parts per million (ppm)	Function
Soda water, section 165.175 of this chapter	200	Flavor enhancer, section 170.3(o)(11) of this chapter. Flavoring agent, section 170.3(o)(12) of this chapter. Synergist, section 170.3(o)(31) of this chapter.
Baked goods, section 170.3(n)(1) of this chapter	400	Flavoring agent, section 170.3(o)(12) of this chapter.
Frozen dairy desserts and mixes, section 170.3(n)(20) of this chapter.	400	Do.
Gelatins, puddings and fillings, section 170.3(n)(22) of this chapter.	400	Do.
Soft candy, section 170.3(n)(38) of this chapter	400	Do.

(d) To ensure safe use of the additive, in addition to other information required by the act:

(1) The label of the additive and any intermediate mix shall bear—

(i) The name of the additive; and

(ii) A statement of the concentration of the additive (expressed as "caffeine") in any intermediate mix, or other information to permit a food processor to determine independently that use of the ingredient will comply with this section.

(iii) Adequate directions for use to provide a final food product that complies with the provisions of this section.

(2) The ingredient statement of any finished food product containing the additive shall include the name of the additive, i.e., "caffeine".

(e) In accordance with § 180.1, adequate and appropriate studies shall be performed to resolve existing questions about the safety of the food additive. These studies shall include:

(1) Pharmacokinetic studies, both acute and chronic, in human volunteers and in appropriate animal species, including the rat, to determine the comparative patterns of absorption, biotransformation, and excretion of caffeine in humans and animals.

(2) Studies necessary to determine whether the teratogenic effects of caffeine seen in rats are caused by caffeine *per se* or by one of its metabolites, and whether any metabolities of caffeine that are unique to humans are teratogenic in appropriate animal models.

(3) Multigeneration reproductive and neurobehavioral studies in appropriate animal models to resolve questions about the effects of prolonged exposure to caffeine on the mammalian nervous system. Questions related to reproduction include the significance of testicular atrophy reported in rats and other potential reproductive effects. Neonates and adult rats from this study should be examined by various procedures for evaluating neuropharmacological effects and functional behavioral effects such as altered conditioning response, summary reflexes, continuous motor activity, and neurochemical analysis.

(4) Definitive chronic feeding studies in two appropriate species that will be adequate to resolve questions that have been raised about the potential carcinogenicity of caffeine. Sponsors of ongoing chronic feeding studies of caffeine in rats shall submit details of the design and conduct of these studies to the Food and Drug Administration so that it can be determined whether they meet current standards for long-term feeding studies and will satisfy the requirements of this regulation. If ongoing studies are determined to be inadequate, additional carcinogenicity studies will be required.

(5) Chronic feeding studies to determine whether caffeine can cause chronic, pathologic effects other than cancer.

(6) Appropriate epidemiology studies on caffeine performed in accordance

[1] Copies may be obtained from: National Academy of Sciences, 2101 Constitution Ave., Washington, DC 20037.

with the epidemiology guidelines of the Interagency Regulatory Liaison Group, which may be obtained from: FDA/ Bureau of Foods (HFF–330), 200 C St., SW, Washington, DC 20204.

(7) Appropriate studies demonstrating the technical effect for which added caffeine is used in soda water and other foods.

(f) Interested persons shall agree in writing to undertake the studies, or submit the information, referred to in paragraph (e) of this section by (60 days after date of publication of the final regulation in the **Federal Register**). Continued use of caffeine is contingent on the timely filing of adequate progress reports of such tests as specified in § 180.1(c)(3) and no indication of an increased risk to public health during the test period.

PART 182—SUBSTANCES GENERALLY RECOGNIZED AS SAFE

§ 182.1180 [Revoked]

2. Part 182 is amended by revoking § 182.1180 *Caffeine.*

Interested persons may, on or before December 22, 1980, submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

In accordance with Executive Order 12044, the economic effects of this proposal have been carefully analyzed, and it has been determined that the proposed rulemaking does not involve major economic consequences as defined by that order. A copy of the regulatory analysis assessment supporting this determination is on file with the Dockets Management Branch, Food and Drug Administration.

Dated: October 16, 1980.

Mark Novitch,

Acting Commissioner of Food and Drugs.

Note.—Incorporations by reference were approved by the Director of the Office of the Federal Register on July 10, 1973 and June 27, 1977, and are on file in the Federal Register Library.

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federal register

Tuesday
October 21, 1980

Part VII

Department of Health and Human Services

Food and Drug Administration

Menstrual Tampons; User Labeling; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 801

[Docket No. 80N-0425]

Menstrual Tampons; User Labeling

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a proposed rule which, if adopted, would require a statement in the labeling of menstrual tampons warning users that toxic shock syndrome (TSS), a rare but serious and sometimes fatal disease, is associated with the use of tampons. the proposed warning statement would advise tampon users how they could almost entirely eliminate or greatly reduce the risk of TSS. The proposed warning statement would also advise tampon users of steps to take if the symptoms of the disease appear.

DATES: Written comments on or before November 20, 1980. FDA intends that the final regulations will be effective 60 days after the date of publication of the final rule.

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Lawrence Kobren, Bureau of Medical Devices (HFK-310), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7222.

SUPPLEMENTARY INFORMATION. Toxic shock syndrome (TSS) is a recently recognized disease that occurs most often in menstruating women under 30. TSS is closely associated with the use of tampons. The disease is serious and can result in death. TSS is believed to be caused by a bacterium, *Staphylociccus aureus.* The early symptoms typically begin with a high fever (102° F or higher), and vomiting, or profuse watery diarrhea. TSS is sometimes accompanied by sore throat, headache, and muscle pain. The disease is characterized by a rapid drop in blood pressure and shock. The patient usually develops a sunburn-like rash with redness of the eyes followed within 7 to 10 days by shedding of the skin of the palms of the hands and the soles of the feet. Based on information from the Centers fro Disease Control (CDC), the incidence of the disease originally was estimated at approximately 3 cases per 100,000 population (Ref. 1). According to more recent information, however, this incidence may be an understatement due to under-reporting and other factors; data collected by the Utah State Department of Health show that, in Utah, the incidence of TSS is 10-15 cases per 100,000 population (Ref. 4). The mortality rate for persons contracting the disease is estimated to be approximately 13 percent (Ref. 1).

CDC initially published a report concerning TSS in its May 23, 1980, *Morbidity and Mortality Weekly Report (MMWR) (Ref. 1).* This report described the syndrome and reported that 52 of 55 cases (95 percent) of the newly recognized illness had occurred in women. The other three cases were in men and children. A menstrual history was obtained from 40 of the 52 women. Of those 40 women, 38 had onset of illness during the first 5 days of menses.

Following the May 23, 1980 report, CDC, the Wisconsin State Department of Health, and the Utah State Department of Health designed and instituted separate case control studies to look at various products associated with the menstrual cycle. The results of these studies were reported in the June 27, 1980, MMWR (Ref. 2). These studies also showed the association of TSS with the use of tampons by women during their menstrual period.

Individual tampon brands were not identified in the data published in the June, 1980 MMWR publication. CDC designed a second retrospective case control study which focused on brands and was based on recent cases. This study compared 50 cases of TSS occurring during July and August, 1980, with 150 control cases (women who had not had the disease during their menses in July and August). The results of the second retrospective case control study were reported to FDA on September 12, 1980. The study showed that: (1) all TSS women had used tampons during their menstrual period as compared to 125 of the 150 controls; (2) 70 percent of the TSS women and 30 percent of the controls used Rely® brand tampons; and (3) reported TSS cases were associated with the use of all five brands of tampons used by women in the study (Rely®, Playtex®, Kotex®, Tampax®, and O.B.®) (Ref. 3). The Rely® tampon was subsequently removed from the market by the manufacturer under a consent agreement with FDA.

On September 22, 1980, the results of a separate case control study conducted by the Utah State Department of Health were reported to FDA. This study included 24 women diagnosed as having TSS and 71 women used as controls. One hundred percent of the TSS women used tampons compared to 80 percent of the control women. The Utah data indicate that Rely® was associated with TSS more frequently than were other brands of tampons.

Also, on September 22, 1980, the Minnesota State Department of Health reported the preliminary results of its independent case control study to FDA (Ref. 5). The data in this study confirmed the results of the CDC and Utah studies that tampon use is associated with TSS. However, the Minnesota data did not indicate that Rely® was associated with TSS more frequently than were other brands of tampons.

While the scientific evidence indicates that the causative agent of TSS is *Staphylococcus aureus,* the pathogenesis (origination and development of the disease) in menstruating women is not fully understood.

From January 1980 through October 16, 1980, 408 cases of TSS have been reported to CDC, 40 of which resulted in death. Although two of the studies above identified Rely® as the tampon most associated with TSS, all tampon brands have been associated with the disease (Refs. 4 and 5).

This proposal would provide that any tampon that is not labeled as required by the regulation and that is introduced or delivered for introduction into commerce after the effective date of the regulation, would be misbranded under sections 502(a) and 201(n) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352(a) and 321(n)).

Section 502(a) of the act provides that a device is misbranded if "its labeling is false or misleading in any particular." Section 201(n) of the act provides that, in determining whether labeling is misleading,

> [T]here shall be taken into account (among other things) not only representations made or suggested by statement, word, design, device, or any combination thereof, but also the extent to which the labeling * * * fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling * * * relates under the conditions of use prescribed in the labeling * * * or under such conditions of use as are customary or usual.

Based on the evidence summarized above of the increased risk of TSS associated with the use of tampons, FDA believes that failure to warn consumers of that risk in the labeling of tampons constitutes omission of a material fact about the products. Any such omission would render the labeling for the products "false or misleading" and the products, therefore, misbranded. The courts have upheld FDA's authority to prevent false and misleading labeling

by promulgating regulations requiring label warnings and other affirmative disclosures, *see, e.g., Cosmetic Toiletry & Frangrance Ass'n.* v. *Schmidt* 409 F. Supp. 57 (D.D.C. 1976) *aff'd without opinion,* Civil No. 75–1715 (D.C. Cir. August 19, 1977) even in the absence of a proven cause and effect relationship between product usage and harm. *Council for Responsible Nutrition* v. *Goyan,* Civil No. 80–1124 (D.D.C. August 1, 1980).

FDA recognizes that the proposed warning differs from the one the Acting Director of the Bureau of Medical Devices by telegram dated September 26, 1980, asked manufacturers to use voluntarily. FDA is considering whether changes in that language are necessary to ensure that consumers are adequately apprised of the risk of TSS associated with the use of tampons, the seriousness and symptoms of the disease, the actions consumers should take if those symptoms occur, and the measures consumers can take either nearly to eliminate or significantly to reduce the risk of TSS.

FDA advises that manufacturers who have already taken voluntary action to adopt the warning suggested in the September 26 telegram or who adopt the warning proposed in this document will be given a reasonable period of time if any final rule is issued to adopt the final language of the warning in their tampon labeling. FDA, therefore, invites comments on whether 60 days after the date of publication of any final rule is a reasonable period of time for revision of a warning statement. FDA expects persons who request a shorter or longer effective date to support their requests with data and information, as well as opinion and argument.

FDA recognizes that a warning statement in the labeling of tampons is not the only requirement FDA may impose to ensure that consumers are informed about TSS. FDA, therefore, invites comments on the following questions.

1. In addition to or in lieu of a warning statement, should FDA require manufacturers to include in each package of tampons a user package insert providing more information about TSS in particular and tampon use in general? If so, what, if anything, should FDA require manufacturers to print on the outside of each package of tampons to alert consumers to the existence of a user package insert inside the package? What topics should a user package insert address? What information about TSS not included in the proposed warning should be presented in a package insert?

2. In addition to or in lieu of a warning statement or a user package insert, should FDA require manufacturers to provide retail establishments warning notices about TSS for display at the point of sale?

3. In addition to or in lieu of a warning statement, a user package insert or a point of sale warning notice, should FDA require manfacturers to provide retail establishments TSS brochures or pamphlets for consumers to obtain at the point of sale.

4. Proposed § 801.430(e) provides that any menstrual tampon that is not labeled as requred by the regulation and that is introduced or delivered for introduction into commerce after the effective date would be misbranded. The regulation would thus require that persons who reintroduce or redeliver tampons for introduction into commerce after the effective date, relabel the products before shipment. Is this necessary? Are there alternative means by which FDA can assure that the consumer is made aware of the information in the warning?

5. What, if any, statements about TSS or tampon use should FDA prohibit in the label of labeling of tampons?

6. Should FDA establish a procedure by which a manufacturer may petition FDA to grant an exemption from the requirements of any final rule? If so, what criteria should FDA apply in determining whether to grant an exemption?

The background information on which this proposed regulation is based is on file in FDA's Dockets Management Branch (address above) and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday. On October 10, 1980, the Obstetrics-Gynecology Device Section of the Obstetrics-Gynecology and Radiologic Devices Panel, and FDA advisory committee, held an open discussion of issues related to tampon use. Data submitted to the Panel and the transcript of the Panel meeting will be included in the background information as soon as it is available.

FDA believes that the association of tampons with TSS is a public health problem that needs to be dealt with promptly. The agency, therefore, finds in accordance with § 10.40(b)(2) (21 CFR 10.40(b)(2)) that good cause exists to reduce the comment period for this proposal from 60 to 30 days.

The agency has determined under 21 CFR 25.24(d)(13) (proposed December 11, 1979; 44 FR 71742) that this proposed action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

References

1. Epidemiologic Notes and Reports: Toxic-Shock Syndrome—United States, *Morbidity and Mortality Weekly Report,* Center for Disease Control, May 23, 1980, Vol. 29, No. 20.

2. Epidemiologic Notes and Reports: Follow-up on Toxic-Shock Syndrome—United States, *Morbidity and Mortality Weekly Report,* Center for Disease Control, July 27, 1980, Vol. 29, No. 25.

3. Epidemiologic Notes and Reports: Follow-up on Toxic-Shock Syndrome, *Morbidity and Mortality Weekly Report,* Center for Disease Control, September 19, 1980, Vol. 29, No. 37.

4. TSS Study by the Utah State Health Department, "September 22, 1980."

5. TSS Study by the Minnesota State Health Department, (undated).

Therefore, under the Federal Food Drug, and Cosmetic Act (secs. 201(n) 502, 701(a), 52 Stat. 1041 as amended, 1050–1051 as amended, 1055 (21 U.S.C. 321(n), 352, 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), it is proposed that Part 801 be amended by adding new § 801.430, to read as follows:

§ 801.430 User labeling for menstrual tampons.

(a) This section applies to scented or scented deodorized menstrual tampons as identified in § 884.5460 and unscented menstrual tampons as identified in § 884.5470 of this chapter.

(b) Examination of available data shows that the occurrence of toxic shock syndrome, a rare but serious disease, is associated with the use of menstrual tampons. To protect the public and to minimize the serious effects of toxic shock syndrome, menstrual tampons must be labeled with a warning that alerts users to the risk of toxic shock syndrome and encourages them to obtain prompt medical attention when the early symptoms of the disease are observed.

(c) The warning statement required by paragraph (d) of this section shall appear prominently and conspicuously on the principal display panel of the package label. The warning statement shall be printed in bold letters and shall be enclosed by lines forming a rectangle in an area separated from other written printed or graphic matter. The height of the printed letters comprising the warning statement required by this section shall not be less than 1/16 of an inch.

(d) The warning statement shall read:

WARNING: Tampons have been associated with Toxic Shock Syndrome, a rare disease that can be fatal. You can almost entirely avoid the risk of getting this disease

by not using tampons. You can reduce the risk by using tampons on and off during your period. If you have a fever of 102° or more, and vomit or get diarrhea during your period, remove the tampon at once and see a doctor right away.

(e) Any menstrual tampon that is not labeled as required by this section and that is introduced or delivered for introduction into commerce after (a date 60 days after date of publication of a final rule) is misbranded pursuant to sections 502(a) and 201(n) of the act.

Interested persons may, on or before November 20, 1980 submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Dockets Management Branch docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

In accordance with Executive Order 12044, as amended by Executive Order 12221, the economic effects of this proposal have been carefully analyzed, and it has been determined that the proposed rulemaking does not involve major economic consequences as defined by that order. A copy of the regulatory analysis assessment supporting this determination is on file with the Dockets Management Branch, Food and Drug Administration.

Dated: October 16, 1980.

Mark Novitch,

Acting Commissioner of Food and Drugs.

[FR Doc. 80-32881 Filed 10-20-80; 8:45 am]

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federal register

Tuesday
October 21, 1980

Part VIII

Department of the Interior

Fish and Wildlife Service

Final Findings for Export of American Alligator and American Ginseng Taken in 1980–1981 Season

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 23 and 810

Final Findings for Export of American Alligator and American Ginseng Taken in 1980–81 Season

AGENCY: U.S. Fish and Wildlife Service.

ACTION: Notice of final findings.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora is a treaty regulating the international shipment of certain wildlife and plant species. Under the Convention, exports of wildlife or plants listed in Appendix I or II may occur only if a Scientific Authority has advised a permit-issuing Management Authority that such exports will not be detrimental to the survival of the species, and if a Management Authority is satisfied that the wildlife or plants were not obtained in violation of laws for their protection.

The Service must make such decisions with respect to the American alligator and American ginseng, both of which are included in Appendix II. This notice announces the Scientific Authority and Management Authority decisions concerning export of specimens of these species taken in the 1980–81 season. These findings for export are made on a state-by-state basis for all specimens taken in a particular season, considering all available information on the population status, management and utilization of the species.

DATE: These final findings are effective on October 21, 1980.

ADDRESS: Please send correspondence concerning this notice to the Office of the Scientific Authority, U.S. Fish and Wildlife Service, Washington, D.C. 20240. Materials received will be available for public inspection from 7:45 a.m. to 4:15 p.m., Monday through Friday, in room 536, 1717 H Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Biological findings.—Dr. Richard L. Jachowski, Office of the Scientific Authority, U.S. Fish and Wildlife Service, Washington, D.C. 20240, telephone (202) 653–5948.

Export permits.—Mr. S. Ronald Singer, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240, telephone (703) 235–2418.

SUPPLEMENTARY INFORMATION: In carrying out the responsibilities of the United States under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the Service is continuing the practice of developing general Scientific Authority and Management Authority findings on the export of certain species, applicable to all specimens taken in a particular season. This approach is more meaningful and less cumbersome than the alternative of developing findings on a permit-by-permit basis for species subject to extensive international trade.

The Service published proposed findings on the export of American alligators, American ginseng and certain other species in the September 29, 1980, **Federal Register** (45 FR 64520). That publication contained a summary of information supplied by state agencies on the biology, management, and harvest of ginseng, and it cited earlier references providing such information for the alligator.

American Ginseng (*Panax Quinquefolius*)

Criteria used by the Service in determining if the export of ginseng will not be detrimental to the survival of the species were the same as those used by the Endangered Species Scientific Authority (ESSA) in previous years:

The ESSA proposes to approve export of wild American ginseng from those states that have implemented substantial programs to conserve the species whose populations can support the harvest. Acceptable conservation programs generally must include some form of research and regulations designed to monitor the status of the state's wild populations to provide annual harvest estimates, and to control exploitation. The ESSA recognizes the recency of wild plant management in many states, and the frequent lack of management authority in state agencies. Consequently, we propose to approve export from certain states whose management agencies lack authority to limit exploitation provided those states have substantial plans for 1979 under existing authority and provided available information indicates that populations of the state can support the harvest. Several state agencies are seeking additional authority from their legislatures. The ESSA wishes to be supportive of new state programs, however, our proposal to approve export for roots harvested in 1979 should not be construed as a precedent for approval in the future.

Criteria used by the Service in determining if ginseng to be exported is not obtained in violation of state or Federal law, which is a Management Authority requirement under the CITES, were described in the September 29, 1980, **Federal Register:**

The [Service] considers the following ongoing program operating on either a mandatory or voluntary basis to be necessary to qualify a state's ginseng for export. A mandatory program administered by the State is preferable to a voluntary one, but a functional voluntary one may be acceptable if the state is working toward regulatory control.

1. An ongoing, state sponsored, American ginseng research program;
2. State certification or registration of dealers and exporters;
3. A requirement that dealers and exporters maintain a record of their commerce in ginseng;
4. A limited taking season to be established by the state to foster survival of the species; and
5. A certificate of legal taking identifying dealer, origin, year of taking, whether wild or cultivated, and weight of the shipment, attached to each export from the state. (This is required only for each export, not for each transaction within the state. This certificate must be presented to Federal officials at the point of export from the United States.)

It should be noted that the Management Authority criteria also were used for decisions on the export of ginseng harvested last year, and that they included conditions (items 1 and 4, above) related to concerns of the ESSA. In view of this, the Service has focused on items 2, 3, and 5 in making Management Authority decisions this year. Further, as with Scientific Authority criteria, the Management Authority criteria are not all absolute requirements. A certificate of legal taking is required for each export. Voluntary state programs for the registration of dealers and exporters and voluntary record-keeping are acceptable if they work and if the states are taking steps to institute mandatory registration and record-keeping.

The Service received no written comments from the public in response to the proposed 1980 export findings for ginseng. Accordingly, the Service has determined that wild or artificially propagated ginseng harvested in those states proposed for approval in the September 29, 1980, notice may be exported under the CITES. States for which export of 1980 season ginseng is approved are: Arkansas, Georgia, Illinois, Indiana, Iowa, Kentucky, Maryland, Minnesota, Missouri, New York, North Carolina, Ohio, Tennessee, Virginia, West Virginia, and Wisconsin. Both the Scientific Authority and Management Authority criteria are met for these states. The Management Authority will approve export of artificially propagated ginseng only from

the states listed above because they have the mandatory or voluntary programs necessary to document the source of the plants.

No export is approved for wild or artificially propagated ginseng harvested in other States during the 1980 season. There is no current information on which to base Scientific Authority or Management Authority findings for Alabama, Connecticut, Maine, Massachusetts, Mississippi, New Hampshire, Oklahoma, Rhode Island, South Carolina, and Vermont. Available evidence indicates that wild populations of ginseng cannot support a commercial harvest in Delaware, Louisiana, Michigan, Nebraska, and New Jersey, thus failing to satisfy one of the Scientific Authority criteria. Management Authority criteria also are not met by these states. Pennsylvania has wild populations of ginseng that might support a limited commercial harvest, but there are no current programs of research and regulation for the species at the state level. Consequently, neither Scientific Authority nor Management Authority criteria are met for this state. Ginseng is not reported to be native to any state other than those discussed above.

American alligator (*Alligator mississippiensis*)

The Service proposed to approve the export of alligators taken in Louisiana during the 1980 commercial harvest season and in Florida under the "nuisance" alligator control program during 1980 and 1981 (see 45 FR 64535). Approval of export was proposed in view of information showing increasing alligator populations in both states, and in view of ongoing programs in both states to monitor alligator populations and to strictly regulate the harvest. The Service received no written comments in response to this proposal. The available data demonstrate that export of alligators harvested this season in Louisiana and Florida will not be detrimental to the survival of the species. Controls on the harvest and subsequent commerce in alligators insure that hides to be exported are obtained in compliance with state and Federal law.

In addition, provided that any export of American alligators is in accordance with the Service's regulations (50 CFR 17.42), which require the licensing of foreign buyers and tanners, and provided that hides are properly tagged, there is assurance that their export would not diminish the effectiveness of the CITES in controlling trade in other crocodilians. There is no evidence to indicate that the export of alligator hides taken in 1979 or in previous seasons had any such effect.

Future Rulemaking

The present findings for ginseng and alligator are effective upon publication of this notice. Findings for the export of other Appendix II species discussed in the September 29, 1980, proposal will be published in a later notice. Upon publication of that notice, the Service intends to incorporate the decisions on export of all species subject to such general findings into Part 23 of Title 50, Code of Federal Regulations.

The findings announced in this notice are effective on the date of publication in the **Federal Register**, because the harvest season for these species has begun and delaying issuance of the findings could adversely impact state conservation programs for these species. The Service also considers a delay in the effective date to be unnecessary because the findings were preceded by an opportunity for comment and because they do not substantially modify an earlier procedure or practice (43 CFR 14.5).

An environmental assessment has been prepared in conjunction with this notice. It is on file in the Service's Office of the Scientific Authority, room 536, 1717 H Street, NW., Washington, D.C. and may be examined during regular business hours.

This notice was prepared by Dr. Richard L. Jachowski, Office of the Scientific Authority (202) 653–5948.

Note.—The Service has determined that this document does not contain a significant proposal requiring preparation of a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Dated: October 17, 1980.

(Final findings for export of American Alligator and American Ginseng taken in 1980–81 season)

Lynn A. Greenwalt,

Director, Fish and Wildlife Service.

[FR Doc. 80–32948 Filed 10–20–80; 8:45 am]

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR NOTICE FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
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DOT/FAA	USDA/FSQS		DOT/FAA	USDA/FSQS
DOT/FHWA	USDA/REA		DOT/FHWA	USDA/REA
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/NHTSA	LABOR		DOT/NHTSA	LABOR
DOT/RSPA	HHS/FDA		DOT/RSPA	HHS/FDA
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	
CSA			CSA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.
Comments on this program are still invited.
Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

NOTE: As of September 2, 1980, documents from the Animal and Plant Health Inspection Service, Department of Agriculture, will no longer be assigned to the Tuesday/Friday publication schedule.

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

Note: There were no items eligible for inclusion in the list of **Rules Going Into Effect Today.**

List of Public Laws

Last Listing October 20, 1980

This is a continuing listing of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (telephone 202-275-3030).

H.R. 5451 / Pub. L. 96-453 Maritime Education and Training Act of 1980 (October 15, 1980; 94 Stat. 1997) Price $1.25.

S. 1798 / Pub. L. 96-454 Household Goods Transportation Act of 1980 (October 15, 1980; 94 Stat. 2011) Price $1.25.

H.R. 4273 / Pub. L. 96-455 To amend section 17 of the Act of July 5, 1946, as amended, entitled "An Act to provide for the registration and protection of trade-marks used in commerce, to carry out the provisions of certain international conventions, and for other purposes" (October 15, 1980; 94 Stat. 2024) Price $1.

S. 1482 / Pub. L. 96-456 Classified Information Procedures Act (October 15, 1980; 94 Stat. 2025) Price $1.

S. 1640 / Pub. L. 96-457 To extend certain authorities of the Secretary of the Interior with respect to water resources research and development and saline water conversion research and development programs, and for other purposes (October 15, 1980; 94 Stat. 2032) Price $1.

S. 1873 / Pub. L. 96-458 Judicial Councils Reform and Judicial Conduct and Disability Act of 1980 (October 15, 1980; 94 Stat. 2035) Price $1.

H.R. 6554 / Pub. L. 96-459 Maritime Appropriation Authorization Act for Fiscal Year 1981 (October 15, 1980; 94 Stat. 2042) Price $1.

H.R. 4417 / Pub. L. 96-460 Chesapeake Bay Research Coordination Act of 1980 (October 15, 1980; 94 Stat. 2044) Price $1.

S. 2320 / Pub. L. 96-461 National Bureau of Standards Authorization Act for Fiscal Years 1981 and 1982 (October 15, 1980; 94 Stat. 2049) Price $1.

H.R. 8178 / Pub. L. 96-462 Federal District Court Organization Act of 1980 (October 15, 1980; 94 Stat. 2053) Price $1.80.

S. 2412 / Pub. L. 96-463 Used Oil Recycling Act of 1980 (October 15, 1980; 94 Stat. 2055) Price $1.

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