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Tuesday
October 28, 1980

Highlights

Briefing on How To Use the Federal Register—For details on briefings in **Washington, D.C.**, see announcement in the **Reader Aids** section at the end of this issue

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Presidential Documents

Title 3—

The President

Executive Order 12249 of October 25, 1980

Foreign Service Salary Schedule

By the authority vested in me as President of the United States of America under Section 403 of the Foreign Service Act of 1980 (Public Law 96–465 approved October 17, 1980), and in order to establish a new Foreign Service Schedule, it is hereby ordered as follows:

1–101. Salary classes for certain members of the Foreign Service are established as set forth in the Foreign Service Schedule attached hereto and made a part hereof.

1–102. Notwithstanding the provisions of Executive Order No. 12248, and pursuant to the provisions of Section 2101 of the Foreign Service Act of 1980, the salary rates set forth in the attached Foreign Service Schedule shall take effect on the first day of the first pay period which begins on or after October 1, 1980.

Jimmy Carter

THE WHITE HOUSE,
October 25, 1980.

The Foreign Service Schedule

	1	2	3	4	5	6	7
Class 1	$44,547	$45,883	$47,260	$48,678	$50,138*	$51,642*	$53,191*
2	36,097	37,180	38,295	39,444	40,627	41,846	43,102
3	29,249	30,126	31,030	31,961	32,920	33,908	34,925
4	23,701	24,412	25,144	25,899	26,676	27,476	28,300
5	19,205	19,781	20,375	20,986	21,615	22,264	22,932
6	17,169	17,684	18,215	18,761	19,324	19,904	20,501
7	15,348	15,808	16,283	16,771	17,274	17,793	18,326
8	13,721	14,133	14,557	14,993	15,443	15,906	16,384
9	12,266	12,634	13,013	13,403	13,805	14,220	14,646

	8	9	10	11	12	13	14
Class 1	$54,787*	$56,431*	$57,912*	$57,912*	$57,912*	$57,912*	$57,912*
2	44,395	45,727	47,098	48,511	49,967	51,466*	53,010*
3	35,973	37,052	38,163	39,308	40,487	41,702	42,953
4	29,149	30,024	30,924	31,852	32,808	33,792	34,806
5	23,620	24,328	25,058	25,810	26,584	27,382	28,203
6	21,116	21,749	22,402	23,074	23,766	24,479	25,213
7	18,876	19,442	20,026	20,626	21,245	21,083	22,539
8	16,875	17,381	17,903	18,440	18,993	19,563	20,150
9	15,086	15,538	16,004	16,484	16,979	17,488	18,013

* Basic pay is limited by Section 5308 of Title 5 of the United States Code to the rate for level V of the Executive Schedule which is, as of the effective date of this schedule, $58,500. See also Note 1.

Note 1. Notwithstanding the above rates, the maximum rate payable, as of the effective date of this schedule, is $50,112.50. (The effect of Section 101(c) of Public Law 96-369 (the continuing resolution approved October 1, 1980) is to limit the use of the funds so appropriated so that they are not available to pay salaries in this schedule in excess of the rate payable for level V of the Executive Schedule on September 30, 1980.)

[FR Doc. 80-33767
Filed 10-27-80; 11:31 am]
Billing code 3195-01-M

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271, 272, 273 and 274

Food Stamp Program; Clarity Revisions and Corrections to Rules Issued Since January 1, 1980

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule—corrections and clarity revisions.

SUMMARY: This document (1) corrects errors in paragraph numbering or referencing of regulatory citations for the following regulations: *Points and Hours of Certification and Issuance Services* (45 FR 2609), *Food Stamp Benefits: Procedures for Reducing, Suspending or Cancelling* (45 FR 22007), *Food Stamp Program Group Living Arrangements Provisions of 1979 Amendments* (45 FR 23291), *and 1980 Food Stamp Act; Eligibility Limits* (45 FR 46041); (2) amends the complaint procedures regulations to reflect a change in zip code for writing to the Food and Nutrition Service Southeast Regional Office; (3) makes corrections to certain sections regarding definitions, resource exclusions, recertification, authorized representatives, and reduction or termination of benefits, by reinstating provisions which had been unintentionally deleted by other publications; and (4) revises other sections pertaining to income calculations, issuance office services, deductible expenses, and treatment of nonhousehold members, for clarity.

FOR FURTHER INFORMATION CONTACT: Larry R. Carnes, Chief, Policy and Regulations Section, Program Standards Branch, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, USDA, Washington, D.C. 20250, 202–447–9075.

EFFECTIVE DATE: This regulation is effective (October 28, 1980).

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. (1) At 45 FR 2609, issued January 11, 1980, § 272.1(g)(4), *Implementation: Amendment 147,* was misnumbered; the correct number is § 272.1(g)(5). Also, at page 2612, § 272.5(b)(5)(ii) is being revised for clarity. We have received several comments that this particular provision as worded is unclear. The revised language is for clarification only and does not change the principle nor the policy intent of the provision.

(2) At 45 FR 22007, issued April 2, 1980, the instruction under § 274.3 to add a sentence to subparagraph (f)(6) was incorrect. The sentence should be added to subparagraph (b)(6) of § 274.3.

(3) At 45 FR 23291, issued April 4, 1980, the reference to § 273.11(e) contained in paragraph (2)(ii) of § 273.1(f) is incorrect. The reference should be § 273.11(f).

(4) At 45 FR 46041, issued July 8, 1980, paragraph (c)(5) under § 273.11 should have been divided into two separate paragraphs. The paragraph is being revised in this document to indicate where this division should appear. Additionally, at page 46041, § 273.8(h)(3), the reference to "paragraphs (e)(3), (4) and (5)" should be changed to read "paragraphs (e)(3), (4) or (5)".

(5) Section 271.6 is being amended to reflect a change in the zip code when writing to FNS' Southeast Regional Office in Atlanta, Georgia.

(6) Sections 273.6(e), 273.10(e)(1)(ii) and 273.10(d) are being revised for accuracy to bring the provisions into conformance with other parts of regulations. Specifically, § 273.6(e) provides means for a person to end a disqualification period for not supplying a social security number (SSN). That provision states that a person can end the disqualification by demonstrating that application for an SSN has been made at the Social Security Administration. Since other parts of regulations allow a person to file an application for an SSN with the local food stamp office, § 273.6(e) is revised to provide an end to disqualification if the application for an SSN is filed at either the SSA or the local food stamp office.

Section 273.10(e)(1) provides procedures for rounding numbers when calculating net monthly income and the shelter cost deduction. Since there is now a deduction for medical cost for certain household members, § 273.10(e)(1)(ii) is revised to provide that the same rounding procedures used in calculating the shelter deduction are also applicable when calculating the medical cost deduction.

Section 273.10(d) states that deductible expenses include only certain costs of dependent care and shelter as described in § 273.9. This section is being revised to include medical expenses also described in § 273.9.

(7) Sections 271.2 and 273.11(e)(5) are being amended and sections 273.2(f)(9)(i), 273.8(e)(11), and 273.11(c)(5), are being revised to incorporate provisions that had been unintentionally deleted by publication of other rules. Specifically, § 271.2 is amended to add the definitions of "Communal dining facilities," "Coupon," "Drug addiction or alcoholic treatment and rehabilitation program," "Meal delivery service," "Nonprofit cooperative food purchasing venture," "Staple food," and "wholesaler food concern;" § 273.11(c)(5) is revised to reinstate a provision regarding a requirement to issue a Notice of Adverse Action when persons are disqualified under the social security numbers provisions; § 273.11(e)(5) is amended to add provisions regarding authorized representatives and change report form when a household leaves a drug or alcoholic treatment or rehabilitation center; § 273.8(e)(11) is revised to reflect an exclusion from consideration as a resource earned income tax credits received as a result of Pub. L. 95–600; § 273.2(f)(9)(i) is being revised to incorporate a sentence regarding verification procedures at time of recertification.

The revisions and amendments read as follows:

PART 271—GENERAL INFORMATION AND DEFINITIONS

7 CFR Part 271 is being amended as follows:

1. In § 271.2, the following seven definitions are being added in alphabetical order:

§ 271.2 Definitions.

* * * * *

"Communal dining facility" means a public or nonprofit private establishment, approved by FNS, which prepares and serves meals for elderly persons, or for supplemental security income (SSI) recipients, and their spouses, a public or private nonprofit establishment (eating or otherwise) that feeds elderly persons or SSI recipients, and their spouses, and federally subsidized housing for the elderly at which meals are prepared for and served to the residents. It also includes private establishments that contract with an appropriate State or local agency to offer meals at concessional prices to elderly persons or SSI recipients, and their spouses.

"Coupon" means any coupon, stamp or type of certification provided pursuant to the provisions of this subchapter for the purchase of eligible food.

"Drug addiction or alcoholic treatment and rehabilitation program" means any drug addiction or alcoholic treatment and rehabilitation program conducted by a private nonprofit organization or institution which is certified by the State agency or agencies designated by the Governor as responsible for the administration of the State's programs for alcoholics and drug addicts pursuant to Pub. L. 91–616, "Comprehensive Alcohol Abuse and Alcoholism Prevention Treatment and Rehabilitation Act of 1970" and Pub. L. 92–255, "Drug Abuse Office and Treatment Act of 1972" as providing treatment that can lead to the rehabilitation of drug addicts or alcoholics.

"Meal delivery service" means a political subdivision, a private nonprofit organization, or a private establishment with which a State or local agency has contracted for the preparation and delivery of meals at concessional prices to elderly persons, and their spouses, and to the physically or mentally handicapped and persons otherwise disabled, and their spouses, such that they are unable to adequately prepare all of their meals.

"Nonprofit cooperative food purchasing venture" means any private nonprofit association of consumers whose members pool their resources to buy food.

"Staple food" means those food items intended for home preparation and consumption, which include meat, poultry, fish, bread and breadstuffs, cereals, vegetables, fruits, fruit and vegetable juices, and dairy products. Accessory food items, such as coffee, tea, cocoa, carbonated and uncarbonated drinks, candy, condiments, and spices are not staple foods for the purpose of qualifying a firm to participate in the program as a retail food store.

"Wholesale food concern" means an establishment which sells eligible food to retail food stores or to meal services for resale to households.

§ 271.6 [Amended]

2. In § 271.6, paragraph (b)(1)(ii) is amended by changing the zip code of 30309 to 30367.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

§ 272.1 [Amended]

1. At 45 FR 2609, issued January 11, 1980, paragraph (g)(4) of § 272.1 was misnumbered. The correct paragraph number is (g)(5).

2. At 45 FR 2609, issued January 11, 1980, paragraph (b)(5)(ii) of § 272.5 is revised to read as follows:

§ 272.5 Locations and hours of operations of certification and issuance services.

* * * * *

(b) *Issuance services.* * * *

(5) * * *

(ii) FNS may approve exceptions to the distance requirement specified in paragraph (b)(4) of this section if a State agency demonstrates that participants normally travel more than 30 miles to a location in order to conduct personal business and use their coupons. To be granted this exception, the State agency shall demonstrate that the participant households would receive issuance services for the time periods described in paragraphs (b)(4)(ii) and (b)(4)(iii) of this section, whichever applies, in the location where they normally conduct their personal business and buy their food. The State agency may request FNS approval to provide issuance services in this location rather than closer to the participants (i.e. within 30 miles). Exceptions may be granted for either entire counties and cities or parts thereof.

* * * * *

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

7 CFR Part 273 is being amended as follows:

A. In § 273.1, paragraph (b)(7) is revised to read as follows:

§ 273.1 Household concept.

* * * * *

(b) *Nonhousehold members.* * * *

(7) *Disqualified individuals.* Individuals disqualified for fraud, as set forth in § 273.16, or for failure to provide an SSN, as set forth in § 273.6.

* * * * *

B. In § 273.2, paragraph (f)(9)(i) is revised to read as follows:

§ 273.2 Application processing.

* * * * *

(f) *Verification.* * * *

(9) *Verification subsequent to initial certification.*

(i) *Recertification.* At recertification, the State agency shall verify a change in income, medical expenses or actual utility expenses claimed by a household if the source has changed or the amount has changed by more than $25 since the last time such expenses were verified. State agencies may verify income, actual utility expenses, or medical expenses claimed by a household which are unchanged or have changed by $25 or less, provided verification is, at a minimum, required when information is questionable as defined in paragraph (f)(2) of this section. All other changes reported at the time of recertification shall be subject to the same verification procedures as apply at initial certification. Unchanged information, other than income and medical or utility expenses, shall not be verified at recertification unless the information is questionable as defined in paragraph (f)(2) of this section. Newly obtained social security numbers shall be verified at recertification in accordance with verification procedures outlined in § 273.2(f)(10)(v).

* * * * *

C. In § 273.6, paragraph (e) is revised to read as follows:

§ 273.6 Social Security numbers.

* * * * *

(e) *Ending disqualification.* The household member(s) disqualified may become eligible upon providing the State agency with an SSN or demonstrating that an application has been made for a social security number.

* * * * *

D. In § 273.8, paragraph (e)(11) is amended by renumbering subparagraph (viii) regarding energy assistance payments, as (ix) and adding a new subparagraph (viii) to read as follows:

§ 273.8 Resource eligibility standards.

* * * * *

(e) *Exclusions from resources.* * * *

(11) * * *

(viii) Earned income tax credits received as a result of Pub. L. 95–600, the Revenue Act of 1978 which are received before January 1, 1980.

* * * * *

E. In § 273.10, paragraph (d) and paragraph (e)(1)(ii) are revised to read as follows:

§ 273.10 Determining household eligibility and benefit levels.

* * * * *

(d) *Determining deductions.* Deductible deductions include only certain dependent care, shelter, and medical costs as described in § 273.9.

* * * * *

(e) *Calculating net income and benefit levels.*

(1) *Net monthly income.* * * *

(ii) In calculating net monthly income, the State agency shall use one of the two following procedures:

(A) Round down each income and allotment calculation that ends in 1 through 49 cents and round up each calculation that ends in 50 through 99 cents; or,

(B) Apply the rounding procedure that is currently in effect for the State's Aid to Families with Dependent Children (AFDC) program. If the State AFDC program includes the cents in income calculations, the State agency may use the same procedures for food stamp income calculations. Whichever procedure is used, the State agency may elect to include the cents associated with each individual shelter cost in the computation of the shelter deduction and round the final shelter deduction amount. Likewise, the State agency may elect to include the cents associated with each individual medical cost in the computation of the medical deduction and round the final medical deduction amount.

* * * * *

F. In § 273.11, paragraph (e)(5) is amended by adding two sentences to the end of the paragraph to read as follows:

§ 273.11 Action on households with special circumstances.

* * * * *

(e) *Residents of drug/alcoholic treatment and rehabilitation programs.* * * *

(5) * * * Once the household leaves, the center is no longer allowed to act as that household's authorized representative. The center shall, if possible, provide the household with a change report form to report to the State agency the individual's new address and other circumstances after leaving the center, and shall advise the household to return the form to the appropriate office of the State agency within 10 days.

* * * * *

§ 273.11 [Amended]

2. At 45 FR 23291, issued April 4, 1980, the reference to § 273.11(e) appearing in paragraph (2)(ii) of § 273.1(f) is incorrect. The correct reference is § 273.11(f).

§ 273.8 [Amended]

3. At 45 FR 46041, issued July 8, 1980, § 273.8(h)(3), the reference to "paragraphs (e)(3), (4), and (5)" should be changed to read "paragraphs (e)(3), (4), or (5)".

4. Also at 45 FR 46041/46042, paragraph (c)(5) of § 273.11 is revised to read as follows:

§ 273.11 Action on households with special circumstances.

* * * * *

(c) *Treatment of income and resources of disqualified members.* * * *

(5) *Reduction or termination of benefits within the certification period.* Whenever an individual is disqualified within the household's certification period, the State agency shall determine the eligibility or ineligibility of the remaining household members based, as much as possible, on information in the case file.

(i) If a household's benefits are reduced or terminated within the certification period because one of its members has been disqualified for fraud, the State agency shall notify the remaining members of their eligibility and benefit level at the same time the disqualified member is notified of its disqualification. The household is not entitled to a notice of adverse action but may request a fair hearing to contest the reduction or termination of benefits.

(ii) *SSN disqualification.* If a household's benefits are reduced or terminated within the certification period because one or more of its members required to provide an SSN is being disqualified for failure to meet the SSN requirement, the State agency shall issue a notice of adverse action, in accordance with § 273.13(a)(2), which informs the household that the individual without an SSN is being disqualified, the reason for the disqualification, the eligibility and benefit level of the remaining members, and the actions the household must take to end the disqualification.

* * * * *

PART 274—ISSUANCE AND USE OF FOOD COUPONS

§ 274.3 [Amended]

At 45 FR 22007, issued April 2, 1980, the instruction under § 274.3 to add a sentence to paragraph (f)(6) is incorrect. The sentence should be added to paragraph (b)(6) of § 274.3.

(91 Stat 958 (7 U.S.C. 2011–2027))

(Catalog of Federal Domestic Assistance, No. 10.551, Food Stamps)

Dated: October 2, 1980.

Carol Tucker Foreman,

Assistant Secretary.

[FR Doc. 80-33560 Filed 10-27-80; 8:45 am]

BILLING CODE 3410-30-M

Commodity Credit Corporation

7 CFR Part 1421

[CCC Grain Price Support Regulations, Grain Reserve Program Supplement, Amendment 4]

Subpart—Regulations Governing the Grain Reserve Program for 1976 and Subsequent Crops

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to amend the regulations governing the Grain Reserve Program for 1976 and Subsequent Crops to provide that when the national average market price is at or above 175 percent of the national average loan rate for wheat or 140 percent of the national average loan rate for feed grains, for five consecutive market days, the loan shall be called. The change is necessary to provide uniformity between farmer-owned grain reserve programs in the manner in which call determinations are made.

EFFECTIVE DATE: This regulation shall become effective October 23, 1980.

ADDRESS: Price Support and Loan Division, ASCS, USDA, 3741 South Building, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Harold Jamison, ASCS, (202) 447–7973. 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: This final action has been reviewed under procedures established in Secretary's Memorandum No. 1955 to implement Executive Order 12044, and has been classified as "significant." Jerome F. Sitter, Director, Price Support and Loan Division, ASCS, USDA, has determined that an emergency situation exists which warrants publication without opportunity for a public comment period on this final action. Current procedure provides that reserve loans shall be called immediately after the call level is reached. An extended period for making a call determination is needed to be certain market conditions reflect a

stable or rising price trend and to provide uniformity between farmer-owned grain reserve programs. The national average market price for corn placed in the Farmer-Owned Grain Reserve Program for 1976 and Subsequent Crops is near the call price. If such corn is called in the manner presently provided for in the regulations, it would result in inequities to farmers in this reserve since other farmer-held grain reserve programs provide that reserve loans are not called until the specified levels have been reached for five consecutive market days. Accordingly, this amendment is necessary to provide consistency between the programs and to provide the opportunity for market prices to stablize before the loans are called. Therefore, pursuant to the administrative procedure provisions as provided for in 5 U.S.C. 553 and Executive Order 12044, it is found upon good cause that notice and other public procedure with respect to this emergency final action are impracticable and contrary to the public interest; and good cause is found for making this emergency final action effective less than 30 days after publication of this document in the **Federal Register.** Comments will be solicited for 60 days after publication of this document, and this emergency final action will be scheduled for review so that a final document discussing comments received and any amendments required can be published in the **Federal Register** as soon as possible.

The title and number of the federal assistance programs to which this action applies are: Title: Grain Reserve Program; Number 10.067 as found in the Catalog of Federal Domestic Assistance. 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

Accordingly, the regulations at 7 CFR Part 1421 are amended by revising § 1421.543(c)(1) to read as follows:

§ 1421.543 Release levels, redemption, requirements, and early redemption charges.

* * * * *

(c) Redemption of commodity when the national average market price is at least 175 percent for wheat or 140 percent for feed grain of national average loan rate.

(1) When CCC determines that the nationl average market price is at or above 175 percent of the national average loan rate for wheat or 140 percent of the national average loan rate for feed grains, for five consectuve market days, the loan shall be called.

Such call will be determined in the same manner as prescribed for release levels in § 1421.543(a). If the loan is not redeemed within 90 days after notification, CCC may take title to the commodity.

* * * * *

Dated: October 23, 1980.

Dale E. Hathaway,

Acting Secretary of Agriculture.

[FR Doc. 80–33513 Filed 10–23–80; 3:23 pm]

BILLING CODE 3410–05–M

Animal and Plant Health Inspection Service

9 CFR Part 97

Overtime Work at Laboratories, Border Ports, Ocean Ports, and Airports

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the regulation which established charges for overtime work at laboratories, border ports, ocean ports, and airports. Veterinary Services inspectors of the United States Department of Agriculture are charged with performing inspection duties relating to imports and exports at laboratories, border ports, ocean ports, and airports. Such services may be performed outside the regular tour of duty of the inspector when requested by a person, firm, or corporation and the charge for such overtime is recoverable fromthose requesting the services. The following amendment increases the hourly rates for such services performed on a Sunday or holiday, or at any other time outside the regular tour of duty. These increases are commensurate with salary increases provided Federal employees in accordance with the Federal Pay Comparability Act of 1970 (Pub. L. 91–656), and Executive Order 12248 dated October 16, 1980.

EFFECTIVE DATE: October 28, 1980.

FOR FURTHER INFORMATION CONTACT: Dr. E. R. Mackery, USDA, APHIS, VS, Room 870, Federal Building, Hyattsville, Md. 20782, 301–436–8695.

Pursuant to the authority conferred by the Act of August 28, 1950 (64 Stat. 561; 7 U.S.C. 2260), and the Airports and Airways Development Act Amendments of July 12, 1976 (90 Stat. 882; 49 U.S.C. 1741), the first sentence of § 97.1(a), Part 97, title 9, Code of Federal Regulations, is revised to read:

§ 97.1 Overtime work at laboratories, border ports, ocean ports, and airports.[1]

(a) Any person, firm, or corporation having ownership, custody or control of animals, animal byproducts, or other commodities subject to inspection, laboratory testing, certification, or quarantine under this subchapter and subchapter G of this chapter, and who requires the services of an employee of Veterinary Services on a holiday or Sunday or at any other time outside the regular tour of duty of such employee, shall sufficiently in advance of the period of overtime or holiday or Sunday service request the Veterinary Services inspector in charge to furnish inspection, laboratory testing, certification or quarantine service during such overtime or holiday or Sunday period, except as provided in paragraph (b) of this section, shall pay the Administrator of the Animal and Plant Health Inspection Service at a rate of $25.04 per man hour per employee on a Sunday and at a rate of $18.08 per man hour per employee for holiday or any other period; except that for any services performed on a Sunday or holiday, except as provided in paragraph (b) of this section for inspection or quarantine services requested by an owner or operator of an aircraft at an airport on a Sunday or holiday which are performed within regularly established hours of service, or at any time after 5 p.m. or before 8 a.m. on a weekday, in connection with the arrival in or departure from the United States of a private aircraft or vessel, the total amount payable shall not exceed $25 for all inspectional services performed by the Customs Service, Immigration and Naturalization Service, Public Health Service, and the Department of Agriculture. * * *

(64 Stat. 561 (7 U.S.C. 2260))

Determination of the hourly rate for overtime services and of the commuted traveltime allowances depends entirely upon facts within the knowledge of the Department of Agriculture. The Agency has no alternatives to raising the overtime rate. By law, importers/exporters are required to reimburse the Agency for its costs associated with the services rendered. Unless the rate is raised, it will not cover the pay raise which commences October 5, 1980.

Accordingly, pursuant to the Administrative provisions of 5 U.S.C. 553, it is found upon good cause that notice and public procedure on this

---

[1] * * * * *

amendment are impracticable, unnecessary, and contrary to the public interest and good cause is found for making this amendment effective less than 30 days after publication in the Federal Register.

This final rule has been reviewed under the provisions of Executive Order 12044, "Improving Government Regulations." A determination has been made that this action is a matter related to Agency management and is therefore exempt from the provisions of the order (E.O. 12044, Section 6(b)(3)).

Done at Washington, D.C., this 23rd day of October 1980.

R. P. Jones,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 80-33554 Filed 10-27-80; 8:45 am]

BILLING CODE 3410-34-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

[IRPS 80-10]

Statement of Interpretation and Policy; When Federal Credit Unions Can Charge More Than 15 Percent Per Annum on Government Insured or Guaranteed Loans

AGENCY: National Credit Union Administration.

ACTION: Statement of interpretation and policy.

SUMMARY: This document states that on a government insured or guaranteed loan, a Federal credit union may charge an interest rate in excess of 15 percent per annum on the unpaid balance inclusive of all finance charges if a higher rate is either expressly required or expressly permitted by the laws and regulations governing the insured or guaranteed loan program. This interpretation and policy statement is needed because certain government agencies have recently raised the permissible interest rates on insured or guaranteed loans to rates in excess of 15 percent per annum on the unpaid balance inclusive of all finance charges.

EFFECTIVE DATE: October 28, 1980.

ADDRESS: National Credit Union Administration, 1776 G Street, N.W., Washington, D.C. 20456.

FOR FURTHER INFORMATION CONTACT: John L. Culhane, Jr., Attorney Advisor, Office of General Counsel, or Thomas C. Buckman, Staff Accountant (Analyst), Office of Examination and Insurance. Telephone Numbers: (202) 357-1030 (Mr. Culhane), (202) 357-1065 (Mr. Buckman).

SUPPLEMENTARY INFORMATION: Recently, certain government agencies have raised the permissible interest rates on insured or guaranteed loans to rates in excess of 15 percent per annum on the unpaid balance inclusive of all finance charges. The Department of Housing and Urban Development has raised the maximum finance charge on insured mobile home loans from 15.00 percent to 15.50 percent. HUD has also raised the maximum charge on insured property improvement loans from 15.00 percent to 15.50 percent. 45 FR 63838 (1980). In addition, the Veterans Administration has raised the maximum rate on energy loans to 15½ percent per annum on the unpaid principal balance. 45 FR 63841 (1980). As a result, the question has been raised whether the Federal Credit Union Act and NCUA's regulations permit Federal credit unions to charge interest rates in excess of 15 per centum per annum on government insured or guaranteed loans.

Section 107(5)(A)(vi) of the Federal Credit Union Act provides that the rate of interest on Federal credit union loans may not normally exceed 15 per centum per annum on the unpaid balance inclusive of all finance charges. 12 U.S.C. 1757(5)(A)(vi). However, a special statutory provision applies in the case of government insured or guaranteed loans. Section 107(5)(A)(iii) of the Federal Credit Union Act states that "a loan secured by the insurance or guarantee of the Federal Government, of a State Government, or any agency of either may be made for the maturity and under the terms and conditions specified in the law under which such insurance or guarantee is provided." 12 U.S.C. 1757(5)(A)(iii). Section 701.21-5 of NCUA's regulations interprets this statutory provision to mean that "a Federal credit union which has been qualified as a lender under a Federal or State insured or guaranteed loan program may make loans to members under the terms and conditions and within the maturities specified by the laws and regulations governing the program." 12 CFR 701.21-5(a).

The National Credit Union Administration concludes that the phrase "terms and conditions" was meant to include the interest rate on loans and that "specified" was meant to cover situations where a term and condition is either expressly required or expressly permitted. Consequently, this interpretive ruling and policy statement has been approved to clarify that a Federal credit union can charge an interest rate in excess of 15 percent per annum on the unpaid balance inclusive of all finance charges on government insured or guaranteed loans, if a higher rate is either expressly required or expressly permitted by the laws and regulations governing the insured or guaranteed loan program. In making this decision, NCUA notes that guarantees and insurance are used by government agencies to encourage lending for certain social or economic objectives. NCUA believes that Congress did not intend for Federal credit unions to be precluded from participating in government insured or guaranteed loan programs simply because of rising interest rates.

Text of Statment of Interpretation and Policy (IRPS 80-10)

Section 107(5)(A)(iii) of the Federal Credit Union act states that "a loan secured by the insurance or guarantee of the Federal Government, of a State Government, or any agency of either may be made for the maturity and under the terms and conditions specified in the law under which such insurance or guarantee is provided." Section 701.21-5(a) of NCUA's regulations states that "A Federal credit union which has been qualified as a lender under a Federal or State insured or guaranteed loan program may make loans to members under the terms and conditions and within the maturities specified by the laws and regulations governing the program."

NCUA interprets the phrase "terms and conditions" to include the interest rate on the loan. NCUA also interprets "specified" to mean that the term and condition is either expressly required or is expressly permitted by the laws and regulations governing the program. Consequently, a Federal credit union may charge an interest rate in excess of 15 percent per annum on the unpaid balance inclusive of all finance charges on a government insured or guaranteed loan if the higher rate is either expressly required or expressly permitted by the laws and regulations governing the program.

Rosemary Brady,

Secretary, NCUA Board.

October 23, 1980.

[FR Doc. 80-33547 Filed 10-27-80; 8:45 am]

BILLING CODE 7535-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 460

Labeling and Advertising of Home Insulation; Trade Regulation Rule

Correction

In FR Doc. 80–32515 appearing at page 68928 in the issue of Friday, October 17, 1980, make the following corrections:

(1) On page 68928, second column, second line from bottom "exception" should be corrected to read "exemption".

(2) On page 68929, second column, second and third lines, "V–Z through V–7" should be corrected to read "X–2 through X–7".

BILLING CODE 1505–01–M

16 CFR Part 460

Trade Regulation Rule: Labeling and Advertising of Home Insulation

Correction

In FR Doc. 80–32517 appearing at page 68920 in the issue of Friday, October 17, 1980, make the following corrections:

(1) On page 68922, first column, first footnote at bottom of column, "[7] In the context" should be corrected to read "[7] In this context".

(2) On page 68924, third column, first paragraph under *B. Availability of Fact Sheets,* second line, "installation" should be corrected to read "insulation".

(3) On page 68924, third column, second paragraph under *B. Availability of Fact Sheets,* line 8, "customs" should be corrected to read "customers".

BILLING CODE 1505–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 433

[Docket No. 79N–0149]

Exemption of Dermatologic and Vaginal Antibiotic Drug Products From Certification

AGENCY: Food and Drug Administration

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) amends the antibiotic drug regulations to provide for exemption from batch certification of all human antibiotic drug products intended solely for dermatologic and vaginal use that have been approved for marketing in accordance with the requirements of section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357). Because of the high level of manufacturer compliance with existing standards, FDA has determined that batch-by-batch testing by FDA is not necessary to ensure the safety and efficacy of these antibiotic drug products. Under the exemption, manufacturers are not required to obtain, prior to marketing, certification of each batch of antibiotic drug product covered by the exemption.

EFFECTIVE DATE: November 28, 1980.

FOR FURTHER INFORMATION CONTACT: Philip L. Paquin, Bureau of Drugs (HFD–30), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5220.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 6, 1979 (44 FR 39469), FDA proposed to amend the antibiotic drug regulations to provide an exemption from batch certification of all human antibiotic drug products intended solely for dermatologic and vaginal use that are the subject of approved regulations, except those dermatologic drug products for which microbiological limits are a requirement for certification. Interested persons were given to September 4, 1979 to submit comments on the proposal.

The agency received comments from six drug manufacturers and one trade association. All the comments supported the proposal. Four of the manufacturers, however, recommended that the scope of the proposal be expanded. Their comments and the agency's conclusions follow:

1. One manufacturer objected to excluding from this exemption dermatologic products for which there are microbiological limits. The comment contended that as long as there is a record of sustained production and assay capability to assure that products meet monograph specifications, duplicative testing and batch certification is not necessary.

In the preamble to the proposal the agency justified excluding these products from the exemption solely because of the risks involved in their use. These products are intended for use in surgery and in other medical conditions where a significant amount of drug is likely to be introduced into an open wound. Because this kind of application presents a significant risk of infection, the agency tentatively concluded that these drug products should continue to be certified to ensure conformity with specified microbiological limits.

Upon reconsideration, in light of the comment, the agency has decided to exempt these products also. The agency notes that the essential element in producing drug products within specified microbiological limits is conformity with current good manufacturing practice (CGMP) regulations (21 CFR Part 211). Special requirements for the production of sterile products or products having microbiological limits are contained in various sections of the CGMP regulations, i.e., 21 CFR 211.42(c)(10), 211.84(c)(3) and (d)(6), 211.113(a) and (b), 211.165(b), and 211.167(a). Compliance with these requirements provides assurance that the methods, facilities, and conditions of production are adequate in design and application to preclude microbiological contamination of drug products. Standardized procedures of demonstrated reliability for production and sterilization processes reasonably ensure the absence of microbiological contamination. Absolute certainty is impractical because it can be obtained only through full testing of every unit.

Before approving an antibiotic Form 5 or 6 or a new drug application the agency must be assured that the manufacturer is conforming with CGMP regulations. Also, manufacturers must conform with those requirements on an on-going basis in order to continue to market drug products subject to such approvals. The agency assures that these products are being produced in conformity with CGMP regulations through factory inspections conducted under section 704 of the act (21 U.S.C. 374). Failure to comply with CGMP regulations is a basis for legal action against the product and the manufacturers and is a basis for the withdrawal of approval of a new drug application.

In the certification program, sterility testing of samples of an antibiotic drug product with microbiological limits is intended basically to confirm a manufacturer's compliance with the applicable CGMP requirements. The sterility testing done with certification does not provide any greater assurance of the sterility of each unit of a drug product than is being provided by assuring that a drug product is manufactured in compliance with the CGMP requirements. Therefore, the agency has concluded that although adherence to microbiological limits is essential for these drug products, sterility testing, because of its limited value in assuring compliance with microbiological limits, is not by itself sufficient justification for continued certification. Accordingly, the final regulation is amended by deleting proposed paragraph (c), thereby

removing the exclusion from exemption for those dermatologic and vaginal drug products that have microbiological limits.

2. Two manufacturers recommended that the proposed exemption from certification be extended to include antibiotic drug products for ophthalmic or otic use.

In the preamble to the proposal, FDA stated that it is undertaking an extensive review of antibiotic testing procedures under the certification program with a view toward eliminating or modifying batch certification requirements when they are no longer necessary to ensure safety and efficacy of antibiotic drugs. As a first step in implementing this program, the agency is exempting from batch certification all antibiotic drug products intended solely for dermatologic and vaginal use that are the subject of an approved antibiotic Form 5 or 6. Dermatologic and vaginal antibiotic products have been considered first because their manner of use, (i.e., local or topical application with a relatively low level of absorption poses less risk to the public than other dosage forms) and the fact that limited conditions for their exemption have existed since 1966. The agency has not yet determined that otic and ophthalmic antibiotic products can be safely exempted from certification. The agency believes it can consider these products as candidates for exemption from certification only when more experience has been gained with the policy implemented by this final rule, i.e., exempting broad classes of antibiotics from batch certification requirements.

3. Two manufacturers asked why certain of their dermatologic products were not included in the list of exempted products.

Although the products mentioned in these comments are not subject to approved regulations (monographs), nonetheless they should have been included in the list of exempted products. These products are subject to approved antibiotic Form 5's or Form 6's. Regulations for these products have not yet been published, and, accordingly, marketability under section 507 of the act is contingent on release rather than on batch certification.

As stated in the preamble to the proposal, on the date of approval of an antibiotic Form 5 or 6 for a product for dermatologic or vaginal use, the approved product is exempt from certification and subject to the new drug requirements of section 505 of the act (21 U.S.C. 355). The proposal specifically provided, therefore, and FDA intended, that antibiotic drugs for dermatologic and vaginal use that are subject to approved antibiotic Form 5's or Form 6's, whether or not subject to applicable regulations, would be exempt from batch certification to the same extent as those antibiotics subject to published regulations. Because of the likelihood that this and other inconsistencies may arise from FDA's attempt, as proposed, to list all exempt antibiotics specifically, the agency has decided not to list each antibiotic drug product that meets the conditions for exemption set forth in § 433.1(a). Further, the specific listing of exempted products is unnecessary. The regulation provides for the exemption of all dermatologic and vaginal antibiotic drug products for human use (which include those subject to the Drug Efficacy Study Implementation (DESI) review or the Over-the-Counter (OTC) Drug Review) meeting the conditions prescribed in § 433.1(a). These criteria are sufficiently clear to make specific listing of these antibiotic drugs unnecessary. Therefore, the final regulation is amended by deleting proposed paragraph (b), thereby removing the listing of exempted products.

As stated in the preamble to the proposal, antibiotic drug products exempt from certification that are subject to the DESI review or the OTC Drug Review must continue to conform to the requirements of those reviews. Any action regarding these drugs that is undertaken as a result of those reviews and is inconsistent with the exemption from certification provided by this regulation will be viewed as superseding the exemption.

The agency finds that the wording of proposed paragraph (a)(1) could be construed to imply that a specific manufacturer may not receive an exemption under this regulation unless all antibiotic drug products produced by the manufacturer are approved for marketing under an appropriate antibiotic Form 5 or 6. For the sake of clarity, a minor editorial change has been made in the final regulation to state that the condition for exemption specified under this paragraph applies to the antibiotic drug product only.

The final rule specifies that FDA has the authority to reimpose certification for any exempt antibiotic drug when it is necessary to ensure safety and efficacy of use. Accordingly, § 433.1 has been amended in the final regulation by specifying that all exemptions shall be subject to the conditions or the effectiveness of exemption from certification under § 433.2 (21 CFR 433.2).

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 505, 507, 52 Stat. 1050–1053 as amended, 59 Stat. 463 as amended (21 U.S.C. 355, 357)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Part 433 is amended by revising § 433.1, to read as follows:

§ 433.1 Exemption of dermatologic and vaginal antibiotic drug products from certification.

(a) Dermatologic and vaginal antibiotic drug products for human use are exempt from the requirements of Part 431 of this chapter for batch certification under the following conditions:

(1) The antibiotic drug product is approved for marketing under an appropriate antibiotic Form 5 or 6.

(2) The drug product is packaged and labeled for dispensing and is labeled solely for dermatologic or vaginal use.

(3) The batch of bulk antibiotic drug used in preparing the drug product has been certified or released by the Food and Drug Administration in accordance with this chapter and has been found to meet the standards of identity, strength, quality, and purity specified in the applicable regulations (monograph) in this chapter.

(4) The drug product meets the standards of identity, strength, quality, and purity specified in the applicable regulations (monograph) in this chapter except that if a monograph was not published, the standards approved in the applicable antibiotic Form 5 or 6 shall apply.

(b) In accordance with provisions of section 507(e) of the act, an antibiotic-containing drug product for human use exempt from the requirements for batch certification under this section is subject to section 505 of the act and applicable regulations for new drug products, generally Parts 310 through 314 of this chapter. For each drug product subject to an exemption under this section:

(1) An approved antibiotic Form 5 is regarded to be an approved new drug application under § 314.1(a) of this chapter.

(2) An approved antibiotic Form 6 is regarded to be an approved abbreviated new drug application under § 314.1(f) of this chapter.

(c) Nothing in this section shall prevent a manufacturer from applying for batch certification of a dermatologic or vaginal antibiotic drug product as provided in section 507(c) of the act.

(d) All exemptions from certification under this section are subject to the conditions of effectiveness under § 433.2 of this chapter.

Effective date. This regulation shall be effective November 28, 1980.

(Secs. 505, 507, 52 Stat. 1050–1053 as amended, 59 Stat. 463 as amended (21 U.S.C. 355, 357))

Dated: October 15, 1980.

Mark Novitch,

Acting Commissioner of Food and Drugs.

[FR Doc. 80-33358 Filed 10-27-80; 8:45 am]

BILLING CODE 4110-03-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

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

CFR Correction

In Title 40, Code of Federal Regulations, (Parts 100–399) revised as of July 1, 1980, in Part 180, § 180.298, appearing on page 588, the following entry should be inserted alphabetically in the table as follows:

Safflower seeds	0.5

BILLING CODE 1505-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 15, and 18

[Docket No. 20790; FCC 80-564]

Establishing a Single System of Identification for Devices Covered Under the Equipment Authorization Program; Delay of Effective Date in Report and Order

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: The Commission has postponed the mandatory compliance date set forth in the Report and Order, Docket 20790, (FCC 79–134), released March 15, 1979 and printed in the **Federal Register** (44 FR 17175), establishing a single system of identification for radiofrequency devices covered under the Commission's equipment authorization program. The mandatory compliance date has been extended from October 27, 1980, to May 1, 1981.

DATES: The effective date of this order is October 9, 1980. Mandatory compliance date of October 27, 1980 is replaced by the date May 1, 1981.

FOR FURTHER INFORMATION CONTACT: Mrs. Ruby Moore, Office of Science and Technology, 301–725–1585.

In the matter of delay of effective date in Report and Order, Docket No. 20790, establishing a single system of identification for devices covered under the equipment authorization program.

Adopted: October 1, 1980.

Released: October 9, 1980.

By the Commission:

1. On February 28, 1979, the Commission adopted a Report and Order in Docket 20790 (FCC 79–134), which was published in the **Federal Register** (44 FR 17175) on March 21, 1979. The Report and Order adopted new rules (to become effective April 25, 1979, and mandatory October 27, 1980) providing for a single system of identification for all devices covered under the equipment authorization program. The rules require an FCC Identifier (consisting of grantee or grantee/trade name and manufacturer codes assigned by FCC and a number assigned by the prospective grantee) to be displayed on the nameplate of each device covered under the equipment authorization program.

2. The rules adopted in the above cited Report and Order have provided for voluntary compliance with the new identification system between April 25, 1979 and October 27, 1980. Since the adoption of the rules, our experience gained in application of the rules and assignment of codes to manufacturers and grantees has revealed a need for clarification and some relaxation of the rules before use of the new system becomes mandatory. We expect to accomplish this clarification and relaxation without the need for issuance of proposed rule making, since no additional requirements or burdens will be imposed upon equipment authorization grantees and manufacturers.

3. In addition to the rule clarifications and relaxations mentioned above, our experience has indicated the necessity for improvement in our own computer programming and record keeping methods, in order to enable prompt assignment and accurate record keeping of assigned grantee and manufacturer codes. The number of requests for assignment of grantee and manufacturer codes has considerably exceeded our expectations.

4. We believe that an extension of the October 27, 1980 mandatory compliance date is necessary to permit the drafting and adoption of the rule clarifications and relaxations and the completion of the additional computer programming and record keeping capabilities needed. It will also ease the burden on those grantees and manufacturers who are currently having difficulty in interpreting the new rules and bringing their equipment into compliance.

5. It is therefore ordered that the mandatory effective date for compliance with the single system of identification be postponed from October 27, 1980 until May 1, 1981.

6. Authority for this action may be found in Sections 4(i), 302 and 303(r) of the Communications Act of 1934, as amended.

7. For further information on this proceeding, contact Mrs. Ruby Moore, Authorization & Standards Division, Office of Science and Technology, (301) 725–1585.

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

PART 15—RADIO FREQUENCY DEVICES

PART 18—INDUSTRIAL, SCIENTIFIC, AND MEDICAL EQUIPMENT

The date October 27, 1980, appearing in each of the following sections of the Commission's Rules is deleted and replaced by the date May 1, 1981: §§ 2.925(a), 2.925(b)(4), 2.925(c), 2.925(g), 2.969(a), 2.969(b), 2.1003(a), 2.1003(b), 2.1045(a), 2.1045(b), 15.132(a), 15.132(b), 15.178(b), 15.178(c), 15.186(a), 15.186(b), 15.314(a), 15.314(b), 15.314(b)(1), 15.375(a), 15.375(b), 15.415(a), 15.415(b), 18.74(a)(1), 18.74(a)(2), 18.141(c)(1), 18.141(c)(2).

[FR Doc. 80-33565 Filed 10-27-80; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 32 and 33

Opening of Certain National Wildlife Refuges to Hunting and Sport Fishing

AGENCY: Fish and wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule adds Morgan Brake National Wildlife Refuge, Mississippi; to the list of refuge areas open for migratory game bird hunting. Delta National Wildlife Refuge, Louisiana; and Morgan Brake National Wildlife Refuge, Mississippi are added to the list of refuge areas open to upland game hunting. Eufaula National Wildlife

Refuge, Alabama; Delta National Wildlife Refuge, Louisiana; and Morgan Brake National Wildlife Refuge, Mississippi; are added to the list of refuge areas open for big game hunting. Banks Lake National Wildlife Refuge, Georgia; is added to the list of refuge areas open to sport fishing. The Director has determined that this action would be in accordance with the provisions of all laws applicable to the areas, would be compatible with principles of sound wildlife management, would otherwise be in the public interest, and that such use is compatible with the management objectives established for each refuge. Hunting and sport fishing subject to annual special regulations, will provide additional public recreational opportunities.

EFFECTIVE DATE: October 28, 1980.

FOR FURTHER INFORMATION CONTACT: Ronald L. Fowler, Division of Refuge Management, U.S. Fish and Wildlife Service, Washington, D.C. 20240, Telephone 202–343–4305.

SUPPLEMENTARY INFORMATION: Ronald L. Fowler is also the primary author of this final rule. As a general rule, most National Wildlife Refuges are closed to hunting until officially opened by regulation. On September 10, 1980, there was published (45 FR 59603) a notice of proposed rulemaking adding the above cited refuges to the designated lists of open areas. The public was asked to provide comments by October 10, 1980, and was also advised that purusant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), an environmental assessment had been prepared on each of these proposals. These assessments are available for public inspection and copying at Room 2341, Department of the Interior, 18th and C Streets, NW., Washington, D.C. 20240, or by mail addressing the Director at the address given above. On the basis of these assessments, the Director has determined that this rulemaking does not constitute a major Federal action significantly affecting the human environment.

Letters in support of this proposed rulemaking were received from the State game and fish agencies in Alabama and Mississippi. No other comments were received. The Director has determined that the proposed uses are compatbile with the major purposes for which the areas were established and that funds are available for the development, operation, and maintenance of the permitted forms of recreation. This action will be in accordance with the provisions of all laws applicable to the area, will be compatible with the principles of sound wildlife management, and will otherwise be in the public interest.

Because of the time limitation involved to coordinate the State and Federal hunting regulations and the rapid approach of the hunting season, the U.S. Fish and Wildlife Service has concluded that "good cause" exists within the meaning of 5 U.S.C. 553(d)(3), of the Administrative Procedure Act to expedite the imnplementation of this rulemaking. Therefore, the effective date of this final rule is October 28, 1980.

Note.—The Department of the Interior 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.

Accordingly, after consideration of all interests and concerns, 50 CFR Parts 32 and 33 are amended by additions in §§ 32.11, 32.21, 32.31 and 33.4 as follows:

§ 32.11 List of open areas, migratory game birds.

* * * * *

Mississippi

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Morgan Brake National Wildlife Refuge

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§ 32.21 List of open areas; upland game.

Louisiana

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Delta National Wildlife Refuge

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Mississippi

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Morgan Brake National Wildlife Refuge

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§ 32.31 List of open areas; big game.

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Alabama

Eufaula National Wildlife Refuge

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Louisiana

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Delta National Wildlife Refuge

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Mississippi

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Morgan Brake National Wildlife Refuge

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§ 33.4 List of open areas; sport fishing.

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Georgia

Banks Lake National Wildlife Refuge

(16 U.S.C. 460k, 16 U.S.C. 668dd)

Dated: October 24, 1980.

Robert S. Cook,

Acting Director, Fish and Wildlife Service.

[FR Doc. 80-33708 Filed 10-27-80; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 657

Atlantic Butterfish Fishery

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

ACTION: Final regulations.

SUMMARY: These regulations implement the Fishery Management Plan for the Butterfish Fishery of the North Atlantic Ocean (FMP) as amended by Amendment No. 1. (45 FR 21307).

This amendment to the FMP extends the plan, with no changes, from April 1, 1980, through March 31, 1981.

The regulations implementing the FMP and this amendment cover both the domestic and foreign butterfish fisheries in the United States fishery conservation zone (FCZ) of the Atlantic Ocean. All regulations in 50 CFR Part 611 governing the foreign fishery for Atlantic butterfish are continued in effect. These final regulations, Part 657, pertain only to the domestic fishery for Atlantic butterfish within the FCZ.

The regulations for the domestic fishery provide: (1) annual catch quotas for domestic fishermen; (2) a fishing year for Atlantic butterfish from April 1 through March 31; (3) domestic vessel registration, recordkeeping and reporting requirements; and (4) criteria for allocating portions of the domestic annual harvest (DAH) to the total allowable level of foreign fishing (TALFF).

EFFECTIVE DATE: The implementing regulations are effective on November 26, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Allen E. Peterson, Jr., Regional Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Gloucester, Massachusetts 01930; Telephone (617) 281–3500.

SUPPLEMENTARY INFORMATION: The Assistant Administration for Fisheries, NOAA (Assistant Administrator), under authority of the Fishery Conservation

and Management Act of 1976, as amended (Act), approved the FMP with one exception on November 9, 1979. The FMP was published in the **Federal Register** on February 6, 1980 (45 FR 8030) and supersedes that portion of the preliminary fishery management plan for the Foreign Trawl Fisheries of the Northwest Atlantic (PMP) which applied to the butterfish fishery by foreign vessels.

On March 5, 1980, the Assistant Administrator approved an amendment to the FMP which extends the FMP through March 31, 1981. There were no other changes.

The FMP sets forth two major objectives for the fishery to be achieved through the regulations implementing the FMP. Those objectives are: (1) to prevent exploitation of the butterfish resource beyond the maximum sustainable yield (MSY) level; and (2) to promote the growth of the domestic butterfish fishery and export industry. The regulations are intended to meet those objectives as follows:

1. *To prevent exploitation of butterfish beyond the maximum sustainable yield.* The Council has set the 1980–81 MSY at 16,000 metric tons (mt) and the optimum yield (OY) at 11,000 mt. Domestic and foreign catch quotas are established. Further, provisions are made for closing the domestic fishery when the annual quota is approached. The foreign fishery will also be closed once TALFF is reached.

2. *To promote the growth of the domestic butterfish fishery and export industry.* The OY was set at 5,000 mt below MSY with the intention of creating an environment favorable to development of the U.S. export market. The 11,000 mt OY is initially divided between domestic fishermen and foreign fishermen on the basis of an estimated domestic annual harvest of 7,000 mt. The remaining 4,000 mt is apportioned to the foreign fisheries (TALFF). It is believed that 4,000 mt is sufficient to provide a reasonable bycatch of butterfish in the foreign *Loligo* squid fishery, but will not permit a directed foreign fishery on butterfish.

Public Comments

These regulations were proposed on April 1, 1980 (45 FR 21307). Public comments were invited until May 31, 1980. During the comment period, two commenters representing Japanese fishing interests formally requested public hearings. They sought to discuss issues and submit information regarding the specification of OY as well as new data affecting the amended FMP and the draft regulatory analysis. In the interest of decisionmaking on the basis of the best available information, the comment period was re-opened on July 21, 1980, for an additional 10 days (45 FR 48930). This provided an opportunity for those and any other interested parties to submit new information.

Based on the information submitted during the second comment period and arguments contained in those comments, it was determined that a public hearing was not warranted.

A summary of substantive comments received during both comment periods and NOAA's response appear below.

§ *657.2 Definitions.*

One comment suggested a new definition for "Vessel of the United States," to include vessels over five net tons which had no U.S. documentation but had a number issued under the National Coordinated Boating Safety Act. NOAA's definition, which is also used in the foreign fishing regulations and in regulations implementing many FMPs, prevents foreign vessels over five net tons from qualifying as a U.S. vessel by obtaining a Boating Safety number from a State. The current definition provides a better expression of the Act's distinction between U.S. and foreign fishing vessels; therefore, no change has been made. NOAA is considering other means to deal with the problem of domestic vessels over five net tons which, for technical reasons, may be ineligible for U.S. documentation.

§ *657.21 Allowable Levels of Harvest.*

Other comments focused primarily on the FMP and the methods used to determine OY, DAH, and TALFF. Commenters representing Japanese fishing groups asserted that the OY should be equal to the maximum sustainable yield (MSY), and that the specification of DAH at 7,000 mt was too high. The commenters questioned whether the specifications in the FMP met the requirements of the Act. Those comments suggested that the objective of the FMP to ". . . promote the growth of the U.S. butterfish export market . . ." is not within the statutory authority of the Act. NOAA believes, however, that the FMP establishes OY, DAH, and TALFF in an acceptable manner and that the objective of promoting the growth of the export market is appropriate. Section 3(18)(B) of the Act states that OY shall be "based on MSY as modified by any relevant economic, social, or ecological factors." The Council based its establishment of an OY of 11,000 mt (5,000 mt below the MSY of 16,000 mt) on economic and social considerations. The Council determined that the impact of foreign fishing on the domestic industry's export market is a relevant factor to consider in specifying OY. The Council believes that reduced butterfish landings by foreign fleets will lead to the subsequent development of a U.S. export market for that species. NOAA believes this factor is an appropriate one to use, based on the legislative history of the Act and on legal analysis of Sec. 3(18).

The Japan Fisheries Association and the Japan Deep Sea Trawlers Association dispute the Council's belief and assert that, regardless of the size of the Japanese allocations in the U.S. fishery conservation zone, there will be a market in Japan for butterfish which meet Japanese price and quality standards. They indicate that the butterfish market is expanding in Japan. More specifically, they said that over the last six years the Japanese market for butterfish has tripled in size, and total consumption is believed to be in the range of 40,000 mt annually, with 15,000 mt of the total being imported. Moreover, the Japanese argue that there is no basis for concluding that Japanese imports from the United States are related to a low Japanese butterfish allocation.

During the first half of the April 1980–March 1981 fishing year, domestic landings of butterfish are reported to have totaled 2,090 mt. The fact that most (i.e. 1,083 mt) of this catch occurred between September 15–30, 1980, indicates significant increased activity. This is believed to be due to increased demand (domestic and foreign) as well as increased availability. Since the U.S. fishery for butterfish is primarily a fall/winter fishery, it is too early to judge the validity of the Japanese claims regarding the harvesting capacity and potential for export development of the U.S. fleet.

One foreign comment indicated that a low butterfish TALFF impairs the foreign fleet's ability to catch other species for which they have allocations, and fails to treat butterfish as a stock which is interrelated with *Loligo*, contrary to the requirements of national standard 3 of the Act ("interrelated stocks of fish shall be managed as a unit or in close coordination"). The Council recognized that the foreign fisheries for butterfish and *Loligo* are interrelated because of species intermixing and commonality of fishing gear and methods. Therefore, the Council established a butterfish TALFF of 4,000 mt to allow foreign fishermen to harvest their allocations of Atlantic squid (*Loligo*) with which the butterfish are associated.

Reserved Provisions

§ 657.5 Recordkeeping and reporting requirements.

This section of the regulations requires recordkeeping by fishing vessel operators and fish dealers/processors. The establishment of mandatory dealer and processor reporting is authorized under sections 303(a)(5) and 303(b)(7) of the Act.

An attempt is being made by the National Marine Fisheries Service (NMFS) to standardize the recordkeeping provisions for all regulated Northwest Atlantic Ocean fisheries. Eventually a single comprehensive recordkeeping form will be used for U.S. participants in these regulated fisheries.

The proposed paragraph on record inspection has been reserved as § 657.5(b)(3) and will be reproposed after NOAA has completed development of its processor-reporting system and has determined the data needs with greater specificity. Another reserved paragraph, § 657.5(b)(2) on processing capacity, will be proposed at that time. This paragraph would specify information necessary to assess more accurately domestic processing capacity.

FMP Approval

The Assistant Administrator has reviewed the comments received on the Plan and on Amendment No. 1 to the Atlantic butterfish FMP and finds that the plan as amended is consistent with the national standards, other provisions of the Act, and other applicable law.

Environmental Impact

Development and implementation of the FMP has been deemed a major Federal action significantly affecting the quality of the human environment. Under provisions of the National Environmental Policy Act of 1969 (NEPA), a final environmental impact statement has been prepared and was filed with the Environmental Protection Agency (EPA) on December 15, 1978. Amendment No. 1 was determined to be nonsignificant under NEPA.

Executive Order 12044

On November 9, 1979, the Administrator determined that the FMP was significant with respect to Executive Order 12044. A draft regulatory Analysis (RA) was prepared and made available for comment at the time the proposed rulemaking was published. A final RA has been prepared and is available to the public by contacting the Regional Director, (see "address" above). The FMP amendment was determined to be nonsignificant by the Administrator on March 12, 1980.

Signed at Washington, D.C., this 23d day of October, 1980.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

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

1. Those sections of 50 CFR 611 which govern foreign fishing for butterfish are retained.

2. A new Part 657 is added to 50 CFR to read as follows:

PART 657—ATLANTIC BUTTERFISH FISHERY

Subpart A—General Provisions

Sec.

Subpart B—Management Measures

Authority: 16 U.S.C. 1801 et seq.

Subpart A—General Provisions

§ 657.1 Purpose and scope.

(a) The regulations in this Part: (1) implement the Fishery Management Plan for the Atlantic Butterfish Fishery of the Northwest Atlantic Ocean, which was prepared and adopted by the Mid-Atlantic Fishery Management Council and approved by the Assistant Administrator; and (2) govern fishing for Atlantic butterfish by fishing vessels of the United States within that portion of the Atlantic Ocean over which the United States exercises exclusive fishery management authority.

(b) The regulations governing fishing for Atlantic butterfish by foreign vessels in the fishery conservation zone are contained in 50 CFR Part 611. The Appendix to 50 CFR 611.20 contains the total allowable level of foreign fishing for butterfish.

§ 657.2 Definitions.

In addition to the definitions in the Act, the terms used in this part shall have the following meanings:

Act means the Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. 1801 *et seq.*

Assistant Administrator means the Assistant Administrator for Fisheries of the National Oceanic and Atmospheric Administration, Department of Commerce, or an individual to whom appropriate authority has been delegated.

Atlantic butterfish or butterfish means the species *Peprilus triacanthus.*

Authorized Officer means:

(a) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;

(b) Any certified enforcement officer or special agent of the National Marine Fisheries Services;

(c) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary of Commerce and the Commandant of the U.S. Coast Guard to enforce the provisions of the Act; or

(d) Any U.S. Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

Catch, take, or harvest includes, but is not limited to, any human activity which results in mortality to any butterfish or in bringing any butterfish on board a vessel.

Fishery Conservation Zone (FCZ) means that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal States to a line on which each point is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

Fishery Management Plan (FMP) means the Fishery Management Plan for the Atlantic Butterfish Fishery of the Northwest Atlantic Ocean, and any amendments thereto.

Fishing includes any activity, other than scientific research activity conducted by a scientific research vessel, which involves:

(a) The catching, taking, or harvesting of butterfish;

(b) The attempted catching, taking, or harvesting of butterfish;

(c) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of butterfish; or

(d) Any operations at sea in support of, or in preparation for, any activity described in paragraph (a), (b) or (c) of this definition.

Fishing trip means a period of time during which fishing is conducted, beginning when the vessel leaves port and ending when the vessel returns to port.

Fishing vessel means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for: (a) fishing; or (b) aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

Fishing week means the weekly period beginning 0001 hours Sunday and ending 2400 hours Saturday.

Operator, with respect to any fishing vessel, means the master or other individual on board and in charge of that vessel.

Owner, with respect to any fishing vessel, means:

(a) Any person who owns that vessel in whole or in part;

(b) Any charterer of the vessel, whether bareboat, time or voyage;

(c) Any person who acts in the capacity of a charterer, including but not limited to parties to a management agreement, operating agreement, or any similar agreement that bestows control over the destination, function, or operation of the vessel; or

(d) Any agent designated as such by a person described in paragraph (a), (b) or (c) of this definition.

Person means any individual (whether or not a citizen or national of the United States), corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

Person who receives Atlantic butterfish for a commercial purpose means any person (excluding governments and governmental entities) engaged in commerce who is the first purchaser of butterfish. The term includes dealers, brokers, processors, cooperatives, or fish exchanges. It does not include a person who only transports butterfish between a fishing vessel and a first purchaser.

Regional Director means the Regional Director, Northeast Region, National Marine Fisheries Service, Federal Building, 14 Elm Street, Gloucester, Massachusetts 01930; or a designee.

Regulated species means any species for which fishing by a vessel of the United States is regulated pursuant to the Act.

United States harvested butterfish means butterfish caught, taken, or harvested by vessels of the United States under this Part, whether or not such butterfish is landed in the United States.

Vessel of the United States means:

(a) Any vessel documented or numbered by the United States Coast Guard under United States law; or

(b) Any vessel under five net tons registered under the laws of any State.

§ 657.3 Relation to other laws.

(a) Persons affected by these regulations should be aware that other Federal and State statutes and regulations may apply to their activities.

(b) All fishing activity, regardless of species sought, is prohibited pursuant to 15 CFR Part 924, on the U.S.S. *Monitor Marine Sanctuary*, which is located approximately 15 miles southwest of Cape Hatteras off the coast of North Carolina (35°00'23"N., 75°24'32"W.).

§ 657.4 Vessel permits and fees.

(a) *General.* Every fishing vessel which fishes for Atlantic butterfish under this Part must have a fishing permit issued under this section. Vessels are exempt from this requirement if they catch no more than 100 pounds of butterfish per trip.

(b) *Eligibility.* [Reserved]

(c) *Application.* (1) An application for a fishing permit under this part must be submitted and signed by the owner or operator of the vessel on an appropriate form obtained from the Regional Director. The application must be submitted to the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective.

(2) Applicants shall provide all the following information:

(i) The name, mailing address including ZIP code, and telephone number of the owner of the vessel;

(ii) The name of the vessel;

(iii) The vessel's United States Coast Guard documentation number, or the vessel's State registration number for vessels not required to be documented under provisions of Title 46 of the United States Code;

(iv) The home port or principal port of landing, gross tonnage, radio call sign, and length of the vessel;

(v) The engine horsepower of the vessel and year the vessel was built;

(vi) The type of construction, type of propulsion, and type of echo sounder of the vessel;

(vii) The permit number of any current or previous Federal fishery permit issued to the vessel;

(viii) The approximate fish hold capacity of the vessel;

(ix) The type and quantity of fishing gear used by the vessel;

(x) The average size of the crew, which may be stated in terms of a normal range; and

(xi) Any other information concerning vessel and gear characteristics requested by the Regional Director.

(3) Any change in the information specified in paragraph (c)(2) of this section shall be submitted in writing to the Regional Director by the owner within 15 days of any such change.

(d) *Fees.* No fee is required for any permit issued under this Part.

(e) *Issuance.* The Regional Director shall issue a permit to the applicant not later than 30 days from the receipt of a completed application.

(f) *Expiration.* A permit shall expire upon any change in vessel ownership, registration, name, length, gross tonnage, fish hold capacity, home port or the regulated fisheries in which the vessel is engaged.

(g) *Duration.* A permit shall continue in effect until it expires or is revoked, suspended, or modified pursuant to 50 CFR Part 621.

(h) *Alteration.* No person shall alter, erase, or mutilate any permit. Any permit which has been intentionally altered, erased, or mutilated is invalid.

(i) *Replacement.* Replacement permits may be issued by the Regional Director when requested in writing by the owner or operator stating the need for replacement, the name of the vessel, and the fishing permit number assigned. An application for a replacemnt permit shall not be considered a new application.

(j) *Transfer.* A permit issued under this Part is not transferable or assignable. A permit shall be valid only for the fishing vessel owner for which it is issued.

(k) *Display.* A permit issued under this Part must be carried on board the fishing vessel at all times. The operator of a fishing vessel shall present the permit for inspection upon request of any Authorized Officer.

(l) *Sanctions.* Subpart D of 50 CFR Part 621 (Civil Procedures) governs the imposition of sanctions against a permit issued under this Part. As specified in that Subpart D, a permit may be revoked, modified, or suspended if the permitted fishing vessel is used in the commission of an offense prohibited by the Act or these regulations, or if a civil penalty or criminal fine imposed under the Act is not paid.

§ 657.5 Recordkeeping and reporting requirements.

(a) *Fishing vessel records.* (1) The operator of any fishing vessel issued a permit to fish for butterfish under this Part shall:

(i) Maintain on board the vessel an accurate and complete fishing vessel record on forms supplied by the Regional Director;

(ii) Make the fishing vessel record available for inspection or reproduction by an Authorized Officer, or an employee of the National Marine Fisheries Service designated by the Regional Director to make such inspections, at any time during or after a fishing trip;

(iii) Keep each fishing vessel record for one year after the date of the last entry in the fishing vessel record; and

(iv) Submit fishing vessel records, as specified in § 657.5(a)(2).

(2) The owner or operator of any fishing vessel conducting any fishing operation subject to this Part shall:

(i) Submit a complete fishing vessel record to a location designated by the Regional Director 48 hours after the end of any fishing week or fishing trip (whichever time period is longer) during which any regulated species were taken; or

(ii) Submit a statement to a location designated by the Regional Director 48 hours after the end of any calendar week, that fishing for any regulated species did not occur during that week.

(3) Fishing vessel records shall contain information on a daily basis for the entirety of any trip during which butterfish or any other regulated species are caught.

(4) A request for exemption from the provisions of § 657.5(a)(2)(ii) of this section shall be submitted, in writing, to the Regional Director. Such request shall state the reason for the request and the period for which the exemption is to apply. The Regional Director may issue an exemption for a period of time greater than two months and less than ten months. If an exemption is issued, the Regional Director must be notified in writing of the operator's intent to resume fishing before fishing may be resumed.

(5) The Assistant Administrator may revoke, modify, or suspend the permit of a fishing vessel whose owner or operator falsifies or fails to submit the records and reports prescribed by this section, in accordance with the provisions of 50 CFR Part 621.

(b) *Fish dealer or processor reports.* (1) Any person who receives Atlantic butterfish for a commercial purpose from a fishing vessel subject to this Part shall file a weekly report (Sunday through Saturday) to the Regional Director, on forms supplied by him, within 48 hours of the end of any week in which butterfish is received. This report shall include information on all first transfers, purchases, or receipts of butterfish and all other fish made during that week.

(2) Processing capacity. [Reserved]

(3) Inspection of records. [Reserved]

§ 657.6 Vessel identification.

(a) *Official number.* (1) Each fishing vessel subject to this Part and over 25 feet in length shall display its Official Number on the port and starboard sides of the deckhouse or hull and on an appropriate weather deck so as to be clearly visible from enforcement vessels and aircraft. The Official Number is the documentation number issued by the U.S. Coast Guard for documented vessels or the registration number issued by a State or the U.S. Coast Guard for undocumented vessels.

(2) The Official Number shall be at least 18 inches in height for fishing vessels over 65 feet in length and at least 10 inches in height for all other vessels over 25 feet in length.

(3) The Official Number must be in block Arabic numerals is contrasting color to the background.

(4) The Official Number shall be permanently affixed to or painted on the vessel. However, charter or party boats may use non-permanent markings to display the Official Number whenever the vessel is fishing for butterfish.

(b) *Vessel length.* The length of a vessel, for purposes of this section, is that length set forth in U.S. Coast Guard or State records.

(c) *Duties of operator.* The operator of each fishing vessel shall:

(1) Keep the Official Number clearly legible and in good repair; and

(2) Ensure that no part of the fishing vessel, its rigging, or its fishing gear obstructs the view of the Official Number from an enforcement vessel or aircraft.

§ 657.7 Prohibitions.

It is unlawful for any person to:

(a) Use any vessel for the taking, catching, harvesting, or landing of any Atlantic butterfish (except as provided for in section 657.4(a)), unless the vessel has a valid permit issued pursuant to this Part, on board the vessel;

(b) Fail to report to the Regional Director within 15 days any change in the information contained in the permit application for a vessel;

(c) Falsify or fail to make, keep, maintain, or submit any fishing vessel record or fish dealer or processor report, or other record or report required by this Part;

(d) Make any false statement, oral or written, to an Authorized Officer, concerning the taking, catching, landing, purchase, sale, or transfer of any butterfish;

(e) Fail to affix and maintain vessel markings as required by § 657.6;

(f) Possess, have custody or control of, ship, transport, offer for sale, sell, purchase, import, export, or land any Atlantic butterfish taken in violation of the Act, this Part, or any regulation promulgated under the Act;

(g) Fish for, take, catch, or harvest any Atlantic butterfish from the FCZ after the fishery has been closed pursuant to § 657.23;

(h) Transfer directly or indirectly, or attempt to so transfer, any United States harvested butterfish to any foreign fishing vessel, while such vessel is within the FCZ, unless the foreign fishing vessel has been issued a permit under section 204 of the Act, which authorizes the receipt by such vessel of the United States harvested butterfish;

(i) Refuse to permit an Authorized Officer to inspect any fishing vessel record;

(j) Refuse to permit an Authorized Officer to board a fishing vessel subject to such person's control for purpose of conducting any search or inspection in connection with the enforcement of this Act, this Part, or any other regulation promulgated under the Act;

(k) Fail to comply immediately with enforcement and boarding procedures specified in § 657.8;

(l) Forcibly assault, resist, oppose, impede, intimidate, threaten or interfere with an Authorized Officer in the conduct of any search or inspection under the Act;

(m) Resist a lawful arrest for any act prohibited by this Part;

(n) Interfere with, obstruct, delay, or prevent by any means the apprehension or arrest of another person knowing that such other person has committed any act prohibited by this Part;

(o) Interfere with, obstruct, delay, or prevent by any means the lawful investigation or search in the process of enforcing this Part;

(p) Violate any other provision of this part, the Act, or any regulation promulgated pursuant thereto.

§ 657.8 Enforcement.

(a) *General.* The operator of any fishing vessel subject to this Part shall immediately comply with instructions issued by an Authorized Officer to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing vessel record, and catch for purposes of enforcing the Act and this Part.

(b) *Signals.* Upon being approached by a U.S. Coast Guard vessel or aircraft, or other vessel or aircraft authorized to enforce provisions of the Act, the operator of the fishing vessel shall be alert for communications conveying enforcement instruction. VHF–FM raidotelephone is the normal method of communication between vessels. Should radiotelephone communications fail, however, other methods of

communication, including visual signals, may be employed. The following signals extracted from the International Code of Signals are among those which may be used, and are included here for the safety and information of fishing vessel operators:

(1) "L" means "You should stop your vessel instantly;"

(2) "SQ3" means "You should stop or heave to; I am going to board you; and

(3) "AA AA AA etc.," which is the call to an unknow station, to which the signaled vessel shall respond by illuminating the vessel's Official Number required by § 657.6.

(c) *Boarding.* A vessel signalled to stop or heave to for boarding shall:

(1) Stop immediately and lay to or maneuver in such a way as to permit the Authorized Officer and his party to come aboard;

(2) Provide a safe ladder for the Authorized Officer and the boarding party;

(3) When necessary to facilitate the boarding, or when requested by an Authorized Officer, provide a man rope, safety line and illumination for the ladder; and

(4) Take such other actions as necessary to insure the safety of the Authorized Officer and his party to facilitate the boarding.

§ 657.9 Penalties.

Any person or fishing vessel found to be in violation of this Part will be subject to the civil and criminal penalty provisions, permit sanction provisions, and forfeiture provisions prescribed in the act, in 50 CFR Part 620 (Citations) and Part 621 (Civil Procedures).

Subpart B—Management Measures

§ 657.20 Fishing year.

The fishing year for Atlantic butterfish is the 12-month period beginning April 1 and ending on March 31 of the following fishing year.

§ 657.21 Allowable levels of harvest.

(a) *Harvest levels.* The total allowable levels of harvest of Atlantic butterfish on a fishing year basis is 11,000 metric tons (mt). The initial annual catch quota for vessels of the United States is 7,000 mt.

(b) *Territorial waters.* These regulations do not restrict harvests of Atlantic butterfish in the waters landward of the FCZ. Harvests from these waters, however, shall be subtracted from the annual domestic quotas set forth in paragraph (a) of this section.

§ 657.22 Allocations.

(a) *General.* This section establishes a procedure which will be followed to make allocations to foreign fishing vessels of part of the domestic quota that will not be harvested by fishermen during the fishing year.

(b) *Criteria.* The Assistant Administrator will determine the domestic harvest of butterfish by reviewing fishing vessel record and fish dealer/processor record data and any other relevant landings statistics for the first seven months of the fishing year (April 1–October 31). If reported domestic harvest (including off-loadings at sea) is equal to or greater than 40 percent of the annual domestic quota of 7,000 mt, no allocation will be made. If the reported domestic harvest for the first seven months of the fishing year is less than 40 percent of the annual domestic quota, the Assistant Administrator may allocate up to one-half the difference between the reported domestic harvest and the initial annual domestic quota in § 657.21(a).

(c) *Notice of intent.* If the Assistant Administrator determines that an allocation is to be made, he will publish in the **Federal Register** a notice proposing to allocate a specified amount of the unharvested portion of the domestic annual quota to the annual quota established for foreign nations. Notice of an intent to allocate will be sent to holders of permits issued under this Part, and to agents of foreign fishing vessels permitted to fish for butterfish under 50 CFR Part 611, on or about the date of publication of the notice in the **Federal Register.**

(d) *Public comment.* The public will be given 15 days from the date of publication to submit written comments on the proposed allocation.

(e) *Consultation.* During the 15-day public comment period, the Assistant Administrator will consult with the Executive Director of the Mid-Atlantic Fishery Management Council on the consistency of the proposed allocation with the objectives of the FMP.

(f) *Final determination.* The Assistant Administrator will make a final determination of the amount of Atlantic butterfish to be allocated after taking into account:

(1) The intent and capability of U.S. fishing vessels to harvest Atlantic butterfish during the remainder of the fishing year;

(2) The consistency of any allocation with the objectives contained in the FMP;

(3) The current harvest of Atlantic butterfish by foreign nations as allowed pursuant to 50 CFR Part 611;

(4) The most recent information available concerning the biological status of the species of Atlantic butterfish; and

(5) Any other information determined by the Assistant Administrator to be relevant.

(g) *Notice of allocation.* The Assistant Administrator will publish a final notice of allocation in the **Federal Register** approximately 15 days prior to the effective date of the allocation. Comments received during the comment period, all relevant information used by the Assistant Administrator in making a final determination on allocations, and the most recent catch statistics available for the domestic harvest of Atlantic butterfish shall be summarized in the **Federal Register** notice of allocation.

(h) *Effective dates.* Any allocation of butterfish shall be effective on January 1 and remain in effect to the end of the fishing year on March 31.

§ 657.23 Closure of fishery.

(a) *General.* The Regional Director will periodically monitor catches and landings of Atlantic butterfish.

(b) *Decision to close.* When 80 percent of the initial annual domestic harvest level specified in § 657.21 has been harvested, the Assistant Administrator shall close the fishery for the remainder of the fishing year.

(c) *Notice of closure.* If the Assistant Administrator determines that a closure of the butterfish fishery is necessary, he shall:

(1) Notify in advance the Executive Directors of the Mid-Atlantic, New England, and South Atlantic Fishery Management Councils of the closure;

(2) Mail notifications of the closure to all holders of permits issued under § 657.4 at least 72 hours prior to the effective date of the closure; and

(3) Publish a notice of closure in the **Federal Register.**

(d) *Incidental Catch.* During a period of closure, fishing vessels may catch, take, or harvest Atlantic butterfish incidental to fishing for other species of fish, provided that the amount of Atlantic butterfish constitutes no more than 10 percent by weight of the total catch of all other fish on board the vessel at the end of any fishing trip.

§ 657.24 Size restrictions. [Reserved]

§ 657.25 Gear/vessel equipment restrictions. [Reserved]

§ 657.26 Area/time restrictions. [Reserved]

[FR Doc. 80-33559 Filed 10-27-80; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 45, No. 210
Tuesday, October 28, 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

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: These proposed regulations would clarify how agencies identify employees with transferring positions under the transfer of function provisions of OPM's reduction in force regulations. These regulations are being proposed in response to requests from agencies that OPM clarify its instructions covering transfer of function.

DATE: Written comments will be considered if received no later than December 29, 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: The transfer of function provisions found in Subpart C of Part 351 of this title are derived from Section 12 of the Veterans Preference Act of 1944, as presently codified in 5 U.S.C. 3503. Additional instructions implementing the transfer of function provisions of Part 351 are contained in Federal Personnel Manual (FPM) Chapter 351. Specifically, Subchapter 3 of FPM Chapter 351 is primarily concerned with transfer of function while Appendix C of that chapter covers the procedures used by agencies to identify the positions of competing employees with a transferring function or functions.

Explanation of Proposed Regulations

These proposed regulations do not represent a change of OPM's present transfer of function policies. The identification procedures set forth in these proposed regulations are intended to clarify provisions presently found in Appendix C of FPM Chapter 351. For reference, the identification procedures were originally issued to Federal agencies in Supplement Number 2 to Departmental Circular 740, dated June 23, 1960.

OPM proposes to make the following specific changes in Part 351:

(1) A new § 351.303 is added. Section 351.303(a) provides that the competitive area losing the function is responsible for identifying the positions of competing employees with the transferring function(s) under Identification Method One or Identification Method Two.

(2) Section 351.303(b) provides that Identification Method One must be used if it is applicable. Otherwise, Identification Method Two is used to identify the positions of competing employees with a transferring function or functions.

(3) Section 351.303(c) covers the applicability and operation of Identification Method One.

(4) Section 351.303(d) covers the applicability and operation of Identification Method Two.

(5) Section 351.303(e) covers employees of the competitive area that is losing the function who volunteer to transfer to the competitive area that is gaining the function.

Proposed § 351.303 is intended to be used in conjunction with final §§ 351.301 and 351.302 published in the **Federal Register** on September 12, 1980 (45 FR 60401).

OPM has determined that this is a significant regulation for the purposes of E.O. 12044.

Office of Personnel Management.

Kathryn Anderson Fetzer,

Assistant Issuance System Manager.

Accordingly, OPM proposes to amend Title 5, Code of Federal Regulations, by adding § 351.303:

§ 351.303 Identification of positions with a transferring function.

(a) The competitive area losing the function is responsible for identifying the positions of competing employees with the transferring function. Two methods are provided to identify employees with the transferring function:

(1) Identification Method One; and

(2) Identification Method Two.

(b) Identification Method One must be used to identify each position to which it is applicable. Identification Method Two is used only to identify positions to which Identification Method One is not applicable.

(c) Under Identification Method One, a competing employee is identified with a transferring function if:

(1) The employee performs the function during all or a major part of his or her work time; or

(2) Regardless of the amount of time the employee performs the function during his or her work time, the function performed by the employee includes the duties controlling his or her grade or rate of pay.

(d) Under Identification Method Two, competing employees are identified with a transferring function in the inverse order of their retention standing.

(e) The competitive area losing the function may permit other employees to volunteer for transfer with the function in place of employees identified under Identification Method One or Identification Method Two, provided that:

(1) No competing employee who is identified for transfer under Identification Method One or Identification Method Two is separated or demoted solely because a volunteer transferred in place of him or her to the competitive area that is gaining the function; and

(2) The employees who volunteer for transfer are in competitive levels with a surplus of employees resulting because of the transfer of function.

If the total number of employees who volunteer for transfer exceeds the total number of employees required to perform the function in the competitive area that is gaining the function, the losing competitive area should give preference to the volunteers with the highest retention standing.

(5 U.S.C. 1302, 3503)

[FR Doc. 80–33553 Filed 10–27–80; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Food Safety and Quality Service

7 CFR Part 2859

9 CFR Parts 308 and 381

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 109, 110, 225, 226, 500, and 509

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 761

Polychlorinated Biphenyls in Food, Feed, Agricultural Pesticide and Fertilizer Facilities

AGENCIES: Food Safety and Quality Service, USDA, Food and Drug Administration; and Environmental Protection Agency.

ACTION: Extension of comment periods; announcement of informal public meeting.

SUMMARY: On May 9, 1980, the Department of Agriculture, the Food and Drug Administration, and the Environmental Protection Agency announced individual proposed regulations affecting the use of PCB-containing equipment in food, feed, agricultural pesticide and fertilizer facilities. This notice extends the comment period on each of these proposals until December 4, 1980. In addition, this notice announces an informal public meeting regarding the three proposals to be held on November 7, 1980.

DATES: Informal public meeting on November 7, 1980, beginning at 10:00 a.m. Requests to appear at the meeting must be received on or before November 5, 1980. Written comments on all three Agency proposals must be received on or before December 4, 1980. (For information on how to make request to make presentations at the meeting, see "For Further Information Contact" section.)

ADDRESSES: The informal public meeting will be held at Room 218–A, Department of Agriculture, Administration Building, 14th and Independence Avenue, SW., Washington, DC.

Written comments on the proposals to:

FSQS Proposal: Regulations Coordination Division, Attn: Annie Johnson, Room 2637, South Agriculture Building, Food Safety and Quality Service, Compliance Program, U.S. Department of Agriculture, Washington, DC 20250. Oral comments on poultry products inspection regulations to Mr. Bartie T. Woods, (202) 447–5627.

EPA Proposal: Joni T. Repasch, Technical Information Specialist, Room 447 (TS–793), Office of Toxic Substances, EPA, 401 M Street, SW., Washington, DC 20460, Attn: Docket Number OTS–62003 (PCB/RR–3).

FDA Proposal: Docket Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Those persons interested in making presentations at the meeting should arrange to schedule their presentation by contacting: Penny Gentilly, Deputy Director, Public Participation, Room 1168, South Agriculture Building, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–7804.

For information on the technical aspects of the proposals:

Mr. Bartie T. Woods, Director, Facilities, Equipment and Sanitation Division, Meat and Poultry Inspection Program, U.S. Department of Agriculture, Food Safety and Quality Service, Washington, DC 20250, (202) 447–5627.

Mr. John B. Ritch, Jr., Director, Industry Assistance Office, Office of Toxic Substances (TS–799), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, telephone toll free (800) 424–9065 (in Washington, 554–1404).

Mr. F. Leo Kaufman, Bureau of Foods (HFF–214), Food and Drug Administration, Department of Health and Human Services, 200 C Street, SW., Washington, DC 20204, (202) 245–1164.

SUPPLEMENTARY INFORMATION: On May 9, 1980, the Department of Agriculture (USDA), the Environmental Protection Agency (EPA), and the Food and Drug Administration (FDA) issued coordinated proposed rulemakings on the use of PCB-containing equipment or machinery in or around food, feed, food-and-feed-packaging material plants or storage facilities, and in facilities manufacturing, processing, or storing fertilizers or agricultural pesticides (45 FR 30980; 30984; 30989).

Specifically, USDA proposed to require that all equipment or machinery containing liquid PCB at levels greater than 50 parts per million by weight (except capcitors with less than 3 pounds of PCB's) would have to be either removed from the meat, poultry, and egg product plants and establishments under its inspection or drained and flushed so that they no longer contain PCB's in the liquid medium at levels greater than 50 parts per million by weight. In addition, any liquids with PCB's above 50 parts per million could no longer enter or be held on the premises for any reason (45 FR 30980–30983).

FDA proposed to prohibit the use of PCB-containing sealed electrical transformers and capacitors used or stored in or around food, feed, and food-and-feed-packaging materials plants or storage facilities, except for capacitors containing less than 3 pounds of fluid. Such equipment would have to be either replaced or drained and flushed so that the residual PCB's in the replacement fluid would be no more than 50 parts per million by weight. In addition, FDA also proposed that certain raw materials used in human food which are susceptible to PCB contamination be examined and analyzed as necessary to ensure that they comply with FDA tolerance levels for PCB's and other poisonous or deleterious substances (45 FR 30984–30988).

EPA proposed to prohibit the use of PCB Items as defined in 40 CFR 761.2(x), such as PCB large, high, and low voltage capacitors, PCB transformers, PCB-contaminated transformers, PCB heat transfer systems, and PCB hydraulic systems in facilities manufacturing, processing, or storing fertilizers or agricultural pesticides. PCB small capacitors (containing less than 3 pounds of fluid) are not to be regulated by the proposal (45 FR 30989–30993).

Initially, each of these proposals established comment periods for the receipt of information and data—USDA and FDA by July 7, 1980, and EPA by July 8, 1980. Subsequently, each of these comment periods was extended for 120 days—until November 4, 1980, for USDA (45 FR 44317, July 1, 1980), and FDA (45 FR 44325, July 1, 1980), and November 5, 1980, for EPA (45 FR 47168–69, July 14, 1980).

In a letter dated September 17, 1980, the American Frozen Food Institute, on behalf of themselves and other interested trade associations,[1] requested an opportunity to discuss in an informal meeting various aspects of the three

[1] These other interested Associations include: American Feed Manufacturers' Association, American Meat Institute, Biscuit and Cracker Manufacturers' Association of America, Edison Electric Institute, National Agriculture Chemical Association, National Broiler Council, National Coffee Association, National Food Processors Association, National Frozen Pizza Institute, National Soft Drink Association, National Turkey Federation, Potato Chip/Snack Food Association, Utilities Solid Waste Activities Group.

proposals which they considered common to the three proposals. These issues included potential health risks, the economic impact of the proposals, and the request for special consideration for those companies which have already invested funds in efforts to control PCB's.

PCB's are toxic substances which have been identified for regulatory coordination by the Regulatory Development Work Group of the Interagency Regulatory Liaison Group (IRLG). At all stages of these rulemaking proceedings, the agencies have coordinated their activities, whenever possible. After considering the request of the American Frozen Food Institute, the three agencies have individually determined that it is appropriate to conduct a joint public informal meeting on November 7, 1980, to hear presentations and to offer clarifications on certain aspects of the proposed rules to industry and other interested persons. The agencies will welcome all comments and data relevant to their rulemaking efforts. A transcript will be made of this meeting and will be included in the administrative rulemaking records of the three agencies.

In order to include comments and data gathered at the meeting within the rulemaking records of each Agency, and to afford sufficient time following the meeting for interested parties to submit their comments on the record of that proceeding, the comment period on each of the three proposals is being mutually extended by this notice until December 4, 1980. Persons wishing to request a public hearing under the EPA proposal may do so until the end of the public comment period on December 4, 1980. In all other respects, the procedure specified in the proposed rules published by each Agency on May 9, 1980, shall continue to apply.

Done at Washington, DC.

Dated: October 28, 1980.

Donald L. Houston,

Administrator, Food Safety and Quality Service.

Dated: October 21, 1980.

Jere E. Goyan,

Commissioner of Food and Drugs.

Dated: October 22, 1980.

Douglas M. Costle,

Administrator, Environmental Protection Agency.

[FR Doc. 80-33616 Filed 10-27-80; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF AGRICULTURE

Food Safety and Quality Service

9 CFR Parts 317 and 381

Net Weight Labeling; Extension of Comment Period

AGENCY: Food Safety and Quality Service, USDA.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On August 8, 1980, the Department published in the **Federal Register** a document proposing to amend the Federal meat and poultry products inspection regulations to provide more uniform labeling requirements and to prescribe uniform procedures for determining compliance with label statements of net contents of meat and poultry products. In response to several requests for additional time to study the proposal and gather data, the Department is extending the comment period for 60 days.

DATE: Comments must be received on or before January 5, 1981.

ADDRESS: Written comments to: Regulations Coordination Division, Attn: Annie Johnson, Room 2637, South Agriculture Building, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, DC 20250. Oral comments on the poultry products inspection regulations to: Mr. Bill Dennis, (202) 447-3840.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Dennis, Director, Processed Products Inspection Division, Meat and Poultry Inspection Program, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-3840. The Draft Impact Analysis describing the options considered in developing the proposed rule and the impact of implementing each option was published in its entirety as an appendix in the August 8, 1980, proposed rule.

SUPPLEMENTARY INFORMATION:

Significance

The proposal was reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and was classified "significant."

Background

On August 8, 1980, the Food Safety and Quality Service published in the **Federal Register** (45 FR 53002-53023) a proposed rule to amend the Federal meat and poultry products inspection regulations to set forth more uniform net weight labeling requirements for federally inspected meat and poultry products and prescribe procedures for determining compliance with these requirements. These proposed regulations would establish objective, numerical standards for determining compliance to insure that consumers receive valid information regarding the actual weight of meat and poultry products and to provide for increased uniformity of regulations at the Federal, State, and local levels. Interested persons were given until November 6, 1980, to comment.

The Food and Drug Administration (FDA) also published a similar proposal relating to non-meat and non-poultry food products (45 FR 53023-53031).

The Department has been requested to extend the comment period for 120 days so data, views, or arguments may be submitted or oral views presented by the American Meat Institute, The Grocery Manufacturers Association, the National Broiler Council and others. The requests stated that additional time was needed in order to gather data and study the proposal. Similar requests were presented to the FDA.

After careful consideration and discussions with the FDA, the Department and FDA have jointly decided that sufficient justification exists to extend the comment period for 60 days. The FDA extension of comment period is published elsewhere in this issue of the **Federal Register.** In all other aspects, the procedure specified in the proposed rule published on August 8, 1980, shall continue to apply.

Done at Washington, D.C., on: October 21, 1980.

Carol Tucker Foreman,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 80-33503 Filed 10-23-80; 4:56 pm]

BILLING CODE 3410-DM-M

CIVIL AERONAUTICS BOARD

[EDR-408A; Economic Regulations Docket: 38746

14 CFR Parts 221, 296, and 297

Airlines Filing Tariffs Stating Prices as Maximum Amounts

Dated: October 22, 1980.

AGENCY: Civil Aeronautics Board.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The CAB extends the period for public comments on its proposal to allow airlines to file tariffs that state prices as maximum amounts instead of exact amounts, so that any price up to

the maximum could be charged. The proposed rule would also allow the payment of commissions to air freight forwarders and foreign air freight forwarders. The extension was requested by the International Air Transport Association and others.

DATES: Comments by: December 1, 1980. Comments and other relevant information received after this date will be considered by the Board only to the extent practicable.

ADDRESSES: Twenty copies of comments should be sent to Docket 38746, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Individuals may submit their views as consumers without filing multiple copies. Copies may be examined in Room 711, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. as soon as they are received.

FOR FURTHER INFORMATION CONTACT: Mark S. Kahan, Assistant Director, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue N.W., Washington, D.C. 20428; 202–673–5371.

SUPPLEMENTARY INFORMATION: In EDR–408 (45 64864; September 30, 1980), the Board proposed to allow airlines to file tariffs that state prices as maximum amounts instead of exact amounts. The Board also proposed to allow the payment of commissions to air freight forwarders and foreign air freight forwarders. Citing the expiration of antirebating injunctions and the need to clarify the legal status of forwarder commissions, EDR-408 established a shorter-than-normal comment period of 30 days. The original due date for comments on the proposed rule was thus October 30, 1980.

On October 9, the International Air Transport Association (IATA) filed a "Motion for an Extension of Time to File Comments and for Coordinated Review Procedures on Parallel Issues in the Competitive Marketing Investigation." IATA asked that the comment period be extended until at least November 28, 1980. In support of this request IATA argued that more time is needed for foreign carriers to prepare their views, consult with their governments, and coordinate their comments. It stated that the proposed rule would bring about fundamental changes in the marketing and distribution of air transportation services, and raised serious legal and international questions. IATA also argued that there is no emergency requiring a short comment period on such and important matter, citing Order 80–9–147 as having eliminated the urgency. That order, issued along with EDR-408, granted several exemptions while the rulemaking is in progress. Finally, IATA argued that an extension of the comment period would not delay the Board's decision because that decision must in any event be coordinated with parallel issues in the *Competitive Marketing Investigation* (Docket 36595).

On October 16, 1980, 15 Electronic Shippers jointly filed an answer in support of the IATA request. On October 17, the Association of Retail Travel Agents (ARTA) filed a motion asking for the same relief. It supported the IATA request and emphasized the importance of the proposed rulemaking to travel agents.

On October 16, the American Society of Travel Agents (ASTA) filed a "Motion to Terminate Notice of Proposed Rulemaking and/or Other Relief." The alternative relief included an order that would explain the relationship between this rulemaking and the *Competitive Marketing Investigation,* with 45 days after that for comments on the proposed rule and 30 days for reply comments.

In view of the importance of the issues presented in this proceeding, and because the Board is especially interested in the views of travel agents and the views of foreign carriers and foreign governments on the international implications of the proposed rule, there is good cause to allow the extension of time requested by IATA and ARTA. The requests are therefore granted. The new comment deadline is December 1, 1980.

The requests for coordinated review procedures on parallel issues in the *Competitive Marketing Investigation,* along with ASTA's motion for termination of the rulemaking or alternative relief, will be considered by the Board. The delegation of authority under which requests to extend comment periods are considered does not extend to such requests.

Accordingly, under authority delegated in 14 CFR 385.20(d), the time for filing comments on EDR–408 is extended to December 1, 1980.

(Secs. 204, 403, 404, 416, and 1002 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 758, 760, 771, and 788, as amended, 49 U.S.C. 1324, 1373, 1374, 1386, and 1482.)

Richard B. Dyson,

Associate General Counsel.

[FR Doc. 80–33525 Filed 10–27–80; 8:45 am]

BILLING CODE 6320–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 79N–0292]

Food Labeling; Net Weight Labeling Requirements; Extension of Comment Period

AGENCY: Food and Drug Administration.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending the period for submitting comments on the notice of proposed rulemaking to amend the net weight labeling regulations. This action is based on a number of requests for extension of the comment period received by FDA.

DATE: Written comments must be submitted on or before January 5, 1981.

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: Howard N. Pippin, Bureau of Foods (HFF–312), Food and Drug Administration, 200 C St. SW., Washington, D.C. 20204, 202–245–3092.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 8, 1980 (45 FR 53023), FDA proposed to amend the net weight labeling regulations. These amendments would quantitatively define permissible "reasonable variations" from stated net weights for several food categories, including foods subject to mositure loss. Interested persons were requested to submit comments by November 6, 1980.

FDA has received a number of requests for extension of the comment period ranging from 90 to 120 days. The requests are on file with the FDA Dockets Management Branch. The requests assert, in general, that additional time is needed to gather information and prepare meaningful comments to the proposal.

After carefully evaluating the merits of the requests for extension of the comment period, FDA has concluded that an extension of the comment period is necessary to provide adequate time for the compilation and submission of comments on the proposed rule. The agency has further concluded, however, that a 60-day extension should be adequate and is extending the comment period to January 5, 1981.

The U.S. Department of Agriculture, Food Safety and Quality Service (FSQS), also published in the **Federal Register** of August 8, 1980 (45 FR 53002) a similar proposal covering meat and poultry products. They have also received requests for an extension of the comment period on their proposal. FDA and FSQS agree that additional time is needed for affected industries to submit their comments on the proposals. The FSQS notice of extension of the comment period is published elsewhere in this issue of the **Federal Register.**

Accordingly, interested persons may, on or before January 5, 1980, submit 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, 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 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.

Dated: October 22, 1980.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 80–33507 Filed 10–27–80; 8:45 am]

BILLING CODE 4110–03–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[191–78]

Investment Credit for Qualified Rehabilitated Buildings

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the investment credit for qualified rehabilitated buildings. Changes to the applicable tax law were made by the Revenue Act of 1978 and the Technical Corrections Act of 1979. The regulations would provide taxpayers desiring to qualify for the credit with the guidance needed to comply with the new law.

DATES: Written comments and requests for a public hearing must be delivered or mailed by December 29, 1980. The amendments are effective with respect to qualified rehabilitation expenditures incurred after October 31, 1978.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Eileen Murphy of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 (Attention: CC:LR:T) (202–566–3297).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 46 and 48 of the Internal Revenue Code of 1954. These amendments are proposed to conform the regulations to section 315 of the Revenue Act of 1978 (92 Stat. 2828) and section 103(a)(4) of the Technical Corrections Act of 1979 (94 Stat. 209) and are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

Qualified Rehabilitated Building

Under section 48(a)(1)(E), that portion of the basis of a qualified rehabilitated building which is attributable to qualified rehabilitation expenditures qualifies as section 38 property. Section 48(g)(1) and the proposed regulations set forth several requirements for a qualified rehabilitated building.

One requirement for a qualified rehabilitated building is that a twenty-year period must have elapsed between the rehabilitation and the later of (1) the date the building was first placed in service, or (2) the date of any prior rehabilitation for which a credit was allowed under section 48(a)(1)(E).

Another requirement for a qualified building is that the building be rehabilitated. The term "rehabilitation" includes renovation, restoration, or reconstruction. The proposed regulations provide that the rehabilitation must be substantial. Whether a rehabilitation is substantial is determined upon the basis of all the facts and circumstances. In general, for the rehabilitation to be "substantial," it must materially extend the useful life of the building, significantly upgrade its usefulness, or preserve it in a manner that significantly improves its condition or enhances its historic value. The regulations require the rehabilitation to be "substantial" because, as discussed above, in general a credit for rehabilitation under section 48(a)(1)(E) may be taken only once in a twenty-year period with respect to a particular building. Thus, it would not conform with the intent behind section 48(g) to upgrade old buildings if an insubstantial project could preclude taking the credit for twenty years for a major upgrading project.

The proposed regulations do not contain a quantitative test for determining whether a rehabilitation of a building is a substantial rehabilitation. In comments on the proposed regulations, suggestions for a quantitative test are invited. (For example, a quantitative test might require that rehabilitation expenditures be a specific percentage of the value of the building after the rehabilitation.)

The proposed regulations also distinguish between expenditures for new construction and for rehabilitation. Any expenditures attributable to an enlargement of an existing building are considered expenditures for new construction. The proposed regulations contain rules defining an enlargement of a building.

Another requirement for a qualified rehabilitated building is that at least 75 percent of the existing external walls of the building must be retained in place as external walls in the rehabilitation process. An external wall is defined in the proposed regulations as a wall, including its supporting elements, with one face exposed to the weather or earth. Under the proposed regulations, an external wall is considered retained in place even though the existing curtain is covered, reinforced, or replaced, provided that the structural framework of the wall is retained in place.

Section 48(g)(1)(C) and the proposed regulations provide that where there is a separate rehabilitation of a major portion of a building, the major portion may be treated as a separate building for purposes of the definition of a qualified rehabilitated building and the twenty-year requirement. The proposed regulations provide that whether a part of a building constitutes a major portion of the building is determined upon the basis of all the facts and circumstances. Factors such as volume, floor space, and functional differences between such part and other parts of the building are taken into consideration. In general, however, a major portion must be comprised of contiguous portions of the building and must be clearly identifiable (for example, the first 5 stories of a 7 story building or the east wing of a building). In addition, to constitute a major portion, a part of a building must be sufficiently large that it would be reasonable to treat it as a separate building. The leased portion of a

building is a major portion only if that part would be considered a major portion independent of the fact that it is subject to a lease. The public is invited, as part of written comments on these proposed regulations, to address the issue of possible quantitative tests for determining a major portion.

Rehabilitation activity that is done in phases may be considered a single rehabilitation. The proposed regulations provide rules for determining whether noncontinuous rehabilitation activity constitutes a single rehabilitation done in phases.

Qualified Rehabilitation Expenditures

Under section 48(g)(2) and the proposed regulations, the term "qualified rehabilitation expenditure" means any amount properly chargeable to capital account, incurred after October 31, 1978, for property (or additions or improvements to property) with a useful life of five years or more, made in connection with the rehabilitation of a qualified rehabilitated building. The proposed regulations contain special rules for treating a transferee of a building as having incurred the qualified rehabilitation expenditures of a transferor if the building is acquired before the property attributable to such expenditures is placed in service. In addition, expenditures for property which is "section 38 property" (determined without regard to section 48(a)(1)(E)) and (l)), the costs of acquiring an interest in a building, and the costs for an enlargement of a building are not qualified rehabilitation expenditures. Finally, expenditures to rehabilitate a certified historic structure (as defined in section 191 (d)(1) and the regulations thereunder) are not qualified rehabilitation expenditures unless the rehabilitation is a certified rehabilitation (as defined in section 191(d)(4) and the regulations thereunder).

Coordination With Other Sections of the Code

The regulations also provide cross-references to other pertinent provisions of the Code. These provisions relate to the lessee's eligibility to take the credit, the taxable year in which the credit may be claimed, and recapture of the credit.

Comments and Request for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably six copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register.**

Drafting Information

The principal author of these proposed regulations is Eileen Murphy of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing these regulations, both on matters of substance and style.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR Part 1 are as follows:

Paragraph 1. Section 1.46–4 (d) is amended by adding a new subparagraph (5) to read as follows:

§ 1.46–4 Limitations with respect to certain persons.

* * * * *

(d) *Noncorporate lessors.* * * *

(5) The requirements of this paragraph shall not apply with respect to any property which is treated as section 38 property by reason of section 48 (a)(1)(E).

Par. 2. Section 1.48–1 is amended by revising the second sentence of paragraph (a), by revising the first sentence of paragraph (e)(1), and by adding a new sentence immediately after such first sentence of paragraph (e)(1), to read as follows:

§ 1.48–1 Definition of section 38 property.

(a) *In general.* * * * Except as otherwise provided in this section, the term "section 38 property" means property (1) with respect to which depreciation (or amortization in lieu of depreciation) is allowable to the taxpayer, (2) which has an estimated useful life of 3 years or more (determined as of the time such property is placed in service), and (3) which is (i) tangible personal property, (ii) other tangible property (not including a building and its structural components) but only if such other property is used as an integral part of manufacturing, production, or extraction, or as an integral part of furnishing transportation, communications, electrical energy, gas, water, or sewage disposal services by a person engaged in a trade or business of furnishing any such service, or is a research or storage facility used in connection with any of the foregoing activities, (iii) an elevator or escalator which satisfies the conditions of section 48 (a)(1)(C), or (iv) in the case of a qualified rehabilitated building, that portion of the basis which is attributable to qualified rehabilitation expenditures. * * *

* * * * *

(e) *Definition of building and structural components.* (1) Generally, buildings and structural components thereof do not qualify as section 38 property. See, however, section 48(a)(1)(E) and (g), and § 1.48–11 (relating to investment credit for qualified rehabilitated building). * * *

* * * * *

Par. 3. Section 1.48–2 is amended by adding a new paragraph (d) to read as follows:

§ 1.48–2 New section 38 property.

* * * * *

(d) *Special rule for qualified rehabilitated buildings.* Notwithstanding the rules in paragraphs (a) through (c) of this section, that portion of the basis of a qualified rehabilitated building attributable to qualified rehabilitation expenditures is treated as new section 38 property. See section 48(a)(1)(E) and (g), and § 1.48–11.

Par. 4. There is inserted immediately after § 1.48–8 the following new section:

§ 1.48–11 Qualified rehabilitated building.

(a) *In general.* Under section 48(a)(1)(E), that portion of the basis of a qualified rehabilitated building which is attributable to qualified rehabilitation expenditures qualifies as section 38 property. In general, property which is treated as section 38 property by reason of section 48(a)(1)(E) is treated as new section 38 property and therefore is not subject to the $100,000 used property limitation. See § 1.48–2(d). Section 48(g)(1) and paragraph (b) of this section define the term "qualified rehabilitated building". Section 48(g)(2) and paragraph (c) of this section define the term "qualified rehabilitation expenditure". Paragraph (d) of this section provides guidance for coordination of these provisions with other sections of the Code.

(b) *Definition of qualified rehabilitated building*—(1) *In general.* The term "qualified rehabilitated building" means any building and its structural components—

(i) Which has been rehabilitated (within the meaning of subparagraph (3) of this paragraph),

(ii) Which was placed in service before the beginning of the rehabilitation,

(iii) 75 percent or more of the existing external walls of which are retained in

place as external walls in the rehabilitation process, and

(iv) Which meets the twenty-year requirement in paragraph (2) of this paragraph.

In addition, a major portion of a building may be treated as a separate building for purposes of this paragraph if the requirements of paragraph (b)(6) are met.

(2) *Twenty-year requirement*—(i) *In general.* A building is considered a qualified rehabilitated building only if a period of at least 20 years has elapsed between the date physical work on the rehabilitation of the building began, and the later of—

(A) The date the building was first placed in service as a building, or

(B) The date the building was placed in service in connection with a prior rehabilitation with respect to which a credit was allowed by reason of section 48(a)(1)(E).

(ii) *Vacant periods.* The 20-year period includes periods during which a building was vacant or devoted to a personal use and is computed without regard to the number of owners or the identity of owners during the period.

(iii) *Physical work.* For purposes of this subparagraph (2), the term "physical work" does not include preliminary activities such as planning, designing, securing financing, exploring, researching, or developing.

(iv) *Special rule.* If a part of a building meets the twenty-year requirement in subdivision (i) of this subparagraph and a part (for example, an addition) does not, a rehabilitation of that part that meets the requirement may qualify for a credit only if that part constitutes a major portion (as defined in subparagraph (6)) of the building.

(3) *Rehabilitation.* (i) For purposes of this paragraph, rehabilitation includes renovation, restoration, or reconstruction. For a building to be considered rehabilitated, the rehabilitation must be "substantial". Whether a rehabilitation is substantial is determined upon the basis of all the facts and circumstances. In general, to be substantial, the rehabilitation must materially extend the useful life of the building, significantly upgrade its usefulness, or preserve it in a manner that significantly improves its condition or enhances its historic value. A substantial rehabilitation may vary in degrees from gutting and extensive reconstruction of a building's major structural components to the cure of a substantial accumulation of major disrepairs. It may also include renovation, alteration, or remodelling for the conversion of a structurally sound building to a design and condition required for a new use. Cosmetic improvements alone, however, do not qualify as a substantial rehabilitation.

(ii) The provisions of this subparagraph (3) may be illustrated by the following examples:

Example (1). Taxpayer A is the owner of a 30-year old building. The building is air conditioned by means of window air conditioning units. A replaces the window units with a central air conditioning system. The building is not considered rehabilitated within the meaning of this subparagraph because the expenditures incurred by A did not materially extend the building's useful life, significantly upgrade its usefulness, or preserve it in a manner that significantly improves its condition or enhances its historic value.

Example (2). Taxpayer B is the owner of a 10 story office building that is 35 years old. The building is in substantial disrepair and in order to modernize it, B installs new plumbing, electrical wiring, and heating and air conditioning systems. In addition, the layout of each floor is changed by means of tearing down many existing interior walls and partitions and building new walls, partitions, and doors. Old plaster is removed from many walls and replaced by new wall covering. New windows and new flooring are installed throughout the building. The improvements made by B materially extend the useful life of the building and significantly upgrade its usefulness. The building is considered rehabilitated within the meaning of this subparagraph.

Example (3). Taxpayer C is the owner of a 100-year-old building that has substantial historic character, although the building is not a certified historic structure (as defined in section 191(d)(1) and the regulations thereunder). C uncovers and restores the original woodwork, wall coverings and molding throughout the building. The windows and doors are replaced with replicas of the original. The original interior floor plan and the exterior architectural uniqueness of the building are retained in the overall renovation of the building. The improvements made by C significantly preserve the building and enhance its historic value. The building is considered rehabilitated within the meaning of this subparagraph.

(4) *New construction distinguished*—(i) *In general.* Expenditures attributable to new construction do not qualify as rehabilitation expenditures. Whether expenditures are attributable to the rehabilitation of an existing building, or to new construction, is determined upon the basis of all the facts and circumstances. In general, however, in order for expenditures to be considered for rehabilitation and not for new construction, 75 percent or more of the existing external walls of the building must be retained in place as external walls in the rehabilitation process. See subparagraph (5) of this paragraph (b). Any expenditures attributable to an enlargement of a building (as defined in subdivision (ii) of this subparagraph) are considered expenditures for new construction, not for rehabilitation.

(ii) *Enlargement of a building.* A building is enlarged to the extent that the total volume of the building is increased. Thus, an increase in floor space resulting from interior remodelling is not considered an enlargement. Generally, the total volume of a building is equal to the product of the floor area of the building and the height from the underside of the lowest floor (including the basement) to the average height of the finished roof (as it exists or existed) above. For this purpose, floor area is measured from the exterior faces of external walls or from the centerline of walls separating buildings.

(5) *Retention of 75 percent of external walls*—(i) *In general.* A building meets the requirements set forth in paragraph (b)(1)(iii) only if 75 percent or more of the existing external walls (as measured by the total area of the existing external walls) are retained in place as external walls. For this purpose, the area of existing external walls includes the area of windows and doors.

(ii) *External wall.* An external wall is a wall, including its supporting elements, with one face exposed to the weather or earth. A common wall is not an external wall.

(iii) *Retained in place.* An external wall is retained in place even though it is covered (*e.g.*, with new siding) or reinforced. The existing curtain may also be replaced with a new curtain, provided that the structural framework that provides for the support of the existing curtain is retained in place. In addition, an external wall is retained in place notwithstanding that the existing doors and windows in an external wall are replaced or enlarged. An existing external wall is not retained in place, however, if the supporting elements of the wall are replaced.

(iv) *Retention as an external wall.* For purposes of meeting the 75 percent requirement of this subparagraph (5), an existing external wall must be retained in place as an external wall. If an addition is made that results in an existing external wall being converted into an internal wall, the wall is not retained in place as an external wall.

(v) *Special rule.* Solely for the purpose of meeting the 75 percent requirement of this subparagraph (5), the walls of an uncovered internal shaft designed solely to bring light or air into the center of a building which are completely surrounded by external walls of the building and which enclose space not designated for occupancy or other use by people (other than for maintenance

or emergency) are not considered external walls. Thus, a wall of a light well in the center of an office building is not an external wall. However, walls surrounding an uncovered courtyard which is usable by the building's occupants, *e.g.*, at lunch time, are external walls.

(vi) *Examples.* The provisions of this subparagraph (5) may be illustrated by the following examples:

Example (1). Taxpayer A rehabilitated a building all of the walls of which consisted of wood siding attached to gypsum board sheets (which covered the studs). A covered the existing wood siding with aluminum siding in a part of a rehabilitation that otherwise qualified under this subparagraph. A satisfied the requirement that 75 percent of the existing external walls must be retained in place as external walls.

Example (2). Taxpayer B rehabilitated a building the external walls of which had a masonry curtain. The masonry on the wall face was replaced with a glass curtain. The steel beam and girders supporting the existing curtain were retained in place. B satisfied the requirement that 75 percent of the existing external walls must be retained in place as external walls.

Example (3). Taxpayer C rehabilitated a building which has two external walls measuring 75′ x 20′ and two other external walls measuring 100′ x 20′. C tore down one of the larger walls, including its supporting elements, which accounted for more than 25% of the building's external walls and constructed a new wall. C has not satisfied the requirement that 75 percent of the existing external walls must be retained in place as external walls.

Example (4). The facts are the same as in example 3, except C does not tear down any walls, but makes an addition that results in one of the smaller walls becoming an internal wall. In addition, C englarged 8 of the existing windows on the larger walls, increasing them from a size of 3′ x 4′ to 6′ x 8′. Since the smaller wall accounts for less than 25 percent of the total wall area (and assuming that the rehabilitation otherwise qualifies under this subparagraph), C has satisfied the requirement that 75 percent of the existing external walls must be retained in place as external walls in the rehabilitation process. The enlargement of the existing windows on the larger wall does not change this result.

(6) *Major portion treated as separate building*—(i) *In general.* Where there is a separate rehabilitation of a major portion of a building, such major portion shall be treated as a separate building. Thus, such major portion may qualify as a qualified rehabilitated building if the requirements of this paragraph are met with respect to such major portion.

(ii) *Major portion defined.* Whether a part of a building constitutes a major portion of the building is determined upon the basis of all the facts and circumstances. Factors such as volume, floor space, and functional differences between such part and other parts of the building are taken into consideration. In general, however, a part of a building is considered a major portion of the building only if it is comprised of contiguous portions of the building and is clearly identifiable (for example, the first 5 stories of a 7 story building or the east wing of a building). However, property or fixtures that service such a contiguous portion of the building may be considered part of the major portion. In addition, to constitute a major portion, a part of a building must be sufficiently large that it would be reasonable to treat it as a separate building. In the case of a leasehold interest of a part of a building, the leased part is considered a major portion of the building only if that part would be considered a major portion independent of the fact that it is subject to a lease.

(iii) *Example.* The provisions of this subparagraph (6) may be illustrated by the following example:

Example. Taxpayer A separately rehabilitated the lower 2 floors of a 4-story building. The lower 2 floors are devoted to retail shops, and the upper 2 floors are leased as offices. The lower 2 floors qualify as a major portion of the building, since these floors are functionally distinct from the upper floors and occupy a sufficiently large portion of the volume and area of the building.

(7) *Special rule for rehabilitation done in phases.* If rehabilitation which is not continuous is determined under this subparagraph to be a single rehabilitation done in phases, the requirements of this paragraph (b) are to be applied with respect to the overall rehabilitation and not merely to a phase of the rehabilitation. In such case, a phase of a single overall rehabilitation will not be considered as "prior rehabilitation" for purposes of subparagraph (2)(i)(B) of this paragraph (b). Whether rehabilitation which is not continuous is a single rehabilitation that is done in phases is determined on the basis of all the facts and circumstances. Generally, however, to constitute a single rehabilitation that is done in phases, there must exist, prior to the time any rehabilitation work is commenced, a written set of architectural plans and specifications for all phases of the rehabilitation of the building and a reasonable expectation that all phases of the rehabilitation will be completed, and the period between the time that physical work on the first phase of the overall rehabilitation is to begin and physical work on the last phase of the overall rehabilitation is to begin must be reasonable. Other factors that are relevant include the length of time between each phase of rehabilitation activities and the extent of rehabilitation activity in each phase.

(8) *Cross-reference.* For provisions relating to when property is considered placed in service, see § 1.46–3(d).

(c) *Definition of qualified rehabilitation expenditures*—(1) *In general.* Except as provided in subparagraph (2) of this paragraph, the term "qualified rehabilitation expenditure" means any amount—

(i) Properly chargeable to capital account (as described in subparagraph (2) of this paragraph),

(ii) Incurred after October 31, 1978, for property (or additions or improvements to property) with a useful life of five years or more, and

(iii) Made in connection with the rehabilitation of a qualified rehabilitated building.

(2) *Chargeable to capital account.* For purposes of subparagraph (1)(i) of this paragraph, amounts paid or incurred are chargeable to capital account if under the taxpayer's method of accounting they are properly includible in computing basis under § 1.46–3. Amounts treated as an expense and deducted in the year they are paid or incurred are not chargeable to capital account.

(3) *Incurred by the taxpayer*—(i) *In general.* Generally, to qualify for a credit under section 48(a)(1)(E), qualified rehabilitation expenditures must be incurred by the taxpayer after October 31, 1978. An expenditure is incurred for purposes of this paragraph on the date such expenditure would be considered incurred under the accrual method of accounting, regardless of the method of accounting used by the taxpayer with respect to other items of income and expense.

(ii) *Qualified rehabilitation expenditures treated as incurred by the taxpayer.* (A) Where qualified rehabilitation expenditures are incurred after October 31, 1978, by a person (or persons) and the taxpayer acquires the property attributable to such expenditures (or an interest therein) before such property is placed in service, the taxpayer will be treated as having incurred the expenditures at the time the building is acquired. This subdivision shall apply only if the rehabilitated property is not placed in service during the period beginning with the date the qualified rehabilitation expenditures were incurred by the transferor and ending on the date the taxpayer acquired an interest in the property.

(B) The amount of qualified rehabilitation expenditures treated as incurred by the taxpayer under this paragraph is the lesser of—

(1) The qualified rehabilitation expenditures incurred before the date on which the taxpayer acquired an interest in the property attributable to the expenditures, or

(2) That portion of the taxpayer's cost or other basis for the property attributable to the qualified rehabilitation expenditures incurred before such date.

The portion of the cost of acquiring a building (or an interest therein) which is not treated under this paragraph as qualified rehabilitation expenditures incurred by the taxpayer is not eligible for a credit under section 48(a)(1)(E). See subparagraph (6) (B) of this paragraph (c).

(iii) *Examples.* The provisions of this subparagraph may be illustrated by the following examples:

Example (1). In 1978, taxpayer A, a cash basis taxpayer, commenced the rehabilitation of a 30-year old building. In June 1978, A signed a contract with a plumbing contractor for replacement of the plumbing in the building. A agreed to pay the contractor as soon as the work was completed. The work was completed in September 1978, but A did not pay the amount due until November 1, 1978. The expenditures for the plumbing are not qualified rehabilitation expenditures because they were not incurred after October 31, 1978.

Example (2). A incurred qualified rehabilitation expenditures of $300,000 with respect to an existing building between January 1, 1980, and May 15, 1980, and then sold the building to B on June 1, 1980. If the property attributable to the expenditures was not placed in service by A during the period from January 1, 1980, to June 1, 1980, B will be treated as having incurred the expenditures.

(4) *Useful life.* The determination whether property has a useful life of five years or more is made by applying the principles of § 1.46–3(e). In the case of expenditures for property made by a lessee, see sections 167 and 178 and the regulations thereunder for rules relating to whether improvements made to leased property are depreciable or amortizable.

(5) *Made in connection with the rehabilitation of a qualified rehabilitated building.* Expenditures attributable to work done to facilities related to a building (*e.g.*, sidewalk, parking lot, landscaping) are not considered made in connection with a qualified rehabilitated building.

(6) *Certain expenditures excluded from qualified rehabilitation expenditures.* (i) The term "qualified rehabilitation expenditures" does not include the following expenditures:

(A) An expenditure for property which is "section 38 property" (determined without regard to section 48 (a)(1)(E) and (l)).

(B) The cost of acquiring a building or any interest in a building (including a leasehold interest) except as provided in paragraph (c)(3) of this section.

(C) An expenditure attributable to enlargement of a building as defined in paragraph (b)(4)(ii) of this section.

(D) An expenditure attributable to rehabilitation of a certified historic structure (as defined in section 191(d)(1) and the regulations thereunder), unless the rehabilitation is a certified rehabilitation (as defined in section 191 (d)(4) and the regulations thereunder).

(d) *Coordination with other provisions of the Code*—(1) *Credit by lessees*—(i) *Rehabilitation performed by lessor.* A lessee may take the credit for rehabilitation performed by the lessor if the requirements of this section and section 48(d) are satisfied.

(ii) *Rehabilitation performed by lessee.* A lessee may take the credit for rehabilitation performed by the lessee, provided that the property (or improvements or additions to property) for which the rehabilitation expenditures are made is depreciable by the lessee (see sections 167 and 178, and the regulations thereunder) and the requirements of this section are satisfied.

(2) *When credit may be claimed.* The investment credit for qualified rehabilitated buildings shall be allowed only in the taxable year in which the property to which the rehabilitation expenditures is attributable is placed in service. See § 1.46–3(d)(1).

(3) *Recapture.* If property described in section 48(a)(1)(E) is disposed of by the taxpayer, or otherwise ceases to be "section 38 property", recapture may result under section 47.

Jerome Kurtz,

Commissioner of Internal Revenue.

[FR Doc. 80–33489 Filed 10–23–80; 1:13 pm]

BILLING CODE 4830–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 884 and 935

Abandoned Mine Lands Reclamation Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of Intent and Proposed Rule.

SUMMMARY: On October 20, 1980, the State of Ohio submitted to OSM its proposed abandoned mine and land reclamation plan under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). OSM is seeking public comment on the adequacy of the State plan.

DATES: Written comments on the plan must be received on or before 5:00 p.m., January 3, 1981. Written comments on whether OSM should hold a public hearing on the plan must be received by 5:00 p.m., November 17, 1980. A public hearing will be held on December 1, 1980 at 2:00 p.m. and will continue until all discussions have been completed. The hearing may be cancelled, as discussed under Supplementary Information, below.

ADDRESS: The public hearing, if held, will be in Room 112D, College Hall, Muskingum Area Technical College, 1555 Newark Road, Zanesville, Ohio 43701.

The hearing may be cancelled, as discussed under Supplementary Information below. Copies of the full text of the proposed Ohio plan are available for review during regular business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Region III, Administrative Record Center, Public Review Facility—Room 511, Federal Building and U.S. Court House, 46 East Ohio Street, Indianapolis, Indiana 46204.

Ohio Department of Natural Resources, Division of Reclamation, Fountain Square, Columbus, Ohio 43224.

Written commments should be sent to: Edgar A. Imhoff, Regional Director, Office of Surface Mining, Federal Building and U.S. Court House, 46 East Ohio Street, Indianapolis, Indiana 46204.

The Administrative Record will be available for public review at the OSM Region III office above, on Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays.

FOR FURTHER INFORMATION CONTACT: Richard D. McNabb, Assistant Regional Director, AML, Office of Surface Mining, Federal Building and U.S. Court House, 46 East Ohio Street, Indianapolis, Indiana 46202, Telephone (317) 269–2647.

SUPPLEMENTARY INFORMATION: Title IV of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), Pub. L. 95–87, 30 U.S.C. 1201 et seq., establishes an abandoned mine land program for the purposes of reclaiming and restoring land and water resources adversely affected by past mining. This program is funded by a reclamation fee imposed upon the production of coal. Lands and water eligible for reclamation are those that were mined or affected by mining and abandoned or left in an inadequate reclamation status prior to

August 3, 1977 and for which there is no continuing reclamation responsibility under State or Federal law.

Title IV provides that if the Secretary determines that a State has developed and submitted a program for reclamation of abandoned mines and has the ability and necessary State ligislation to implement the provisions of Title IV, the Secretary may approve the State program and grant to the State exclusive responsibility and authority to implement the provisions of the approved program.

On October 20, 1980, OSM received a proposed abandoned mine reclamation plan from the State of Ohio. The purpose of this submission is to demonstrate both the intent and capability to assume responsibility for administering and conducting the provisions of SMCRA and OSM's Abandoned Mine Lands (AML) Reclamation Program (30 CFR Chapter VII, Subchapter R) as published in the **Federal Register** (FR) on October 25, 1978, 43 FR 49932–49952.

This notice describes the proposed program and sets forth information concerning public participation in the Director's determination of whether or not the submitted plan may be approved. The public participation requirements for the consideration of a State AML Reclamation Plan are found in 30 CFR 884.13 and 884.14 (43 FR 49948 (1978)). Additional information may be found under corresponding sections of the preamble to OSM's AML Reclamation Program Final Rules (43 FR 49932–49940 (1978)).

The receipt of the Ohio Reclamation Plan submission is the first step in the process which will result in the establishment of a comprehensive program for the reclamation of abandoned mine lands in Ohio.

By submitting a proposed plan, Ohio has indicated that it wishes to be primarily responsible for this program. If the submission as hereafter modified, is approved by the Director of OSM, the State will have primary responsibility for the reclamation of abandoned mine lands in Ohio. If the program is disapproved and the State does not choose to revise the plan, a Federal AML program will be implemented and OSM will have primary responsibility for these activities.

All written comments must be mailed or hand carried to the Regional Director's Office above or may be hand carried to the public hearing, if a public hearing is found to be necessary and submitted as exhibits to the proceedings.

If the Regional Director finds that the State has given the public adequate notice and opportunity to comment in public hearings, and that the record of such hearing does not reflect major unresolved controversies and there are not a significant number of requests during the 15-day period to comment on the need for a hearing, the hearing may be cancelled by a notice published in the **Federal Register** cancelling the scheduled hearing.

Written comments on the issue of waiver of the public hearing must be received by 5:00 p.m., November 17, 1980.

Pursuant to 30 CFR 884.13, OSM will continue the period of review of the proposed Ohio Reclamation Plan at least until a final decision is made by the Secretary of the Interior on the Ohio permanent regulatory program.

The comment period will close at 5:00 p.m., on January 3, 1981. Comments received after that time will not be considered. Representatives of the Regional Director's Office will be available to meet between 8:00 a.m. and 4:00 p.m. at the request of members of the public to receive their advice and recommendations concerning the proposed State AML reclamation program.

Persons wishing to meet with representatives of the Regional Director's Office during this time period may place such request with Ron Lennard, Public Information Officer, telephone 317/269–2603 at the Regional Director's Office above.

Meetings may be scheduled between 8 a.m. and 4:00 p.m. Monday through Friday excluding holidays at the Regional Director's Office.

The Department intends to continue to discuss the State's plan with representatives of the State throughout the review process. All contacts between Departmental personnel and representatives of the State will be conducted in accordance with OSM's guidelines on contacts with States published September 19, 1979 at 44 F.R. 54444.

No Environmental Impact Statement is being prepared in connection with the process leading to the approval or disapproval of the proposed program. The approval of State AML reclamation plans does not have significant environmental impact, but is only a procedural change in terms of the governmental entity that will be performing the work.

The Director has determined that this is not a significant rule within the meaning of 43 CFR Part 14 and no regulatory analysis is being prepared on the Director's decision relating to the Ohio Reclamation Plan for Abandoned Mine Lands.

The Ohio Reclamation Plan for Abandoned Mine Lands can be approved if:

1. The Director finds that the public has been given adequate notice and opportunity to comment, and the record does not reflect major unresolved controversies.

2. Views of other Federal agencies have been solicited and considered.

3. The State has the legal authority, policies and administrative structure to carry out the plan.

4. The plan meets all the requirements of the OSM, AML Reclamation Program Provisions.

5. The State has an approved Regulatory Program, and

6. It is determined that the plan is in compliance with all applicable State and Federal laws and regulations.

The following constitutes a summary of the contents of the Ohio State Reclamation Plan submission:

The Ohio Department of Natural Resources has been designated by the Governor of the State of Ohio to implement and enforce the Abandoned Mine Lands Program in accordance with SMCRA (Pub. L. 95–87). The Division of Reclamation has developed State regulations to carry out State mandate. Contents of the State Plan submission include:

(a) Designation of authorized State Agency to administer the program.

(b) State's Chief Legal Officers opinion of designated Agency to operate the program.

(c) Description of the policies and procedures to be followed in conducting the program including:

(1) Goals and objectives.

(2) Project ranking and selection procedures.

(3) Coordination with other reclamation programs.

(4) Land acquisition, management and disposal.

(5) Reclamation on private land.

(6) Rights of Entry.

(7) Public participation in the program.

(d) Description of the Administrative and Management structure to be used in the program including:

(1) Description of the organization of the designated agency and its relationship to other organizations that will participate in the program.

(2) Personnel staffing policies.

(3) Purchasing and procurement systems and policies.

(4) Description of the accounting system including specific procedures for operation of the reclamation fund.

(e) Description of the public's participation in preparation of the plan.

(f) A general description of activities to be conducted under the reclamation plan including:

(1) Known or suspected eligible lands and water requiring reclamation, including a map.

(2) General description of the problems identified and how the plan proposes to deal with them.

(3) General description of how the lands to be reclaimed and proposed reclamation relate to the surrounding lands and land uses.

(4) A table summarizing the quantities of land and water affected and an estimate of the quantities to be reclaimed during each year covered by the plan.

(5) General description of the social, economic, and environmental conditions in the different geographic areas where reclamation is planned, including:

(i) The economic base.

(ii) Sociologic and demographic characteristics.

(iii) Significant aesthetic, historic or cultural, and recreational values.

(iv) Hydrology including water quality and quantity problems associated with past mining.

(v) Flora and fauna including endangered or threatened species and their habitat.

(vi) Underlying or adjacent coal beds and other minerals and projected methods of extraction.

(vii) Anticipated benefits from reclamation.

Dated: October 22, 1980.

Paul L. Reeves,

Deputy Director.

[FR Doc. 80-33549 Filed 10-27-80; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

National Security Agency

32 CFR Part 299a

[NSA/CSS Regulation 10-35]

Privacy Act Systems of Records-Disclosure and Amendment Procedures-Specific Exemptions

AGENCY: National Security Agency.

ACTION: Notice of proposed rulemaking—exemption rule.

SUMMARY: This proposed rule establishes specific exemptions from certain portions of Public Law 93-579, The Privacy Act of 1974 for a proposed new systems records, identified as GNSA 13, NSA/CSS Archival Records File. The National Security Agency (NSA) has established a repository pursuant to authority delegated by the National Archives and Records Service of the General Services Administration to provide secure storage, except review for declassification and categorization and preservation of cryptographic archives. File retrieval will be by subject matter and, in certain case, by name or other unique individual identifier. Exemptions are needed to protect properly classified material and certain data required by statute to be maintained and used solely for statistical purposes from compromise. Exemptions for these purposes are authorized by subsections 5 U.S.C. 552a(k)(1) and k(4) of the Act respectively.

DATES: Comments must be received by 1 December 1980.

ADDRESS: Comments should be sent to the Office of General Counsel, National Security Agency, Fort George G. Meade, MD 20755.

FOR FURTHER INFORMATION CONTACT: LCdr M. E. Bowman, JAGC, USN, Telephone: (Area code 301) 688-6054.

SUPPLEMENTARY INFORMATION: This proposed specific exemption rule is to be added to the existing NSA exemption rules of systems of records subject to The Privacy Act of 1974. The NSA exemption rules were published in the **Federal Register** on September 28, 1978, at 44 FR 51484. Accordingly, this proposed amendment, if adopted, will add a subsection 299a.10(b)(13) to 32 CFR Part 299a which will read as follows:

§ 299a.10 Specific exemptions.

* * * * *

SYSTEM NAME: NSA/CSS Archival Records.

EXEMPTION: This system is exempted from the sections of Title 5 U.s.C. 552a cited in paragraph 299a.10(a) and is subject to the statutory limitations noted in that paragraph.

AUTHORITY: 5 U.S.C. 552a(k)(1) and (k)(4).

REASONS: This system of records is exempted from all subsections cited pursuant to exemption (k)(1) to protect from unauthorized disclosure classified information which may be contained in records and files making up the system. The exemption does not limit access to that portion of the records in the system which are not classified or otherwise protected from unauthorized disclosure.

This system is exempted from all subsections cited pursuant to exemption (k)(4) where individual records and files are maintained and used solely for statistical compliance with those requirements with a minimum of administrative burden and expense.

M. S. Healy,

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

[FR Doc. 80-33555 Filed 10-27-80; 8:45 am]

BILLING CODE 3810-70-M

Department of the Army

32 CFR Part 505

[Army Regulation 340-21]

Personal Privacy and Rights of Individuals Regarding Personal Records; Exemptions

AGENCY: Department of the Army.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Army is amending exemption rules for fifteen Army systems of records subject to the Privacy Act. Exemptions rules for these fifteen exempted records systems are amended to delete redundant specific exemptions claimed. Additionally, three rules are reidentified and redescribed for clarity and agreement with the system notices to which they apply, i.e., A0201.08b is changed to A0240.01; A0202.08 is changed to A0239.01; and A0401.108 is changed to A401.08. The exemption rules, as proposed to be amended, are printed below in their entirety.

EFFECTIVE DATE: Comments must be received on or before November 28, 1980.

ADDRESS: Comments should be sent to Headquarters, Department of the Army, The Adjutant General Office, Washington, D.C. 20310.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Christian, telephone (area code 202) 693-0973.

SUPPLEMENTARY INFORMATION: The Department of the Army exemption rules were published in the **Federal Register** of September 28, 1979 at 45 FR 51486.

Accordingly, § 505.9(b) of 32 CFR Part 505 is proposed to be amended by revising exemptions A0225.01aDAPE, A0239.01DAAG, A0240.01DAAG, A0401.08DAJA, A0501.08eUSACIDC, A0508.09DAPE, A0508.11aUSACIDC, A0508.11bUSACIDC, A0508.16DAPE, A0508.17DAPE, A0508.24aDAPE, A0508.25aUSACIDC, A0509.09aDAPE, A0509.18bDAPE, and A0509.21DAPE:

§ 505.9 Exemption rules for Army systems of records.

* * * * *

EXEMPTED RECORD SYSTEMS

(General Exemptions)

ID—A0225.01aDAPE

SYSNAME—Military Police Management Information System (NPMIS)—Correctional Reporting System (CRS).

EXEMPTION—All portions of this system which fall within 5 U.S.C. 552a(j)(2) are exempt from the following provisions of Title 5 U.S.C. section 552a: (c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5), (e)(8), (f), and (g).

AUTHORITY—5 U.S.C. 552a(j)(2).

REASONS—From subsection (c)(3) because the release of accounting of disclosures would place the subject of an investigation on notice that he is under investigation and provide him with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations. From subsection (d) because granting individuals access to information collected and maintained by this component relating to the enforcement of criminal laws could interfere with the orderly administration of justice. Disclosure of this information could jeopardize the safety and well being of information sources, correctional supervisiors and other confinement facility administrators. Disclosure of the information could also result in the invasion of privacy of persons who provide information used in developing individual correctional treatment programs. Further, disclosure could result in a determination of a prisoner's self-image and adversely affect meaningful relationships between a prisoner and his counselor or supervisor. These factors are essential to the rehabilitation process.

Exemption from the remaining provisions is predicated upon the exemption from disclosure or upon the need for proper functioning of correctional programs.

* * * * *

EXEMPTED RECORD SYSTEMS

(General Exemptions)

ID—A0239.01DAAG

SYSNAME—Request for Information Files.

EXEMPTION—Portions of this system of records which fall within 5 U.S.C. 552a(j)(2) are exempt from the following provisions of Title 5 U.S.C. section 552a: (c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5), (e)(8), (f), and (g). Portions of the system maintained by Offices of Initial Denying Authorities which do not have a law enforcement mission and which fall within 5 U.S.C. 552a(k)(1) through (k)(7) are exempt from the following provisions of Title 5 U.S.C. section 552a: (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (f).

AUTHORITY—5 U.S.C. 552a(j)(2) and (k)(1) through (k)(7).

REASONS—This system of records is maintained solely for the purpose of administering the Freedom of Information Act and processing routine requests for information. To insure an accurate and complete file on each case, it is sometimes necessary to include copies of records which have been the subject of a Freedom of Information Act request. This situation applies principally to cases in which an individual has been denied access and/or amendment of personal records under an exemption authorized by Title 5 U.S.C. section 552. The same justification for the original denial would apply to a denial of access to copies maintained in the Freedom of Information Act file. It should be emphasized that the majority of records in this system are available on request to the individual and that all records are used solely to process requests. This file is not used to make any other determinations on the rights, benefits or privileges of individuals.

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EXEMPTED RECORD SYSTEMS

(General Exemptions)

ID—A0240.01DAAG

SYSNAME—Privacy Act Case Files.

EXEMPTIONS—Portions of this system which fall within 5 U.S.C. 552a (j)(2) are exempt from the following provisions of Title 5 U.S.C. section 552a: (c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5), (e)(8), (f), and (g). Portions of this system maintained by the DA Privacy Review Board and by those Access and Amendment Refusal Authorities which do not have a law enforcement mission and which fall within 5 U.S.C. 552a(k)(1) through (k)(7) are exempt from the following provisions of Title 5 U.S.C. section 552a: (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (f).

AUTHORITY—5 U.S.C. 552a(j)(2) and (k)(1) through (k)(7).

REASONS—This system of records is maintained solely for the purposes of administering the Privacy Act of 1974. To insure an accurate and complete file on each case, it is sometimes necessary to include copies of records which have been the subject of a Privacy Act request. This situation applies principally to cases in which an individual has been denied access and/or amendment of personal records under an exemption authorized by Title 5 U.S.C. section 552a. The same justification for the original denial would apply to a denial of access and/or amendment of copies maintained in the Privacy Act Case File. It should be emphasized that the majority or records in this system are available on request to the individual and that all records are used solely to administer Privacy Act requests. This file is not used to make any other determinations on the rights, benefits or privileges of individuals.

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EXEMPTED RECORD SYSTEMS

(General Exemptions)

ID—A0401.08DAJA

SYSNAME—Prosecutorial Files.

EXEMPTION—Portions of this system of records which fall within 54 U.S.C. 552a(j)(2) are exempt from the following provisions of Title 5 U.S.C. section 552a: (c)(3), (c)(4), (d), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(8), (f) and (g).

AUTHORITY—5 U.S.C. 552a(j)(2).

REASONS—From subsection (c)(4), (d), (e)(4)(G), (e)(4)(H), (f), and (g) because granting individuals access to information collected and maintained by this component relating to the enforcement of laws could interfere with proper investigations and the orderly administration of justice. Disclosure of this information could result in the concealment, alteration or destruction of evidence, the identification of offenders or alleged offenders, nature and disposition of charges; and jeopardize the safety and well being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources and methods used by this component, and could result in the invasion of the privacy of individuals only incidentally related to an investigation. Exemption from access necessarily includes exemption from other requirements.

From subsection (c)(3) because the release of accounting of disclosure would place the subject of an investigation on notice that he is under investigation and provide him with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

From subsection (e)(2) because in a criminal or other law enforcement investigation, the requirement that information be collected to the greatest extent practicable from the subject individual would alert the subject as to the nature or existence of the investigation and thereby present a

serious impediment to effective law enforcement.

From subsection (e)(3) because compliance would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

From subsection (e)(8) because compliance with this provision would provide an impediment to law enforcement by interfering with the ability to issue warrants or supoenas and by revealing investigative techniques, procedures of evidence.

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EXEMPTED RECORD SYSTEMS

(General Exemptions)

ID—A0501.08e USACIDC

SYSNAME—Informant Register.

EXEMPTION—All portions of this system of records which fall within 5 U.S.C. 552a(j)(2) are exempt from the following provisions of Title 5 U.S.C. section 552a: (c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5), (e)(8), (f), and (g).

AUTHORITY—5 U.S.C. 552a(j)(2).

REASONS—From subsection (c)(3) because release of accounting of disclosures would provide the informant with significant information concerning the nature of a particular investigation, the internal methods and techniques involved in criminal investigation, and the investigative agencies (state, local or foreign national) involved in a particular case resulting in a serious compromise of the criminal law enforcement processes.

From subsections (c)(4), (d), (e)(4)(G), (e)(4)(H), (f), and (g) because disclosure of portions of the information in this system of records would seriously impair the prudent and efficient handling of these uniquely functioning individuals; hamper the inclusion of comments and evaluations concerning the performance, qualification, character, identity, and propensities of the informant; and prematurely compromise criminal investigations which either concern the conduct of the informant himself or investigations wherein he/she is integrally or only peripherally involved. Additionally, the exemption from access necessarily includes exemption from amendment, certain agency requirements relating to access and amendment of records and civil liability predicated upon agency compliance with specific provisions of the Privacy Act.

Subsection (d), (e)(4)(G), (e)(4)(H), and (f) are also necessary to protect the security of information properly classified in the interest of national defense and foreign policy.

From subsection (e)(1) because the nature of the criminal investigative function creates unique problems in prescribing what information concerning informants is relevant or necessary. Due to close liaison and existing relationships with other Federal, state, local and foreign national law enforcement agencies, information about informants may be received which may relate to a case then under the investigative jurisdiction of another Government agency but it is necessary to maintain this information in order to provide leads for appropriate law enforcement purposes and to establish patterns of activity which may relate to the jurisdiction of both the USACIDC and other agencies. Additionally, the failure to maintain all known information about informants could affect the effective utilization of the individual and substantially increase the operational hazards incumbant in the employment of an informant in very compromising and sensitive situations.

From subsection (e)(2) because collecting information from the informant would potentially thwart both the criminal investigative process and the required management control over these individuals by appraising the informant of investigations or management actions concerning his involvement in criminal activity or with USACIDC personnel.

From subsection (e)(3) because supplying an informant with a form containing the information specified could result in the compromise of an investigation, tend to inhibit the cooperation of the informant, and render ineffectual investigative techniques and methods utilized by USACIDC in the performance of its criminal law enforcement duties.

From subsection (e)(5) because this requirement would unduly hamper the criminal investigative process due to type of records maintained and necessity for rapid information retrieval and dissemination. Also, in the collection of information about informants, it is impossible to determine what information is then accurate, relevant, timely and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation or contact brings new details to light. In the criminal investigative process, accuracy and relevance of information concerning informants can only be determined in a court of law. The restrictions imposed by subsection (e)(5) would restrict the ability of trained investigators to exercise their judgment in reporting information relating to informant's actions and would impede the development of criminal intelligence necessary for effective law enforcement.

From subsection (e)(8) because the notice requirements of this provision could present a serious impediment to criminal law enforcement by revealing investigative techniques, procedures, and the existence of confidential investigations.

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EXEMPTED RECORD SYSTEMS

(General Exemptions)

ID—A0508.09DAPE

SYSNAME—FBI Criminal-Type Reporting Files.

EXEMPTION—All portions of this system of records which fall within 5 U.S.C. 552a(j)(2) are exempt from the following provisions of Title 5 U.S.C. section 552a: (c)(3), (c)(4), (d), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(8), (f), and (g).

AUTHORITY—5 U.S.C. 552a(j)(2).

REASONS—From subsections (c)(4), (d), (e)(4)(G), (e)(4)(H), (f), and (g) because granting individuals access to information collected and maintained by this component relating to the enforcement of laws could interfere with proper investigations and the orderly administration of justice. Disclosure of this information could result in the concealment, alteration or destruction of evidence, the identification of offenders or alleged offenders, nature and disposition of charges; and jeopardize the safety and well being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources and methods used by this component, and could result in the invasion of the privacy of individuals only incidentally related to an investigation. Exemption from access necessarily includes exemption from the other requirements.

From subsection (c)(3) because the release of accounting of disclosure would place the subject of an investigation on notice that he is under investigation and provide him with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

From subsection (e)(2) because in a criminal or other law enforcement investigation, the requirement that information be collected to the greatest extent practicable from the subject individual would alert the subject as to the nature or existence of the investigation and thereby present a

serious impediment to effective law enforcement.

From subsection (e)(3) because compliance would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

From subsection (e)(8) because compliance with this provision would provide an impediment to law enforcement by interfering with the ability to issue warrants or subpoenas and by revealing investigative techniques procedures or evidence.

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EXEMPTED RECORD SYSTEMS

(General Exemptions)

ID—A0508.11aUSACIDC

SYSNAME—Criminal Investigation and Crime Laboratory Files.

EXEMPTION—All portions of this system of records which fall within 5 U.S.C. 552a(j)(2) are exempt from the following provisions of Title 5 U.S.C. section 552a: (c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5), (e)(8), (f), and (g).

AUTHORITY—5 U.S.C. 552a(j)(2)

REASONS—From subsection (c)(3) because the release of accounting of disclosures would place the subject of an investigation on notice that he is under investigation and provide him with significant information concerning coordinated investigative effort and techniques and the nature of the investigation, resulting in a serious impediment to criminal law enforcement activities or the compromise of properly classified material.

From subsection (c)(4), (d), (e)(4)(G), (e)(4)(H), (f), and (g) because access might compromise ongoing investigations, reveal classified information, investigatory techniques or the identity of confidential informants, or invade the privacy of persons who provide information in connection with a particular investigation. The exemption from access necessarily includes exemption from amendment, certain agency requirements relating to access and amendment of records, and civil liability predicated upon agency compliance with those specific provisions of the Privacy Act. The exemption from access necessarily includes exemptions from the other requirements.

From subsection (e)(1) because the nature of the investigative function creates unique problems in prescribed specific perimeters in a particular case as to what information is relevant or necessary. Also due to close liaison and working relationships with other Federal, State, local and foreign national law enforcement agencies, information may be received which may relate to a case then under the investigative jurisdiction of another Government agency but it is necessary to maintain this information in order to provide leads for appropriate law enforcement purposes and to establish patterns of activity which may relate to the jurisdiction of both the USACIDC and other agencies.

From subsection (e)(2) because collecting information from the subject of criminal investigations would thwart the investigative process by placing the subject of the investigation on notice thereof.

From subsection (e)(3) because supplying an individual with a form containing the information specified could result in the compromise of an investigation, tend to inhibit the cooperation of the individual queried, and render ineffectual investigation techniques and methods utilized by USACIDC in the performance of their criminal law enforcement duties.

From subsection (e)(5) because this requirement would unduly hamper the criminal investigative process due to the great volume of records maintained and the necessity for rapid information retrieval and dissemination. Also, in the collection of information for law enforcement purposes, its impossible to determine what information is then accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light. In the criminal investigative process, accuracy and relevance of information can only be determined in a court of law. The restrictions imposed by subsection (e)(5) would restrict the ability of trained investigators to exercise their judgment in reporting on investigations and impede the development of criminal intelligence necessary for effective law enforcement.

From subsection (e)(8) because the notice requirements of this provision could present a serious impediment to criminal law enforcement by revealing investigative techniques, procedures, and the existence of confidential investigations.

EXEMPTED RECORD SYSTEMS

(General Exemptions)

ID—A0508.11bUSACIDC

SYSNAME—Criminal Information Reports and Cross Index Card Files.

EXEMPTION—All portions of this system of records which fall within 5 U.S.C. 552a(j)(2) are exempt from the following provisions of 5 U.S.C. 552a: (c)(3), (c)(4), (e)(4)(G), (e)(4)(H), (e)(5), (e)(8), (f), and (g).

AUTHORITY—5 U.S.C. 552a(j)(2).

REASONS—From subsection (c)(3) because the release of accounting of disclosures would place the subject of an investigation on notice that he is under investigation and provide him with significant information concerning coordinated investigative effort and techniques and the nature of the investigation, resulting in a serious impediment to criminal law enforcement activities or the compromise of properly classified material.

From subsection (e)(4), (d), (e)(4)(G), (e)(4)(H), (f), and (g) because access might compromise ongoing investigations, reveal investigatory techniques and the identity of confidential informants, and invade the privacy of persons who provide information in connection with a particular investigation. The exemption from access necessarily includes exemption from amendment, certain agency requirements relating to access and amendment of records, and civil liability predicated upon agency compliance with those specific provisions of the Privacy Act. In addition, subsections (d), (e)(4)(G), (e)(4)(H), and (f) are necessary to protest the security of information properly classified in the interest of national and foreign policy.

From subsection (e)(1) because the nature of the criminal investigative function creates unique problems in prescribing specific perimeters in a particular case what information is relevant or necessary. Also, due to close liaison and working relationships with other Federal, State, local and foreign national law enforcement agencies, information may be received which may relate to a case then under the investigative jurisdiction of another Government agency but it is necessary to maintain this information in order to provide leads for appropriate law enforcement purposes and to establish patterns of activity which may relate to the jurisdiction of both the CID and other agencies.

From subsection (e)(2) because collecting information from the subject of criminal investigations would thwart the investigative process by placing the subject of the investigation on notice thereof.

From subsection (e)(3) because supplying an individual with a form containing the information specified could result in the compromise of an investigation, tend to inhibit the cooperation of the individuals queried,

and render ineffectual investigative techniques and methods utilized by USACIDC in the performance of their criminal law enforcement duties.

From subsection (e)(5) because this requirement would unduly hamper the criminal investigative process due to the great volume of records maintained and the necessity for rapid information retrieval and dissemination. Also, in the collection of information for law enforcement purposes, it is impossible to determine what information is then accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light. In the criminal investigative process, accuracy and relevance of information can only be determined in a court of law. The restrictions imposed by subsection (e)(5) would restrict the ability of trained investigators to exericse their judgment in reporting on investigations and impede the development of criminal intelligence necessary for effective law enforcement.

From subsection (e)(8) because the notice requirements of this provision could present a serious impediment to criminal law enforcement by revealing investigative techniques, procedures, and the existence of confidential investigations.

EXEMPTED RECORD SYSTEMS

(General Exemptions)

ID—A0508.16DAPE

SYSNAME—Absentee Case Files

EXEMPTION—All portions of this system of records which fall within 5 U.S.C. 552a(j)(2) are exempt from the following provisions of Title 5 U.S.C. section 552a: (c)(3), (c)(4), (d), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(8), (f), and (g).

AUTHORITY—5 U.S.C. 552a(j)(2).

REASONS—From subsection (c)(4), (d), (e)(4)(G), (e)(4)(H), (f), and (g) because granting individuals access to information collected and maintained by this component relating to the enforcement of laws could interfere with proper investigations and the orderly administration of justice. Disclosure of this information could result in the concealment, alteration or destruction of evidence, the identification of offenders or alleged offenders, nature and disposition of charges; and jeopardize the safety and well being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources and methods used by this component, and could result in the invasion of the privacy of individuals only incidentally related to an investigation. Exemption from access necessarily includes exemption from the other requirements.

From subsection (c)(3) because the release of accounting of disclosure would place the subject of an investigation on notice that he is under investigation and provide him with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

From subsection (e)(2) because in a criminal or other law enforcement investigation, the requirement that information be collected to the greatest extent practicable from the subject individual would alert the subject as to the nature or existence of the investigation and thereby present a serious impediment to effective law enforcement.

From subsection (e)(3) because compliance would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

From subsection (e)(8) because compliance with this provision would provide an impediment to law enforcement by interfering with the ability to issue warrants or subpoenas and by revealing investigative techniques, procedures, or evidence.

EXEMPTED RECORD SYSTEMS

(General Exemptions)

ID—A0508.17DAPE

SYSNAME—Military Police Reporting Files.

EXEMPTION—All portions of this system of records which fall within 5 U.S.C. 552a(j)(2) are exempt from the following provisions of Title 5 U.S.C. section 552a: (c)(3), (c)(4), (d), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(8), (f), and (g).

AUTHORITY—5 U.S.C. 552a(j)(2).

REASONS—From subsection (c)(4), (d), (e)(4)(G), (e)(4)(H), (e)(4)(I), (f), and (g) because granting individuals access to information collected and maintained by this component relating to the enforcement of criminal laws could interfere with orderly investigations and the orderly administration of justice. Disclosure of this information could result in the concealment, alteration or destruction of evidence, the identification of offenders or alleged offenders, nature and disposition of charges, and jeopardize the safety and well being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources and methods used by this component, and could result in the invasion of the privacy of individuals only incidentally related to an investigation.

From subsection (c)(3) because the release of accounting of disclosure would place the subject of an investigation on notice that he is under investigation and provide him with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

From subsection (e)(2) because in a criminal or other law enforcement investigation, the requirement that information be collected to the greatest extent practicable from the subject individual would alert the subject as to the nature or existence of the investigation and thereby present a serious impediment to effective law enforcement.

From subsection (e)(3) because compliance would constitute a serious impediment to law enforcement in that it would compromise the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

From subsection (e)(8) because compliance with this provision would provide an impediment to law enforcement by interfering with the ability to issue warrants or subpoenas and by revealing investigative techniques, procedures, or evidence.

EXEMPTED RECORD SYSTEMS

(Specific Exemptions)

ID—A0508.24aDAPE

SYSNAME—Serious Incident Reporting Files.

EXEMPTION—All portions of this system of records which fall within a 5 U.S.C. 552a(j)(2) are exempt from the following provisions of Title 5 U.S.C. section 552a: (c)(3), (c)(4), (d), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(8), (f), and (g).

AUTHORITY—5 U.S.C. 552a(j)(2).

REASONS—From subsections (c)(4), (d), (e)(4)(G), (e)(4)(H), (f), and (g) because granting individuals access to information collected and maintained by this component relating to the enforcement of criminal laws could interfere with orderly investigations and the orderly administration of justice. Disclosure of this information could result in the concealment, alteration or destruction of evidence, the identification of offenders or alleged offenders, nature and disposition of

charges; and jeopardize the safety and well being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources and methods used by this component, and could result in the invasion of the privacy of individuals only incidentally related to an investigation. Exemption from access necessarily includes exemption from the other requirements.

From subsection (c)(3) because the release of accounting of disclosure would place the subject of an investigation on notice that he is under investigation and provide him with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

From subsection (e)(2) because in a criminal or other law enforcement investigation, the requirement that information be collected to the greatest extent practicable from the subject individual would alert the subject as to the nature or existence of the investigation and thereby present a serious impediment to effective law enforcement.

From subsection (e)(3) because compliance would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

From subsection (e)(8) because compliance with this provision would provide an impediment to law enforcement by interfering with the ability to issue warrants or subpoenas and by revealing investigative techniques, procedures or evidence.

EXEMPTED RECORD SYSTEMS

(General Exemptions)

ID—A0508.25aUSACIDC

SYSNAME—Index to Criminal Investigative Case Files.

EXEMPTION—All portions of this system of records which fall within 5 U.S.C. 552a(j)(2) are exempt from the following provisions of 5 U.S.C. 552a: (c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5), (e)(8), (f), and (g).

AUTHORITY— 5 U.S.C. 552a(j)(2).

REASONS—From subsection (c)(3) because the release of accounting of disclosures would place the subject of an investigation on notice that he is under investigation and provide him with significant information concerning coordinated investigative effort and techniques and the nature of the investigation, resulting in a serious impediment to criminal law enforcement activities or the compromise of properly classified material.

From subsection (c)(4), (d), (e)(4)(G), (e)(4)(H), (f), and (g) because access might compromise ongoing investigations, reveal investigatory techniques and the identity of confidential informants, and invade the privacy of persons who provide information in connection with a particular investigation. The exemption from access necessarily includes exemption from amendment, certain agency requirements relating to access and amendment of records, and civil liability predicated upon agency compliance with those specific provisions of the Privacy Act. In addition, subsections (d), (e)(4)(G), (e)(4)(H) and (f) are necessary to protect the security of information properly classified in the interest of national and foreign policy.

From subsection (e)(1) because the nature of the criminal investigative function creates unique problems in prescribing specific perimeters in a particular case what information is relevant or necessary. Also, due to close liaison and working relationships with other Federal, State, local and foreign national law enforcement agencies, information may be received which may relate to a case then under the investigative jurisdiction of another Government agency but it is necessary to maintain this information in order to provide leads for appropriate law enforcement purposes and to establish patterns of activity which may relate to the jurisdiction of both the CID and other agencies.

From subsection (e)(2) because collecting information from the subject of criminal investigations would thwart the investigative process by placing the subject of the investigation on notice thereof.

From subsection (e)(3) because supplying an individual with a form containing the information specified could result in the compromise of an investigation, tend to inhibit the cooperation of the individuals queried, and render ineffectual investigative techniques and methods utilized by USACIDC in the performance of their criminal law enforcement duties.

From subsection (e)(5) because this requirement would unduly hamper the criminal investigative process due to the great volume of records maintained and the necessity for rapid information retrieval and dissemination. Also, in the collection of information for law enforcement purposes, it is impossible to determine what information is then accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light. In the criminal investigative process, accuracy and relevance of information can only be determined in a court of law. The restrictions imposed by subsection (e)(5) would restrict the ability of trained investigators to exercise their judgment in reporting on investigations and impede the development of criminal intelligence necessary for effective law enforcement.

From subsection (e)(8) because the notice requirements of this provision could present a serious impediment to criminal law enforcement of revealing investigative techniques, procedures, and the existence of confidential investigations.

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EXEMPTED RECORD SYSTEMS

(General Exemptions

ID—A0509.09aDAPE

SYSNAME—Traffic Law Enforcement Files.

EXEMPTION—All portions of this system of records which fall within 5 U.S.C. 552a(j)(2) are exempt from the following provisions of Title 5 U.S.C. section 552a: (c)(3), (c)(4), (d), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(8), (f), and (g).

AUTHORITY—5 U.S.C. 552a(j)(2).

REASONS—From subsections (c)(4), (d), (e)(4)(G), (e)(4)(H), (f), and (g), because granting individuals access to information collected and maintained by this component relating to the enforcement of laws could interfere with proper investigations and the orderly administration of justice. Disclosure of this information could result in the concealment, alteration or destruction of evidence, the identification of offenders or alleged offenders, nature and disposition of charges; and jeopardize the safety and well being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources, and methods used by this component, and could result in the invasion of the privacy of individuals only incidentally related to an investigation. Exemption from access necessarily includes exemption from the other requirements.

From subsection (c)(3) because the release of accounting of disclosure would place the subject of an investigation on notice that he is under investigation and provide him with significant information concerning the

nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

From subsection (e)(2) because in a criminal or other law enforcement investigation, the requirement that information be collected to the greatest extent practicable from the subject individual would alert the subject as to the nature or existence of the investigation and thereby present a serious impediment to effective law enforcement.

From subsection (e)(3) because compliance would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

From subsection (e)(8) because compliance with this provision would provide an impediment to law enforcement by interfering with the ability to issue warrants or subpoenas and by revealing investigative techniques, procedures or evidence.

EXEMPTED RECORD SYSTEMS

(General Exemptions)

ID—A0509.18bDAPE

SYSNAME—Expelled or Barred Person Files.

EXEMPTION—All portions of this system of records which fall within 5 U.S.C. 552a(j)(2) are exempt from the following provisions of Title 5 U.S.C. section 552a: (c)(3), (c)(4), (d), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(8), (f), and (g).

AUTHORITY—5 U.S.C. 552a(j)(2).

REASONS—From subsections (c)(4), (d), (e)(4)(G), (e)(4)(H), (f), and (g) because granting individuals access to information collected and maintained by this component relating to the enforcement of criminal laws could interfere with orderly investigations and the orderly administration of justice. Disclosure of this information could result in the concealment, alteration or destruction of evidence, the identification of offenders or alleged offenders, and the nature and disposition of charges; and jeopardize the safety and well being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources, and methods used by this component, and could result in the invasion of the privacy of individuals only incidentally related to an investigation.

From subsection (c)(3) because the release of accounting would place the subject of an investigation on notice that he is under investigation and provide him with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

From subsection (e)(2) because in a criminal or other law enforcement investigation, the requirement that information be collected to the greatest extent practicable from the subject individual would alert the subject as to the nature or existence of the investigation and thereby present a serious impediment to effective law enforcement.

From subsection (e)(3) because compliance would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

From subsection (e)(8) because compliance with this provision would provide an impediment to law enforcement by interfering with the ability to issue warrants or subpoenas and by revealing investigative techniques, procedures or evidence.

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EXEMPTED RECORD SYSTEMS

(General Exemptions)

ID—A0509.21DAPE

SYSNAME—Local Criminal Information Files.

EXEMPTION—All portions of this system of records which fall within 5 U.S.C. 552a(j)(2) are exempt from the following provisions of Title 5 U.S.C. section 552a: (c)(3), (c)(4), (d), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(8), (f), and (g).

AUTHORITY—5 U.S.C. 552a(j)(2).

REASONS—From subsections (c)(4), (d), (e)(4)(G), (e)(4)(H), (f) and (g) because granting individuals access to information collected and maintained by this component relating to the enforcement of laws could interfere with proper investigations and the orderly administration of justice. Disclosure of this information could result in the concealment, alternation or destruction of evidence, the identification of offenders or alleged offenders, nature and disposition of charges; and jeopardize the safety and well being of informants, witnesses and their families, and law inforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources and methods used by this component, and could result in the invasion of the privacy of individuals only incidentally related to an investigation. Exemption from access necessarily includes exemption from the other requirements.

From subsection (c)(3) because the release of accounting of disclosure would place the subject of an investigation on notice that he is under investigation and provide him with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

From subsection (e)(2) because in a criminal or other law enforcement investigation, the requirement that information be collected to the greatest extent practible from the subject individual would alert the subject as to the nature or existence of the investigation and thereby present a serious impediment to effect law enforcement.

From subsection (e)(3) because compliance would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation or reveal the identify of witnesses or confidential informants.

From subsection (e)(8) because compliance with this provision would provide an impediment of law enforcement by interfering with the ability to issue warrants or subpoenas and by revealing investigative techniques, procedures or evidence.

M. S. Healy,

OSD Federal Register Liaision Officer
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October 21, 1980.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-10-FRL 1644-1]

Approval and Promulgation of Michigan Implementation Plan—Ozone

AGENCY: U.S. Environmental Protection Agency.

ACTION: Proposed rulemaking.

SUMMARY: This notice proposes approval of the ozone control strategy and transportation control plans for Niles, Michigan, a portion of the South Bend, Indiana urbanized area. The State of Michigan submitted these revisions to the U.S. Environmental Protection Agency to satisfy the requirements of Part D of the Clean Air Act. The purpose of this notice is to discuss the results of USEPA's review of these submittals, to

propose rulemaking action and to invite public comment on the SIP revision.

DATE: Comments on the revision and on USEPA's proposed rulemaking are due by November 28, 1980.

ADDRESSES: Copies of these SIP revisions are available for public inspection during normal business hours at the following addresses:

United States Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604,

United States Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, D.C. 20460,

Michigan Department of Natural Resources, Air Quality Division, State Secondary Government Complex, General Office Building, 7150 Harris Drive, Lansing, Michigan 48917.

Written comments should be sent to: Mr. Gary Gulezian, Chief, Regulatory Analysis Section, Air Programs Branch, U.S. Enviromental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Judy Kertcher, Regulatory Analysis Section, Air Programs Branch, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–6038.

SUPPLEMENTARY INFORMATION:

General Information

On March 3, 1978 (43 FR 8962) and October 5, 1978 (43 FR 45993), pursuant to the requirements of section 107 of the Clean Air Act (Act) as amended, USEPA designated certain areas in each state as not meeting the National Ambient Air Quality Standards (NAAQS) for various pollutants. These areas are delineated at 40 CFR Part 81. Part D of the Act, which was added by the 1977 Amendments, requires each State to revise its State Implementation Plan (SIP) to meet specific requirements for areas designated as nonattainment. These SIP revisions must demonstrate attainment of the primary standard as expeditiously as practicable, but not later than December 31, 1982. Under certain conditions that date may be extended to no later than December 31, 1987, for ozone and or carbon monoxide.

On April 25, 1979, the State of Michigan submitted plans for all of the designated ozone and carbon monoxide nonattainment areas in the State. Additional material concerning ozone attainment was submitted by the State on October 26, 1979, and on November 8, 1979. On December 26, 1979, the State of Michigan submitted transportation control plans (TCPs) for the major urban areas in the State. USEPA announced receipt and availability of these SIP revisions on March 14, 1980 (45 FR 16504). On August 8, 1980, the State submitted additional information on the transportation control plans (TCPs) for Niles, Michigan, a portion of the South Bend, Indiana urbanized area. As defined by the U.S. Bureau of the Census in 1970, this area includes the urbanized portions of Cass and Berrien Counties.

In the April 14, 1980 **Federal Register** (45 FR 25087, 25093), USEPA proposed approval of the ozone attainment demonstrations and TCPs for the Detroit, Flint, Lansing and Grand Rapids urban areas. At that time, USEPA also proposed approval of the ozone control strategy for rural counties in the State of Michigan, including Berrien and Cass Counties (45 FR 25087). These rulemaking actions were finalized on June 2, 1980 (45 FR 37188, 37192). At that time, however, USEPA's final rulemaking action approved the plans only for the nonurbanized portions of Berrien and Cass Counties. USEPA stated that action on the plan for urbanized portions of those two counties would be proposed in a separate **Federal Register** notice. On August 8, 1980 the State of Michigan submitted the remaining required information on the TCPs for the Niles area. This notice addresses the ozone control strategy and TCPs for those urbanized areas of Berrien and Cass Counties not approved in the June 2, 1980 **Federal Register** (45 FR 37188, 37192). USEPA solicits public comment on the SIP revision and on USEPA's proposed rulemaking action.

A thirty day comment period is being used to enable publication of final action on the SIP revision as soon as possible. Final action approving the revision would remove the new source growth prohibitions mandated by section 110(a)(2)(I) of the Clean Air Act for all nonattainment areas lacking a federally approved SIP.

Requirements for Transportation Control Plans and Demonstrations of Attainment

USEPA has evaluated the transportation control plan and the attainment demonstration using the requirements for an approvable nonattainment area SIP which appeared in the April 4, 1979 **Federal Register** (44 FR 20372), the "USEPA–USDOT Guideline for Air Quality—Transportation Plans" and the office of Transportation and Land Use Policy "Checklist for Transportation SIPs." To assist the public in preparing comments on the proposed SIP revisions, a summary of the principal requirements is presented below.

1. Technical Assessments, Demonstrations of Attainment, and Reasonable Further Progress. Section 175 of the Act states that the SIP must include a program for selecting transportation measures to attain the emission reduction targets of the SIP. This program must include schedules for the expeditious implementation of adopted transportation measures and schedules for the analysis and adoption of additional transportation measures.

The April 4, 1979 **Federal Register** and its supplements describe the requirements for acceptable attainment demonstrations. A brief summary follows:

a. A definition of the geographic areas covered by the plan.

b. An accurate, comprehensive, and current emission inventory.

c. Emission reduction estimates for each adopted or scheduled control measure or for related groups of control measures.

d. A determination of the level of control needed to demonstrate attainment of the primary NAAQS by 1982 (1987 if attainment cannot be made by 1982 for ozone or carbon monoxide). This should include a consideration of future emission growth.

e. A provision for reasonable further progress (RFP) toward attainment of the primary standards prior to 1982 or 1987.

f. A provision for the annual reporting on the progress toward meeting the compliance schedules outlined in the SIP.

g. An identification and quantification of an emissions growth increment, which will allow for major new or modified stationary sources. Alternatively, an emission offset approach can be adopted to accommodate new sources.

2. Interagency Agreements and Assignments of Tasks. Pursuant to section 174 of the Act, the State and elected officials of affected local governments must determine respective responsibilities of the state air pollution control agency, other state agencies, the lead local agencies, and local units of government. This determination must identify the responsibilities for strategy evaluation, adoption, implementation, and enforcement.

3. Analysis of Alternatives. Pursuant to section 172(b)(2) of the Act, all reasonably available transportation measures must be evaluated and considered for implementation. At a minimum, the strategies listed in section 108(f) of the Act must be considered for each nonattainment area needing transportation related emission

reductions. Areas that need an extension of the attainment date for carbon monoxide or ozone must commit to establish, expand or improve public transit and to meet basic transportation needs (Section 110(a)(3)(D) and 110(c)(5)(B)).

4. Implementor Commitments. Pursuant to section 172(b)(10) to the Act, the SIP must include written evidence that the State and other units of government have adopted the necessary requirements in legally enforceable form. Further, the SIP must contain commitments to implement and enforce the SIP strategy as well as annual emission reduction goals.

5. Financial and Manpower Resources. Pursuant to section 172(b)(7) of the Act, the SIP must identify the fiscal resources necessary to carry out the plan provisions.

6. Reporting of Progress. Pursuant to section 172(b)(5) of the Act, the SIP must contain procedures and schedules for periodic monitoring of progress in implementing strategies and in achieving annual emission reductions. Section 176(c) of the Act requires that the lead local agency determine the conformity of its transportation control plan and programs with the SIP.

7. Impacts of Plan Provisions. Pursuant to section 172(b)(9)(A) of the Act, the SIP must identify and analyze the air quality, health, welfare, economic, energy, and social effects of the plan provisions and the alternatives considered.

8. Public Participation. Pursuant to section 172(b)(9) of the Act, the SIP must contain evidence of public, local government and State legislative involvement and consultation regarding the planning process and proposal.

9. Strategies. Each State Implementation Plan must include strategies which will be used to demonstrate attainment of the NAAQS.

USEPA has reviewed the transportation control plans and ozone attainment demonstration for the urbanized areas of Cass and Berrien Counties, Michigan, to determine if they satisfy these requirements. USEPA proposes to approve the transportation control plans and the ozone attainment demonstration for the urbanized areas of Cass and Berrien Counties, Michigan, as discussed below.

Based on observed exceedances of the ozone standard (0.12 ppm) during the 1975 through 1978 period, the State of Michigan designated the Cass and Berrien Counties as nonattainment for ozone. The nonattainment designation of the Michigan counties was based on the statistical evaluation approach for the determination of the expected number of violations as outlined in "Guideline for Interpretation of Ozone Air Quality Standards" (EPA–450/4–790003).

The transportation control plan for the Niles area was prepared by the Michiana Area Council of Governments (MACOG), in cooperation with the Southwestern Michigan Regional Planning Commission (SWMRPC). The Governor designated SWMRPC as the lead local agency for the Niles, Michigan portion of the South Bend, Indiana urbanized area. The ozone control strategy includes transportation control measures which are designed to reduce hydrocarbon emission levels. The control strategy, however, relies primarily on hydrocarbon emission reductions resulting from the Federal Motor Vehicle Control Program (FMVCP) and implementation of reasonably available control technology (RACT) on stationary sources. Michigan's hydrocarbon control strategy for stationary sources was conditionally approved in the May 6, 1980 **Federal Register** (45 FR 29790).

The South Bend urbanized area has a population of approximately 286,000, which is spread over a total land area of about 103 square miles (U.S. Bureau of the Census, 1970). The population of the Niles area is about 13,000 and the urbanized area is approximately five square miles. According to the 1977 emission inventory for the South Bend urbanized area, Niles produced nine percent of the total hydrocarbon emissions for the area. As a result of RACT requirements, stationary sources of hydrocarbon emissions in the urbanized areas of Cass and Berrien Counties, Michigan, are projected to decrease from 2,070 tons in 1977 to 720 tons by the end of 1982, a reduction of sixty-five percent. For mobile sources, the Federal Motor Vehicle Control Program (FMVCP) will reduce hydrocarbon emissions from 770 tons in 1977 to 490 tons by the end of 1982, a reduction of thirty-six percent. This is an overall reduction in hydrocarbon emissions of 1,630 tons or fifty-seven percent in the Niles area. Based on information submitted by the State, an overall reduction in hydrocarbon emissions of eleven percent in the entire South Bend urbanized area is required to demonstrate attainment of the ozone standard by 1982. The required emission reduction was calculated using a design value of .138 and the modified linear rollback approach. Based on RACT stationary source emission reductions in Cass and Berrien Counties and Federal Motor Vehicle Control Program emission reduction in the entire interstate urbanized area, sufficient emission reductions are projected to demonstrate attainment in the urbanized areas of Cass and Berrien Counties by the statutory deadline. USEPA will propose action on the Indiana portion of the urbanized area in a separate **Federal Register** notice.

The State of Michigan's submittal of August 8, 1980, satisfies the requirements of section 172(b)(2) of the Clean Air Act (Act), that all reasonable available transportation measures must be evaluated and considered for implementation. Appropriate strategies have been submitted for inclusion in the SIP. The State's submittal of August 8, 1980 also includes a policy resolution dated May 15, 1980 signed by the Cass County Board of Commissioners and the Cass County Road Commission. Similar resolutions were signed by the Berrien County Road Commission on June 25, 1980 and the City of Niles (under the Mayor's signature) on June 23, 1980. The resolutions contain commitments to meet the goals and objectives of the Act and to conform with the adopted SIP.

The August 8, 1980 submittal included a description of the transportation systems management SIP strategies already adopted and implemented during the 1975–1978 time period and the transportation control measures to be relied upon for continued emission reduction. Funding and cost estimates have been submitted as well as MACOG's unified work plan (UWP) for Fiscal Year 1980. The UWP describes the work underway to accomplish the goals and objectives in the SIP.

MACOG is responsible for the preparation and submittal to the State of an annual report summarizing progress towards achieving air quality standards for ozone. Included in this report will be an updated emission inventory and revised data on emission reductions achieved to indicate reasonable further progress towards attainment of the standard.

The State's submittal of August 8, 1980 also addresses the impact of the plan provisions. Health and welfare impacts, social impacts, economic impacts and energy savings are adequately assessed.

The State has submitted documentation showing that the requirements for public participation have been satisfied. Two public hearings on the plan were held, with advance notice announed in the newspapers and on the radio. MACOG distributed press and public information brochures describing the transportation analyses and projected air quality benefits. Elected officials are involved in the decision making process for air quality planning via the policy

committees for each metropolitan planning organization.

The transportation control plan contains representative strategies which have been identified for the Niles area. The table below identifies the projects, implementors and the emission reductions associated with the projects.

Strategy	Implementor(s)	Emission reduction (tons per day)
Ridesharing activities: Carpool demonstration.	Southern Michigan Regional Planning Commission.	0.0020
Transit improvements: Increase Niles Dial-A-Ride.	Niles Dial-A-Ride	.0051
Traffic flow improvements—highway and traffic projects:		
17th Street (widening).	City of Niles, Berrien County.	.0038
Burton Road (bridge reconstruction).	Cass County, Michigan Department of Transportation.	.0012
Lake Street (widening).		.0044
U.S. Route 33 (resurfacing).		.0049
MI-51 (resurfacing).		.0044

USEPA has reviewed the control strategy and ozone attainment demonstration developed for the Niles urban area. (A document which details USEPA's complete review is available for inspection at the USEPA Region V Office.) USEPA finds that the transportation control plan and the attainment demonstration portions of the control strategy satisfy all of the nine requirements previously described for an approvable nonattainment area SIP. The State has shown that sufficient emission reductions will be achieved to demonstrate attainment of the ozone standard by 1982. The transportation control plans, taken in conjunction with stationary source RACT requirements in Michigan, represent an acceptable ozone control strategy for the Niles urban area. Therefore, USEPA proposes to approve the transportation control plan and the ozone attainment demonstration for the urbanized areas of Cass and Berrien Counties, Michigan. USEPA will propose rulemaking on the Indiana portion of the South Bend urbanized area in a separate **Federal Register** notice.

Interested persons are invited to comment on the proposed revision to the Michigan SIP, and on USEPA's proposed rulemaking action. Comments should be sent to the address listed in the beginning of this notice.

Under Executive Order 12044 (43 FR 12661), USEPA is required to judge whether a regulation is "significant" and, therefore, subject to certain procedural requirements of the Order or whether it may follow other specialized development procedures. USEPA labels proposed regulations, "specialized." I have reviewed this and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

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

Dated: September 30, 1980.

John McGuire,

Regional Administrator.

[FR Doc. 80-33552 Filed 10-27-80; 8:45 am]

BILLING CODE 6560-26-M

40 CFR Part 52

[A-3-FRL 1644-6]

District of Columbia State Implementation Plan; Proposed Revision

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: This notice announces the Administrator's proposal to approve a revision to the District of Columbia's Implementation Plan of amendments to the District of Columbia's Air Quality Control regulations. These amendments allow the permanent deletion of the requirement that, after October 1, 1978, the maximum sulfur content in all fuels sold and used in the District not exceed 0.5%. The District's currently effective maximum sulfur content of 1.0% would be retained. The revision is applicable to §§ 8-2:704 (Allowable Sulfur in Fuel Oil) and 8-2:705 (Allowable Sulfur Content in Coal) of the District's Air Quality Control Regulations. The Administrator previously approved these amendments but only until December 31, 1980 in a January 4, 1980 **Federal Register** publication (45 FR 1024).

DATE: Comments must be submitted on or before November 28, 1980.

ADDRESSES: Copies of the proposed SIP revision and accompanying support documentation are available for public inspection during normal business hours at the following offices:

U.S. Environmental Protection Agency, Air Programs Branch (3AH11), Curtis Building, 6th & Walnut Streets, Philadelphia, Pennsylvania 19106. ATTN: Joanne T. McKernan;

District of Columbia Department of Environmental Services, Bureau of Air and Water Quality, 5010 Overlook Avenue, SW., Washington, D.C. 20032. ATTN: V. Ramadass;

Public Information Reference Unit, Room 2922-EPA Library, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

All comments on the proposed revision submitted within 30 days of publication of this notice will be considered and should be directed to: James E. Sydnor, Chief, DC, MD, VA Section (3AH11), Air Programs Branch, Air, Toxics & Hazardous Materials Division, U.S. Environmental Protection Agency, Region III, 6th & Walnut Streets, Philadelphia, Pennsylvania 19106. ATTN: AH012DC.

FOR FURTHER INFORMATION CONTACT: Joanne T. McKernan (3AH11), U.S. Environmental Protection Agency, Region III, 6th & Walnut Streets, Philadelphia, Pennsylvania 19106, Telephone Number: (215) 597-8182.

SUPPLEMENTARY INFORMATION: On December 27, 1978, the District of Columbia submitted to the Regional Administrator, EPA, Region III, amendments to the District's Air Quality Control Regulations and requested that they be reviewed and processed as a revision of the District of Columbia's Implementation Plan for the attainment and maintenance of National Ambient Air Quality Standards (NAAQS). The amendments consist of changes to §§ 8-2:704 (Allowable Sulfur Content in Fuel Oil) and 8-2:705 (Allowable Sulfur Content in Coal) of the District's Air Quality Control Regulations. The proposed revision amended both regulations by deleting the provision which states that the use and sale in the District of Columbia of fuel oils and coal containing up to 1% sulfur are permitted only until October 1, 1978 (after which time a 0.5% maximum sulfur requirement would be in effect). Some of the arguments presented by the District to support its proposed revision included:

1. The District is presently meeting the Federal ambient air quality standards for sulfur dioxide and it expects to maintain the standards through 1985 with the use of 1% sulfur fuel;

2. The 0.5% sulfur content level would substantially increase the cost of fuel and electricity to the consumer;

3. There is a shortage of the higher grade (lower sulfur content) coal in the East; and

4. Maryland and Virginia maintain a 1% sulfur limit.

On January 4, 1980 (45 FR 1024), the Administrator approved as a revision to the District of Columbia's Implementation Plan the amendments to the regulations, and on August 20, 1980 (45 FR 55422), the Administrator clarified the January 4, 1980 rulemaking

to show his intent to approve the revision only until December 31, 1980. The Administrator based his decision to approve the revision only through December 31, 1980 since an October, 1977 study prepared by the Metropolitan Washington Council of Governments (MWCOG) entitled "Air Quality Maintenance Planning, Technical Analysis" predicted that, although there would be no violations of the National Ambient Air Quality Standards for sulfur dioxide during 1980, there was no clear demonstration of air quality levels beyond 1980 due to projected growth in the Region. EPA took exception with the fact that in its demonstration, the District's growth projections were applied to a 1973 air quality baseline and that the District used extrapolations from air quality data collected only at a single site which may not be representative of air quality over the entire District.

By approving the revision through December 31, 1980, the District of Columbia was able to further evaluate the impact on ambient air quality in order to demonstrate to EPA's satisfaction, that the 0.5% sulfur content limit will not be needed after December 31, 1980 to maintain the sulfur dioxide standards. In order to accomplish this within the prescribed timeframe, and due to District staff resource constraints, EPA funded an independent contractor to perform a new air quality dispersion analysis.

The study resulted in a report entitled "Future Ambient SO_2 for Metropolitan Washington, D.C.," which was performed to supplement the information and air quality demonstration submitted by the District of Columbia in its December 27, 1978 SIP submittal. The report utilized the most current and comprehensive emission inventories available and used emission data and meteorological data from the same year in developing a new baseline. The study made new projections of future air quality for SO_2 using updated informaton and diffusion modeling results to determine whether and when violations can be expected and what control strategies may be adopted to prevent such violations. The study concluded that the present limit of 1% sulfur in all fuels sold and burned in the District of Columbia may be extended to 1995 without exceeding the National Ambient Air Quality Standards (NAAQS) for SO_2. This supports the District of Columbia's position that the District is presently meeting the NAAQS for SO_2 and expects to maintain the standard through at least 1985, with the 1% sulfur-in-fuels requirement. Therefore, EPA has determined that the 0.5% sulfur requirement is not necessary to maintain the standards and proposes to approve the deletion of the effective date of that requirement from the District SIP.

A copy of the report and of EPA's evaluation is available at the addresses listed in this Notice.

In the January 4, 1980 final rulemaking, EPA also stated that before an approval of the deletion of the 0.5% sulfur increment could be granted, the District of Columbia would be required to specify a coal sampling method (to be used in conjuction with its test method for sampling sulfur content). On March 3, 1980 (45 FR 13729), EPA approved the District's test procedures for the sulfur-in-fuel regulation (which incorporated by reference the methods specified in 40 CFR 60.45(f)(5)). Although that SIP revision did not clearly specify coal lot size or averaging time which EPA feels is needed to improve the enforceability of the sulfur-in-fuel regulation for coal usage, EPA is working with the District to develop an acceptable sampling procedure and recently forwarded an acceptable procedure (an American Society for Testing and Materials publication numbered D-2234-6, entitled "Standard Method for Collection of a Gross Sampling of Coal") to the District for review. The District has agreed to review the recommended procedure, and if there are no objections, to incorporate the coal sampling method into its procedures and to submit a revision to its State Implementation Plan.

Therefore, since EPA will issue a separate rulemaking on that issue, the Agency does not intend to delay or condition final action on this revision pending resolution of this procedural concern, and EPA is proposing approval of this SIP revision at this time.

The District of Columbia certified that a public hearing with respect to the revision was held on May 23, 1978, in accordance with the requirements of 40 CFR Section 51.4.

The public is invited to submit to the address stated above, comments on whether the amendments to Sections 8-2:704 and 8-2:705 of the District's air pollution control regulations governing the sulfur content in fuels should be approved as a revision of the District of Columbia State Implementation Plan.

The Administrator's decision to act on the proposed revision 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.

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

(Authority: 42 U.S.C. §§ 7401-7642)

Dated: October 2, 1980.

A. R. Morris,

Acting Regional Administrator.

[FR Doc. 80-33551 Filed 10-27-80; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 52

[A-10-FRL 1647-4]

State of Idaho Implementation Plan; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The purpose of this Notice is to extend the public comment period on EPA's proposed promulgation of a maintenance of pay provision in the State of Idaho State Implementation Plan under Section 110(a)(6).

DATE: Comments must be post-marked no later than November 7, 1980.

ADDRESSES: The relevant material in support of this revision may be examined during normal business hours at the following locations:

Central Docket Section (10A-79-4), West Tower Lobby, Gallery I, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

Air Programs Branch, Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington, 98101.

Comments should be addressed to:

Laurie M. Kral, Air Programs Branch, M/S 629, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington, 98101.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Lepic, Air Programs Branch, M/S 625, 1200 Sixth Avenue, Seattle, Washington, 98101. Telephone: (206) 442-1125, FTS: 399-1125.

SUPPLEMENTAL INFORMATION: On September 26, 1980 (45 FR 63886), EPA invited public comment on its proposal to promulgate a maintenance of pay provision in the State of Idaho State

Implementation Plan under Section 110(a)(6), as amended. This provision would protect the employee of a source which uses supplemental, intermittent or other dispersion-dependent control systems from temporary loss of pay.

Public comments on the proposal were invited for a period of 30 days ending October 27, 1980. EPA Region 10 has received a request to extend the comment period for an additional two weeks. In view of this request, EPA is hereby extending the public comment period until November 7, 1980.

Interested parties are invited to comment on this proposed amendment to the Idaho SIP. Comments should be submitted to the address listed in the front of this Notice. Public comments postmarked by November 7, 1980 will be considered in any final action EPA takes on this proposal.

(Section 110, 172 Clean Air Act (42 U.S.C. 7210(a), 7502)).

Date: October 22, 1980.

Donald P. Dubois,

Regional Administrator.

[FR Doc. 80-33623 Filed 10-27-80; 8:45 am]

BILLING CODE 6560-38-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[CC Docket No. 80-584; RM-3304; FCC 80-550]

Policies Governing the Ownership and Operation of Domestic Satellite Earth Stations in the Bush Communities in Alaska

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Communications Commission proposes a rule which would establish local exchange certification as an eligibility requirement for filing an application to construct and operate an Alaskan Bush earth station intended to provide message telephone services. Over the past several years, the Commission has received competing applications to own the earth stations from Alascom, Inc. and various local carriers who provide local exchange service in Bush communities. Because of the small size of these communities, the Commission believes only one application for an earth station can be granted for each community. The proposed rule would establish a Commission policy favoring exchange ownership.

DATES: Comments must be submitted on or before December 29, 1980 and reply comments must be submitted on or before January 29, 1981.

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

FOR FURTHER INFORMATION CONTACT: Pamela J. Wisne, Common Carrier Bureau, (202) 632-5930.

SUPPLEMENTARY INFORMATION:

Adopted: September 25, 1980.

Released: October 29, 1980.

By the Commission: Commissioner Lee concurring and issuing a statement; Commissioner Fogarty issuing a separate statement.

Introduction

1. This proceeding concerns the ownership and operation of small antenna domestic satellite earth stations located in rural Alaskan Bush communities providing message telephone service (MTS).[1] The Alaskan "Bush" refers to small villages in rural Alaska which are isolated from the larger cities by rugged terrain and harsh weather conditions. Alascom, Inc.[2] now provides service to the Bush through a variety of facilities, including small diameter earth station antennae, improved mobile telephone service (IMTS), point-to-point microwave and rural and other radio facilities.[3] Local service is provided in some of the Bush communities by local carriers who are regulated and certified by the Alaska Public Utilities Commission (APUC).

2. Presently pending with the Commission are applications for earth station facilities at approximately 35 Bush locations. At each of these locations, separate applications have been filed by Alascom and a local exchange carrier operating in the village where the earth station is located or proposed.[4] All of the applicants seek to provide MTS as well as private-line service. While there are some differences in the financial and technical details of the various proposals, each applicant appears reasonably capable of sustaining the requisite public interest findings. The issue for decision, therefore, is a determination of the appropriate entity to hold the earth station license. Alascom submits that it, as the transferee of the government ACS facilities,[5] is the sole entity authorized to provide interstate service and that the Bush stations are an integral element of its network. The local exchange carriers, on the other hand, argue for the integration of the earth stations with their local exchange plants and propose to interconnect with Alascom or another carrier for the provision of intrastate and interstate communications services.

3. Also pending before the Commission is a petition for proposed rulemaking filed by United Utilities, Inc., (United) a local exchange carrier operating in the Calista region of Alaska.[6] United requests the Commission to initiate a rulemaking proceeding to establish rules which will govern the disposition of the pending applications as well as future applications which may be filed for Bush earth stations. Specifically, the petition seeks a rule which will grant a controlling preference to an applicant who is certified by the APUC to provide local exchange service in the community where the earth station is proposed. Comments in support of the petition were filed by the National Telephone Cooperative Association, (NTCA)[7] Arctic Slope Telephone Association Cooperative, Inc., (ASTAC)[8] and the State of Alaska. Alascom has opposed the petition and alternatively requests the Commission to confirm as a matter of policy its legitimate expectation to own and operate the entire earth station network in Alaska, including the Bush facilities.

4. For the reasons discussed below, we propose herein a rule which will require certification as a local exchange carrier by the APUC as a basic eligibility requirement for the filing of applications to construct and operate earth station facilities providing MTS service to rural Alaskan Bush communities.

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[1] While these facilities additionally can and do provide private line services including program reception, our primary focus herein is with MTS.

[2] Alascom, Inc. is a wholly-owned subsidiary of Pacific Power and Light Company, which acquired the operation, formerly known as RCA Alaska Communications, Inc., from the RCA Corporation. See Order and Authorization, FCC 79-305, released May 22, 1979. In the text, we use the term Alascom to refer to the current company as well as its predecessor.

[3] The "Alaska Communications Plan" submitted to the Commission by Alascom in 1974 contemplated the provision of MTS service to every Alaskan community of more than 25 persons.

[4] Earth stations have been constructed and are being operated by Alascom in most of these communities pursuant to temporary authority. See discussion in paragraphs six through nine, *infra*.

[5] See RCA Global Communications, Inc., 22 FCC 2d 200 (1970) (hereinafter ACS Decision).

[6] The Calista region is one of the twelve geographic areas delineated in the Alaska Native Claims Act. See 43 U.S.C. § 1601 et seq. The Region encompasses much of Southwest Alaska, comprising approximately 56,000 square miles. See Application File No. 445-DSE-P/L-79, at 2, n.1.

[7] NTCA is a trade association which represents nearly 300 rural cooperative and commercial telephone systems. Its primary goal is to establish and improve telecommunications service in rural areas.

[8] ASTAC operates local exchanges in the North Slope Borough in Alaska. Its applications for earth stations in several of its exchange communities were recently dismissed at its own request. See application File Nos. 7/13-DSE-P/L-80.

Background [9]

5. The State of Alaska comprises a land area of approximately 566,432 square miles with a population of about 403,000 people. Eighty-four percent of the population resides in non-rural communities, while the remaining population is dispersed throughout rural Alaska in small isolated communities.[10] Land transportation within the State is generally unavailable since Alaska's highways provide access to only about 15% of its communities. Some maritime transportation exists during "open waters" season, primarily from June through September. Hence, the Bush communities rely almost exclusively on air travel and long distance communications for contact with the other communities in Alaska as well as those in the contiguous states.

6. Alascom currently provides inter and intrastate service to nearly 160 Bush communities. Of those communities, approximately 100 receive "lifeline services" via small antennae earth stations. The lifeline service consists of two channels, one which is dedicated to the provision of intrastate and interstate MTS service and the other which is a private line connected to the Alaska Native Health Service (ANHS) which provides emergency and health related assistance to the villages. The telephone which accesses the MTS services is semi-public in that it is generally located in a central location within the village and may often be inaccessible outside of business hours. Thus, the residents sometimes do not have ready access to the phone, must be summoned by a messenger for an incoming call, and due to the public location of the phone, enjoy minimal privacy during their conversations. Where local exchange service is available, however, the communities have access to single party telephone service.

7. Bush local exchange service is generally provided by small family-owned companies or non-profit cooperative associations. The non-profit cooperatives were formed subsequent to the Alaska Native Claims Act and are owned and controlled by natives of their geographic regions.[11] These cooperative systems, as well as the other small operating companies, rely primarily on low interest financing funds from the Rural Electrification Administration (REA) to construct their exchange operations. The State indicates nearly $60 million has been expended by REA to assist in the development of Alaskan rural communications. REA views the earth station as part of the local exchange and therefore eligible for its low interest financing.

8. The operations of the local exchange carriers are roughly analogous to similar operations in the continental states. To provide toll service, the local carrier transfers calls from its toll trunk cables to the toll access facility, generally a small antenna earth station, where it is interconnected to toll trunk lines currently provided by Alascom. Each voice channel from a Bush earth station is assigned its own frequency and is connected by satellite to the Bartlett Gateway earth station in Talkeetna where it is then trunked to Anchorage via microwave for timing, ticketing and toll switching.

9. The Bush earth station controversy began with the State's dissatisfaction with Alascom's initial Bush proposal.[12] It found the proposal to be both technically and economically deficient in meeting long-term Bush requirements. Because of its belief that Alascom was reluctant in pursuing an adequate Bush program, it filed its own applications to construct Bush earth stations.[13] In the *Satcam Construction Order,* the Commission found both the State and Alascom were legally, technically and financially qualified to construct the Bush facilities but that their applications were mutually exclusive in fact.[14] In the interests of initiating service, the State and Alascom agreed to an earth station program and negotiated an interim arrangement for construction and operation of the facilities pending Commission action on their applications. Since 1975, a series of temporary authorizations have been issued granting joint authority to construct and operate, and authority to Alascom, as trustee, for provision of common carrier services.[15] The temporary authorizations have been expressly predicated on the condition, agreed to by the parties, that they would in no way prejudice the ultimate resolution of the question of permanent authority to own and operate the earth station facilities. The State's applications were recently dismissed at its own request and it has indicated that it will convey its ownership interest to the ultimate licensee.[16]

Positions of the Parties

10. Since 1977, the local exchange carriers have been filing applications to construct new earth stations or to acquire those currently operated by Alascom and jointly owned by the State.[17] For the most part, the carriers seek to control the facilities within their geographic and certified regions and anticipate that ownership will provide them with a more significant role in planning the development of the Bush network. They emphasize the importance ownership has to the viability of their local exchanges from both an economic and management point of view. First, the carriers point to the increased revenues which would be derived from the settlements process if the earth station facilities were considered exchange plant. Second, they contend that the availability of low interest REA financing will enable them to improve services at lower ultimate costs to their subscribers. Operationally, they express some dissatisfaction with Alascom's service and interconnection practices and stres the importance of local control over the facilities which, in many instances, provide their service areas with the only link to other communities in Alaska as well as to the contiguous states. To improve services, some of the carriers propose equipment

[9] The general background information, unless otherwise referenced, is gleaned from the Comments of the State of Alaska in Docket No. 21263, filed Feb. 6, 1979, and from Alascom's Comments in CC Docket No. 78–72, filed March 3, 1980. While these comments are used to provide a general perspective for this proceeding, such use in no way constitutes any determination of their respective merits in the proceedings for which they were filed.

[10] The State indicates that of its 347 communities, 21 have populations in excess of 1500 and thus are non-rural.

[11] See e.g., File Nos. 445–DSE–P/L–79 and 911–DSE–P/L–80.

[12] See RCA Global Communication, Inc., 56 FCC 2d 660 (1975) (hereinafter Satcom Construction Order).

[13] The Alaskan legislature appropriated $5 million towards this effort. The State did not intend to operate the facilities but rather proposed to lease the station to the carrier, Alascom or a local entity, offering the most favorable terms. It subsequently indicated that its actions were motivated in part by a desire to preserve the option that these facilities could be owned and operated by local carriers. See State of Alaska's Reply to Response to Petition for Continued Authorizations as Trustee, Application File No. W–P–C–1659.

[14] The finding of mutual exclusivity was based on the conclusion that one facility could provide all the services proposed by either party, and that there did not appear to be any public interest benefits in construction of duplicative facilities in the Bush. Satcom Construction Order, *supra* note 12, at 689. None of the parties in this proceeding has disputed that conclusion. Thus, the parties do not proposed competitive facilities and the questions under consideration in CC Docket No. 78–72 do not arise.

[15] The lifeline service described in paragraph six *supra,* is a result of the interim arrangement.

[16] See letter of May 29, 1980 in File Nos. 65–DSE–P–75 et al. The State's withdrawal appears to have been based in part on the growing strength of local exchange development. In a Statement released in October, 1979, the Governor indicated that the wilingness of the local carriers to compete for earth station ownership made it possible for the State to withdraw its applications.

[17] See Appendix A. Alascom has opposed each of these applications.

redundancy not currently available [18] and have devised local and regional maintenance schemes which they intend to incorporate with their exchange maintenance staffs. Generally, a three-tier maintenance approach is planned. Village personnel will be available at the site for minor repairs such as deicing the antenna or replacing small parts. Regional personnel are to be employed who will service more than one village. Finally, a centralized staff, located within the geographic region, will be capable of responding to the more serious problems which arise. The carriers believe their maintenace approach will eliminate the long service outages which are occasioned by Alascom's practice of centralized staffing and will also obviate the need for two distinct maintenance staffs.

11. The local exchange carriers emphasize that local ownership will better serve the public interest because it will bring local control of essential telecommunications facilities. The carriers claim this local ownership translates into a strong commitment to maintain and upgrade the service while keeping the rates as low as possible. Additionally, they state the availability of on-site and regional maintenance personnel will reduce the long service outages caused by Alascom's practice, perhaps necessitated by the economics of the situation, of dispatching a maintenance staff from a centralized location. Each states it only seeks control of the toll end equipment in their service areas. They encourage resolution of the ownership question through a rulemaking proceeding so that the decision can be based on the broader policy perspective that a rulemaking proceeding permits. The State characterizes the implementation of a policy favoring local ownership as both timely and appropriate. It, therefore, favors a rule which would permit a grant to the local exchange carrier provided the carrier is otherwise qualified to operate the facility.

12. Alascom has opposed the petition on both procedural and substantive grounds. First, it claims the *Ashbacker* doctrine [19] precludes the use of a rulemaking procedure. It claims there are too few filings by local exchange carriers and too many differences among them to justify a general policy favoring exchange ownership. [20] Secondly, it argues that Section 201(a) requires a hearing in each case where local exchange ownership is proposed since interconnection practices will be modified. Finally, it claims its due process rights require that any transfer of its existing toll responsibilities be accomplished on a case by case basis accompanied by the full rigors of an evidentiary hearing.

13. Alternatively, if a rule making proceeding is instituted, Alascom claims the Commission should confirm its "legitimate expectation" to own and operate the earth station network which interconnects the telephone exchanges in Alaska. It claims that, as the ACS transferee, it alone is authorized to own and operate facilities which perform toll functions. Operationally, it argues that its unified control of these stations is critical to the efficient operation of the network. It claims that earth station operations necessarily entail a high level of ongoing engineering coordination regarding equipment, frequency use, testing and other technical matters. By placing control in an indeterminate number of exchange operators, Alsacom believes unnecessary and undesirable risks are presented to the efficient operation of the network. Finally, it claims that its role as "carrier of last resort" would be threatened by a local ownership policy since its ability to obtain earnings on its earth station investments would be impaired. On the other hand, Alascom argues that the potential financial benefit to be derived from the separations and settlements process should not be considered as a basis for decison since those issues are being addressed by a Joint Board in a separate proceeding. [21]

14. In sum, the question of permanent authorization for the Bush earth stations has been outstanding since 1975. Although the entities seeking authorization have changed, two generic interests remain juxtaposed for our consideration. On the one hand, Alascom proposes to operate the facilities as part of its integrated inter and intrastate network. On the other hand, the local exchange carriers seek to operate the facilities in conjunction with their exchange operations, interconnecting at some point between the earth station and the satellite.

Discussion

15. Our central objectives in this proceeding is to establish an ownership structure which satisfies the communications needs of the residents of the Alaska Bush communities in the most efficient and expeditious manner possible. Alaska's pressing need for improved services has previously been documented as well as the special promise satellite technology holds toward that end. [22] While the interim Bush operations have brought at least essential communications services to Bush communities not previously served, it is apparent that far greater progress is needed. Regrettably, the unresolved status of the Bush applications may have led to uncertain network planning to the detriment of the Bush communication users. All of the parties agree that the development of the Bush earth station operations should not be further impaired by continuing controversy over the ownership question. The public interest, therefore, would appear to be furthered by definitive resolution of this controversy.

16. For the reasons discussed herein, we propose to establish local exchange certification as a prerequisite for filing an application for an earth station to provide MTS service in an Alaskan Bush community. Qualified applicants will otherwise be required to establish their financial and technical ability to construct and/or operate the facilities. Provision for waiver of the rule is also proposed for those instances where no certified local exchange carrier has filed, or where a non-certified applicant can demonstrate sufficient justification for waiver of the rule. [23] Moreover, these rules are intended to apply in a renewal situation so that if a waiver was granted, the waiver applicant must demonstrate on the basis of conditions existing at the time of the renewal that a waiver of the rule is still appropriate. Additionally, we are proposing several measures to facilitate implementation of the rules, including *prima facie* showings of financial and technical qualifications. We seek comments on the effect of the proposed rule on coordinating and planning the Alaskan telecommunications satellite network including interconnection practices. Finally, we propose to relax Section 214 procedural requirements in the situation where the local exchange carrier owns

[18] See e.g., Application File Nos. 444/447-DSE-P/L-79.

[19] Ashbacker Radio Corp. v. FCC, 326 U.S. 327 (1945).

[20] At the time Alascom's Comments were filed, only five applications by local exchange carriers were pending before the Commission. The remaining applications listed in Appendix A were filed subsequent to the State's request to dismiss its applications.

[21] See Docket No 21263.

[22] *See e.g.*, Domestic Communication Satellite Facilities (Domsat II), 35 FCC 2d 844 (1972); Satcom Construction Order, *supra* note 12, at 689. Since communication by satellite is involved, our jurisdiction is invoked (California Interstate Telephone Co. v. FCC, 328 F. 2d 556 (D.C. Cir. 1964)) and our regulatory responsibility with regard to the Bush is to accomplish the ends of Section 1 of the Act.

[23] We remind the parties that hearings on waivers will not be routinely granted, nor will grounds already fully considered in this proceeding constitute sufficient justification.

and operates the earth station in connection with its local exchange service.

Ownership of the Earth Stations

17. Since the transfer of the ACS facilities, the Commission has accorded Alascom every reasonable opportunity, consistent with the public interest, to develop the Alaska Communications network and its own financial structure. While this Commission has expressly refrained from conferring any sole source status on Alascom,[24] it has adopted particular measures based on the circumstances then before it. For instance, in both the *Talkeetna Interconnection Order* and in the *Domsat III Decision*,[25] the Commission allowed Alascom to interconnect within the boundaries of the contiguous states, rather than at the satellite, so that it would have reasonable access to the revenues derived from interstate MTS operations. Those decisions were based on the conditions then prevailing and our concomitant perception of how the public interest would be best served. Our central concern has been, and remains, promoting the most expeditious development of Alaskan service as is practicable. The Commission's assessment of how the public interest will be served can change with time [26] and changed circumstances may, in fact, necessitate an altered regulatory response.[27]

18. The circumstances now before the Commission present a choice between two operationally viable and distinct ownership patterns. Alascom proposes to centrally manage and operate the facilities while the local carriers propose to operate the earth station providing toll access as part of their exchange operations. Each claims it needs the operational control and financial benefits associated with ownership to maintain the viability of its respective service markets.[28] Each claims it is better able to meet the communication needs of the Bush residents. Thus, the public interest question is which of these proposals is most likely to result in the most optimal communication services to the Bush residents.

19. Certainly, there are many benefits associated with Alascom's unified control of all earth station facilities. Planning and coordination, traffic allocation, development of circuit requirements, and restoration of interrupted services may be simplified when performed by a single entity. Alascom, additionally, has extensive experience in operating Alaskan earth stations and thus, already has some experience in managing the communications system. There are, however, disadvantages to Alascom's centralized method of providing the Bush service due to the geographic and climatic conditions by which these communities are characterized.

20. Many of the problems associated with Bush service can be attributed to their rugged terrain, geographic isolation and severe weather conditions which combine to strain the reliability and efficiency of service. Due to the high costs of maintaining qualified personnel at each of the station locations, facilities maintenance has been a significant problem for Alascom in serving these communities. During the winter months, travel and weather conditions can cause a delay of several days before an Alascom employee can even reach the facility needing repair. Additionally, since these facilities are unattended by Alascom, power fluctuations and shutdowns and inadequate heating or cooling of the buildings where the facilities are housed have caused outages. Thus, whether toll access or local exchange service is proposed, the providing carrier must be prepared to deal with these conditions in a timely fashion and the resultant effects they can have on service reliability.

21. By virtue of their actual presence in the Bush communities, the local exchange carriers would appear to be better equipped to remedy the problems. Their exchange operations require on-site personnel to maintain the exchange plant and presumably the same personnel could also assume some responsibility for proper operation of the earth station. This on-site availability would likely reduce or eliminate the service outages due to the recurring minor repair problems which now require Alascom to dispatch a maintenance staff from a centralized metropolitan location. While the local carriers do not propose to keep a full-time technician capable of performing all repairs in the community, they are confident their staff can attend to the routine functions such as maintaining an adequate power supply, replacing fuses, resetting circuit breakers and removing snow and ice from the antenna. Additionally, they plan to locate fully qualified regional and centralized staffs within close geographic proximity of the facilities which may need repair. Local ownership would also obviate the need for two maintenance staffs to respond to trouble reports and the resulting expense to Bush ratepayers. Thus, it would appear that local ownership represents the more efficient and economic alternative for meeting the unusual service needs of the Bush earth stations.

22. Moreover, local ownership is likely to produce a more effective means of predicting and satisfying growing communication requirements. Through their local exchange operations, the local carriers have daily contact with the users of the facilities. Thus, they should be better able to assess the needs of the community and whether the existing level of service is adequately satisfying those needs. Additionally, each of the carriers is owned and operated by Bush residents who themselves must rely on the communication services and facilities.[29] Thus, they have a natural incentive to improve the services which link their remote communities with the outside world. With control of the earth station operations, they believe rapid and efficient communication service can be actualized in rural Alaska.

23. Upon the basis of the information now before us, it does not appear that local ownership will detrimentally affect the technical integrity of the network. Daily operation of these facilities requires only a minimum level of supervision to ensure that proper power levels are being used and that the equipment is functioning. For the more serious repairs, the local carriers intend to train personnel and in some instances, they propose equipment redundancy to avoid any service outage during repair. Additionally, the local carriers recognize Alascom's expertise in managing the overall system and intend to abide by the operating

[24] *See* ACS Decision, *supra* note 5, at 204; Memorandum Opinion and Order in CC Docket No. 78-72, 75 FCC 2d 664 (1980).

[25] RCA Alaska Communications, Inc., 26 FCC 2d 466 (1970); Domestic Communication Satellite Facilities, 38 FCC 2d 665 (1972).

[26] Pinellas Broadcasting Co. v. FCC, 230 F.2d 204, 206 (D.C. Cir. 1956).

[27] Geller v. FCC, 610 F.2d 973 (D.C. Cir. 1979).

[28] Alascom's total investment in Bush facilities for about 160 locations is approximately 4.5% of its total capital investment. The proposed rule, if adopted, would likely not affect even half of that investment in the foreseeable future, and thus would appear to have minimal effect on Alascom's financial structure. Additionally, the local carriers have claimed ownership will provide needed revenues. While we recognize the ownership of these facilities will affect the settlements and separations process as it relates to the ownership thereof, no party has submitted any concrete figures regarding the benefit of ownership. Therefore, our primary focus in this proceeding is on the operational and structural benefits associated with each of the ownership proposals. We, of course, would welcome additional comments in this regard if the parties believe it appropriate for our consideration.

[29] With one exception, each of the carriers is a native-owned, nonprofit cooperative association.

parameters established by Alascom.[30] Since the success of their exchange operations depends in part on reliable and efficient toll operations, these carriers have a real incentive to ensure proper functioning of the network so as to optimize the quality of their service offerings.

24. In sum, it does not appear that Alascom, whose service responsibilities encompass the entire state, has the same incentives or ability to operate and develop these facilities in an optimal manner as the Bush exchange carriers do. While it has continually strived to improve communication service to the Bush, it has repeatedly underscored the financial and operational burden these facilities impose.[31] Under these circumstances, it would appear the public interest would be better served by assigning the responsibility for the Bush stations to the carrier whose local exchange is served by the facility. Because of their local operations and ownership characteristics, the local carriers appear to be better suited for responding to the unusual circumstances associated with service to the Bush.

Procedural Authority

25. Alascom has argued that Sections 309 and 201 of the Communications Act of 1934 (the Act) and due process of law bar our ability to determine the ownership question in a rulemaking mode. More precisely, Alascom contends that we cannot formulate a rule which will establish local exchange certification as a qualification for owning and operating a Bush earth station. It does not, however, perceive similar procedural obstacles were the Commission to adopt a policy confirming its belief that it is solely eligible to own the Bush earth stations. We are not persuaded that either of the cited statutory sections negate our ability to determine an ownership policy in this rulemaking proceeding and, furthermore, we believe this proceeding is consistent with due process of law.

26. The Commission has broad latitude when formulating rules and policies which effectuate its responsibilities under the Communications Act. Procedural questions, especially where the Commission's licensing function is invoked, are left to its informed determination so long as the basic requirements for the protection of private rights and the public interest are observed.[32] While generally the "function of filling in the interstices of the Act" should be accomplished through rulemaking proceedings, the choice between proceeding by general rule or *ad hoc* litigation lies primarily in the informed discretion of the agency.[33] Absent constitutional constraints or other compelling circumstances, the agency's procedural choice will be left undisturbed by a reviewing court.[34]

27. Although Section 309 requires that the Commission determine whether the public interest would be served by a grant of an application for a radio license, there is no requirement that the same question be resolved on numerous individual occasions. We believe that our decision here to proceed by rulemaking represents a sound administrative choice. Rather than explore the identical policy questions in a multitude of evidentiary hearings, we are electing a more efficient decisional vehicle. There are numerous applications to own and operate facilities in the same communities and there is every reason to expect similar filings in the future as the local exchange development in Alaska progresses. The differences between the technical proposals before us do not appear decisionally significant and in many instances, the local carriers seek to acquire the facilities currently operated by Alascom. Any comparative process that might be undertaken would be submerged by the precise policy question concerning ownership that this rulemaking is designed to resolve. Furthermore, individual hearings are unlikely to produce sufficiently more information than this proceeding to justify their burden, and would needlessly delay the question of permanent authorization to the detriment of Bush communications users. We do not believe rational decision will be furthered by an excursion into detail that is likely to obscure the fundamental issue of whose ownership will serve the public interest.[35]

28. Moreover, our authority to extract issues from the public interest calculus is well established. In *United States* v. *Storer Broadcasting Company*, 351 U.S. 192 (1956), the Supreme Court confirmed the Commission's ability to withdraw issues from the Section 309 licensing decision via a rulemaking proceeding. Provided the applicants are given an opportunity to apply for a waiver of the promulgated rules, the hearing right, otherwise invoked by Section 309, is not improperly abridged. Since the *Storer* decision, there has been a discernible judicial trend endorsing, if not encouraging, increased reliance on rulemaking proceedings because of the greater efficacy a rulemaking proceeding provides for the broad formulation of policy.[36] The rationale supporting the rulemaking preference is both logical and persuasive in the present instance. This procedure will permit broad participation by all interested parties in the decision making process and will better enable the Commission to develop an integrated plan for ownership of the Bush earth station facilities. The determination thereby derived will be equally applied to all applicants for Bush earth stations.

29. Nor do we believe our action here contravenes the *Ashbacker* doctrine.[37] The purpose of this proceeding is to establish eligibility requirements for filing an application for an Alaskan Bush earth station. Rulemaking proceedings have frequently been used for this purpose without violating the *Ashbacker* doctrine [38] and we see no reason why its use would be inappropriate here. Therefore, we believe this proceeding is procedurally sufficient so long as our substantive decision is based on legitimate public interest factors and is otherwise reasonable.[39]

30. We also find unpersuasive Alascom's contention that Section 201 precludes us from using a rulemaking proceeding to modify the physical point of interconnection betwen the parties. Although Section 201 does provide for an "opportunity for hearing" prior to an interconnection order, our previous use of notice and comment procedures to satisfy the Section 201 hearing

[30] Any improvement or alteration of the facility would, of course, be subject to our regulatory review under Title III and would require coordination with Alascom to assure that the proposed changes do not impair the technical integrity of the network as a whole.

[31] See e.g., Alascom's Comments in CC Docket No. 78-72, filed March 3, 1980.

[32] FCC v. Pottsville Broadcasting Co., 309 U.S. 134, 138 (1940); *See also,* FCC v. Schreiber, 381 U.S. 279 (1965) and Sections 4(i) and 4(j) of the Communications Act, 47 U.S.C. § 154 (i) and (j).

[33] SEC v. Chenery Corp., 332 U.S. 194, 203 (1947).

[34] Vermont Yankee Nuclear Power Co. v. Natural Resource Defense Council, 435 U.S. 519, 542 (1978); *See also,* U.S. v. Florida East Coast Railway Co., 410 U.S. 224 (1973).

[35] WBEN, Inc. v. U.S. 396 F.2d 601, 617 (2nd Cir.), *cert. denied,* 393 U.S. 914 (1968).

[36] *See e.g.,* FCC v. National Citizens Committee for Broadcasting, 436 U.S. 775 (1978); FPC v. Texaco, Inc., 377 U.S. 33 (1964); Washington Utilities & Transportation Commission v. FCC, 513 F.2d 1142, *cert. denied,* 432 U.S. 836 (1975); National Petroleum Refiners Association v. FTC, 482 F.2d 672 (D.C. Cir. 1973), *cert. denied,* 415 U.S. 951 (1974).

[37] Ashbacker Radio Corp. v. FCC, 326 U.S. 327 (1945). We note in this regard that Storer also involved a situation where a rulemaking affected applications already on file.

[38] *See e.g.,* FCC v. National Citizens Committee for Broadcasting, and FPC v. Texaco, Inc., *supra* note 36; United States v. Storer Broadcasting Co., *supra.*

[39] FCC v. National Citizens Committee for Broadcasting, *supra* note 36, at 793.

requirement was expressly affirmed by the U.S. Court of Appeals for the Third Circuit.[40] The Court found that Section 201(a), construed in conjuction with Section 154(j), conferred procedural discretion on the Commission when deciding interconnection questions.[41] So long as the procedure is related to the issues of the case and the parties are given notice and an opportunity to participate consistent with due process of law, the Section 201(a) hearing requirement is satisfied. While the interconnection issues are more fully discussed below, we believe this rulemaking proceeding is procedurally sufficient to implement any changes in interconnection practices which the proposed rule may necessitate.

31. Alascom, as a common carrier, has a duty pursuant to Section 201(a) to provide physical connection with other carriers "in accordance with the orders of the Commission." As the only common carrier currently providing toll service in Alaska, its duty to establish physical connection with the local exchange carriers for the provision of MTS service would appear to be required by the public interest standard contained in Section 201(a). Alascom presently does provide such physical connection and the proposed rule, if adopted, would merely alter the physical point at which interconnection is currently accomlished.[42] Alteration of that point would be identical in each Bush location where the earth station is owned and operated by the local exchange carrier. To the extent Alascom views this alteration as a significant modification of its Section 201(a) responsibilities, this rulemaking proceeding affords it an opportunity to voice its concerns. We have previously used a rulemaking proceeding to resolve similar issues [43] and we see no reason to question the wisdom of its use here.

32. Finally, we must consider Alascom's claim that due process of law requires us to determine the ownership question on a case by case basis accompanied by the full rigors of an evidentiary hearing. While the argument is not precisely articulated, it appears that Alascom considers a rule favoring local ownership as an action "quasijudicial" in nature and that it will be exceptionally affected in each case upon individual grounds.[44] Even though Alascom is the only interstate carrier now serving the Bush communities, we do not find its argument compelling based on the circumstances before us.

33. Due process of law is defined by the particular interests which are affected, the circumstances which are involved and the procedures which have been prescribed by Congress.[45] Alascom's "interests" in this case are the Bush earth stations which it has been temporarily authorized to construct and operate pursuant to the interim agreement negotiated by it and the State of Alaska. Each of these temporary authorizations was expressly predicated on the condition that it would in no way prejudice the Commission's ultimate determination of who would be permanently authorized to own and operate the Bush earth stations. Therefore, Alascom has accepted these authorizations with notice that it may ultimately be required to relinquish its operation of the stations as well as any financial investment in the facilities. Moreover, Alascom's present role in the provision of interexchange services in Alaska is not the result of a definitive Commission policy according Alascom a *de jure* monopoly over all communication facilities and services in the State.[46]

34. The circumstances of this proceeding additionally militate against Alascom's claim for individual proceedings. We have previously discussed the Congressional intent that the Commission be vested with broad procedural discretion when formulating new policy for an industry. The policies proposed herein are based on the Commission's assessment of the nature of communication service in the Alaskan Bush and how the public interest will be best served. While the proposed rule precludes Alascom from operating a Bush earth station where it does not operate the local exchange and waiver of the rule is inappropriate, the rule would also preclude all other would be applicants similarly situated. Alascom has not proffered any facts or specific lines of inquiry, nor can we perceive any, which would necessitate a separate evidentiary hearing in each instance where local exchange ownership is proposed. Therefore, we conclude this proceeding provides Alascom with an adequate opportunity to present its concerns and is accordingly consistent with due process of law.

Proposed Rule

35. In summary, we believe the proposed rule will foster an improved telecommunications system in Alaska by affording the local carriers a greater role in network operations. We recognize, though, their ownership will alter the current method by which communication services are provided. Because essential communication service is involved, we wish to facilitate an orderly transition in this regard. Our current intention is to implement the rule if appropriate, promptly after the benefit of public comment. Accordingly, we have set forth guidelines toward this end. We wish to provide for the most efficient administrative procedures possible in order to resolve the long-outstanding Bush controversies in a timely fashion. We invite comments from the parties regarding these guidelines and whether they are sufficient to protect the public interest, namely, bringing rapid and efficient communication service to the Bush.

36. The proposed rule is set forth in Appendix B. It is intended to apply only to those small isolated communities traditionally thought to comprise part of the Alaskan rural Bush population. While the Commission has never precisely defined what comprises a Bush community, we do not intend to limit the rule to only those communities currently served by Alascom or to those communities for which applications are currently on file. Rather, our intent is to apply the rule where the general characteristics of a Bush community are present. Therefore, we have excluded from the rule the 32 largest cities where Alascom now operates "mid-route" stations.[47] Comments are specifically requested on the appropriateness of this criterion.

37. The rule will only apply to earth station facilities which are intended to provide public message telephone service as defined in Section 21.2 of the Commission's Rules. In other words, the

[40] Bell Telephone Co. of Pennsylvania v. FCC, 503 F.2d 1250 (3rd Cir.) *cert. denied*, 422 U.S. 1026 (1974).

[41] *Id.* at 1266, 1268. *See also* Vermont Yankee and Florida East Coast Railway Co., *supra* note 34.

[42] As previously indicated, the carriers now interconnect at Alascom's earth station. The proposed rule would move the interconnection point somewhere between the earth station and the satellite. See discussion in paragraphs 44–45, *infra*.

[43] In the Docket No. 15735 proceedings, the Commission adopted policies and procedures governing the ownership and operation of earth stations in the international communications satellite system, the processing of competing applications without comparative hearings, and the interface between terrestrial and satellite facilities and operations. Ownership and Operation of Earth Stations: Report and Order, 38 FCC 1104 (1965), *recon.* 2 FCC 2d 658 (1966); Second Report and Order, 5 FCC 2d 812 (1966).

[44] *Compare* Londoner v. Denver, 210 U.S. 373 (1907) with Bi-Metallic Investment Co. v. State Board of Equalization, 239 U.S. 441 (1915). *See also* Florida East Coast Railway Co., *supra* note 34, at 244–46.

[45] FCC v. WJR, The Goodwill Station, 337 U.S. 265, 275–77.

[46] Memorandum Opinion and Order in CC Docket No. 78–72, *supra* note 24.

[47] The term "mid-route" connotes those facilities which "switch" MTS or private line traffic, which we have previously found do not present the same economic exclusivity considerations. Satcom Construction Order, *supra* note 12, at 689–90.

rule applies only to those earth stations which are proposed to be operated in conjunction with a local exchange service or which will otherwise be connected with the inter and intrastate network to provide message telephone service. Our intent in this proceeding, and the purpose of the proposed rule, is to establish a policy only for these earth stations in order to avoid duplication of facilities needed to provide essential public message service to the small communities.

38. The rule, if adopted, will be implemented as follows. Those applications which contain appropriate documentation of the applicant's status as the local exchange carrier in the community where the facility is proposed will be processed. Those applications which do not contain such documentation will be deemed unacceptable for filing and will be returned to the applicant. For purposes of the rule, the certification order from the APUC will be sufficient to satisfy the eligibility requirement.

39. A waiver of the rule will be granted for the term of the station license [48] where the applicant can demonstrate one of two conditions. The first condition involves the situation where no certified local exchange carrier is operating and there is no application for such certification pending with the APUC. An affidavit from the waiver applicant attesting to the lack of a certified exchange carrier, or applicant therefor, will be *prima facie* evidence that a grant of the waiver is appropriate. Public notice of the filing of the application and waiver request will be given so that the normal 30 day comment procedures will apply affording all interested parties an opportunity to comment on the appropriateness of the waiver.[49] Since the purpose of the rule is obviously inapplicable in the situation where no local exchange carrier exists, we expect that waivers will be routinely granted.

40. The second condition which invokes grounds for waiver of the rule is where an eligible entity is unwilling to file an application to construct and operate an earth station. An affidavit from the applicant attesting to the local exchange carrier's unwillingness to file an application will be *prima facie* evidence that the eligible entity is unwilling to provide the service. Waiver applicants will additionally be required to serve a copy of their application on the local exchange carrier operating in the community where the facility is proposed. We expect the public notice period will provide interested parties with a fair opportunity to dispute an applicant's showing for waiver.

41. We emphasize that oppositions to waiver applications must set forth with sufficient clarity why waiver of the rule is inappropriate. Oppositions from eligible entities must indicate with specificity that they have a present intent and ability to file an application for an earth station in the same location with operation to commence at essentially the same time. Since we have provided for license terms of three years for a waiver applicant, we do not believe the public interest would be served by delaying permanent authorization, and hence service to the community, based on an eligible entity's intent to file an application at some later date. Moreover, an independent showing of the grounds for waiver must be made with an application for a renewal of the license, based on the conditions existing at the time of renewal. We believe these procedures will provide the most efficient processing of Bush applications since it will afford local carriers an opportunity to plan for acquisition of an earth station and will also permit expeditious resolution of applications where only a non-local exchange applicant appears ready and willing to provide satellite service to the community.

42. We expect eligible applicants to demonstrate their technical and financial qualifications to construct and/or operate the stations consistent with the guidelines articulated in our 1975 public notice,[50] and propose minimum threshold standards for a *prima facie* determination that an applicant is qualified to hold the station license. In those instances where the applicant seeks to acquire existing facilities, it will not be necessary to replicate the information already submitted by Alascom which remains unchanged. We do expect, however, to be apprised of the data which is applicable to the application as well as the technical details concerning any proposed alteration of the facility. Moreover, the applicant should describe its proposed method of acquiring the facility, including the amount of reimbursement flowing to Alascom and the State for their ownership interests in the facilities. We expect that normal commercial practice will prevail and that the facilities will be transferred at net book value.

43. Applicants should also demonstrate their financial ability to construct and/or operate the facilites. Since the local carrier has already undergone financial scrutiny by the APUC during the exchange certification process, we believe local exchange certification will be a *prima facie* showing that the local carrier is financially qualified to operate the facility.

44. We additionally recognize that the proposed rule, if adopted, will modify the physical point of interconnection between the parties. Presently, the local carrier transfers its calls to Alascom's interconnected lines at the earth station. Local ownership will obviously move the physical point of interconnection behind the earth station. We do not view the physical relocation of the interconnection point as a significant alteration of the actual service obligations of the parties.

45. While we do not believe it is necessary to precisely define at what point interconnection will occur under local ownership of the earth station, we wish to make it very clear we are exercising our responsibilities under Section 201 of the Act. Interconnection is crucial to the continuity of essential telephone service to the Bush. Although at what point the interconnection is accomplished may be operationally irrelevant, we suggest a point between the earth station and the satellite so that the space segment costs remain Alascom's responsibility. We specifically request comments from the parties on the appropriateness of this conclusion and, if necessary, we will issue an interconnection order consistent with the comments received in this proceeding.

46. We believe it also desirable to define the respective operation roles of the carriers. Alascom, as the interstate carrier, maintains the overall responsibility for the operation of an integrated and efficient toll network. It provides the necessary space segment capacity based on the circuit requirements assessed by the local carriers. Local ownership will provide the exchange carriers with a greater voice in planning decisions, particularly with respect to channel and service requirements of the communities as well as the requisite reliability requirements. Traffic allocations and circuit requirements must necessarily be a product of mutual agreement between the cariers. Additionally, decisions regarding implementation of technical improvements to the network should be jointly deliberated as much as possible.

[48] Where a waiver is granted, the term of the license shall be three years.

[49] We expect waiver applicants to file their waiver petitions with their formal applications for the facility, thereby avoiding the necessity of separate public notice periods. Copies of the filings should be served on the APUC.

[50] See Public Notice issued Aug. 8, 1975 entitled "Processing Procedures for Domestic Satellite Earth Station Applications," FCC 75-932.

While we expect Alascom to adhere to its obligation by providing network management functions to maintain the technical integrity of the network, joint cooperation between the parties will be essential. Thus, the proposed rule seeks only minimal technical capabilities of the licensee to perform routine, day-to-day functions needed to maintain continuity of service at the particular earth station as a *prima facie* showing of technical qualifications. Comments are requested to the extent additional technical details are needed or desired.

47. In conjunction with this division of responsibility, Alascom is regulated by the Commission pursuant to the provisions of Title II of the Act. In the *Alaska Facilities Order*,[51] we stated that Alascom would be required to separately justify its traffic and circuit requirements and the terms of each acquisition of space segment capacity. According, we did not authorize any definitive amount of capacity but rather directed Alascom to file a separate application pursuant to Section 214 and Part 63 of the Rules.[52]

48. Because we have already implemented effective regulatory oversight through the Section 214 requirements discussed above, we believe it may be unnecessarily duplicative and burdensome to require separate Section 214 applications by the local carriers who own and operate the Bush earth Stations. The information Alascom is required to provide will necessarily be based in part on the circuit utilization of the exchange carriers. Since their circuit uses and projections will already be reviewed in the context of Alascom's Section 214 application, we tentatively conclude that no regulatory objective will be furthered by requiring the submission of a separate application, where only intrastate service or interstate service through connection with a certified interstate carrier is proposed. Moreover, any use of the facilities, as well as any modification thereof, is fully subject to the provisions of Title III. Therefore, in light of the alternate avenues of review as well as the nature of the services the exchange carriers will provide, our tentative conclusion is that separate Section 214 certification will not be required of the local exchange cariers to operate the Bush earth stations, but will be implicit in the Title III authorization.

Conclusion

49. It is our tentative belief that the public interest will be best served by adopting rules which require local exchange certification as a qualification to own and operate earth station facilities in rural Alaskan communities to provide MTS service. As a practical matter this means that native Alaskans will play a larger role in network planning in Bush areas and will exercise more effective control over the operation and maintenance of satellite earth stations serving their communities. We expect this will increase the availability of satellite services to these areas, and therefore promote safety of life, efficient service, more adequate facilities and and other ojectives of Section 1 of the Communications Act. Apart from these substantive benefits, we believe that this rulemaking proceeding provides the most effective procedural tool for deciding the ownership policy question which has plagued the Bush applications for more than five years. We expect its resolution will permit expeditious action on the applications currently pending as well as those that will be filed in the future.

50. This Notice of Inquiry and Proposed Rule Making is issued pursuant to authority contained in § 4(i), 303, and 403 of the Communications Act of 1934, as amended. Interested parties may file comments on or before December 29, 1980 and reply comments on or before January 29, 1981. All relevant and timely comments and reply comments filed in response to this Notice will be considered by the Commission. In accordance with the provisions of Section 1.419 of the Rules, an original and five copies of all comments, replies, briefs, and other documents filed in this proceeding shall be furnished the Commission. Copies of all filings will be available for public inspection during regular business hours in the Commission's public reference room at its headquarters in Washington, D.C.

51. Members of the public should note that from the time a Notice of Proposed Rulemaking is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in proceedings such as this one. See *Sangamon Valley Television Corp. v. U.S.*, 269 F. 2d 221 (D.C. Cir. 1959). An *ex parte* contact is a message (spoken or written) concerning the merits of the rulemaking made to a Commissioner, a Commissioner's assistant, or other decision making staff members, other than comments officially filed at the Commission or oral presentations requested by the Commission with all parties present. A summary of the Commission's procedures governing *ex parte* contacts in informal rulemaking is available from the Commission's Consumer Assistance Office, FCC, Washington, D.C. 20554, (202) 632–7000.

Federal Communications Commission.[53]

William J. Tricarico,

Secretary.

[51] RCA American Communications, Inc., 79 FCC 2d 435 (1979).

[52] See Application File No. W–P–C–3315.

[53] See attached Statements of Commissioner Lee and Commissioner Fogarty.

Appendix A

Location	File Nos.	Applicant
(1) Akutan	21–DSE–P–76, 922/DSE–P/L–80	Alascom, Inc., Interior Telephone Company.
(2) Alakanuk	183–DSE–P–77, 446–DSE–P/L–80	Alascom, Inc., United Utilities, Inc.
(3) Ambler	59–DSE–P–75, 919–DSE–P/L–80	Alascom, Inc., OTZ Telephone Cooperative, Inc.
(4) Buckland	205–DSE–P–77, 913–DSE–P/L–80	Alascom, Inc., OTZ Telephone Cooperative, Inc.
(5) Chevak	1362–DSE–P/L–80, 1277–DSE–P/L–80	Alascom, Inc., United Utilities, Inc.
(6) Deering	204–DSE–P–77, 914–DSE–P/L–80	Alascom, Inc., OTZ Telephone Cooperative, Inc.
(7) Elim	135–DSE–P–77, 1068–DSE–P–80	Alascom, Inc., Mukluk Telephone Company, Inc.
(8) Emmonak	336–DSE–P/L–76, 444–DSE–P–79	Alascom, Inc., United Utilities, Inc.
(9) Gambell	78–DSE–P–75, 937–DSE–P/L–80	Alascom, Inc., United Utilities, Inc.
(10) Golovin	138–DSE–P–77, 1069–DSE–P/L–80	Alascom, Inc., Mukluk Telephone Company, Inc.
(11) Goodnews Bay	1364–DSE–P/L–80, 1208–DSE–P/L–80	Alascom, Inc., United Utilities, Inc.
(12) Hooper Bay	81–DSE–P–76, 447–DSE–P/L–79	Alascom, Inc., United Utilities, Inc.
(13) Kiana	58–DSE–P–75, 917–DSE–P/L–80	Alascom, Inc., OTZ Telephone Cooperative, Inc.
(14) King Cove	41–DSE–P–75, 924–DSE–P/L–80	Alascom, Inc., Interior Telephone Company.
(15) Kipnuk	79–DSE–P–75, 938–DSE–P/L–80	Alascom, Inc., United Utilities, Inc.
(16) Kivalina	1–DSE–P–75, 916–DSE–P/L–80	Alascom, Inc., OTZ Telephone Cooperative, Inc.
(17) Kobuk	53–DSE–P–75, 920–DSE–P/L–80	Alascom, Inc., OTZ Telephone Cooperative, Inc.
(18) Kotlik	142–DSE–P–77, 934–DSE–P/L–80	Alascom, Inc., United Utilities, Inc.
(19) Koyuk	137–DSE–P–77, 1070–DSE–P/L–80	Alascom, Inc., Mukluk Telephone Company, Inc.
(20) Moutain Village	139–DSE–P–76, 940–DSE–P/L–80	Alascom, Inc., United Utilities, Inc.
(21) Noatak	42–DSE–P–75, 918–DSE–P/L–80	Alascom, Inc., OTZ Telephone Cooperative, Inc.
(22) Noorvik	2–DSE–P–75, 911–DSE–P/L–80	Alascom, Inc., OTZ Telephone Cooperative, Inc.
(23) Pilot Station	143–DSE–P–77, 933–DSE–P/L–80	Alascom, Inc., United Utilities, Inc.
(24) Quinhagak	1365–DSE–P/L–80, 1207–DSE–P/L–80	Alascom, Inc., United Utilities, Inc.
(25) Savoonga	63–DSE–P–75, 932–DSE–P/L–80	Alascom, Inc., United Utilities, Inc.
(26) Selawik	206–DSE–P–77, 915–DSE–P/L–80	Alascom, Inc., OTZ Telephone Cooperative, Inc.
(27) Skaktoolik	136–DSE–P–77, 1072–DSE–P/L–80	Alascom, Inc., Mukluk Telephone Company, Inc.
(28) Shishmaref	404–DSE–P/L–78, 1158–DSE–P–78	Alascom, Inc., Mukluk Telephone Company, Inc.
(29) Shungnak	54–DSE–P–75, 912–DSE–P/L–80	Alascom, Inc., OTZ Telephone Cooperative, Inc.
(30) St. Mary's	339–DSE–P/L–76, 968–DSE–M/P–79, 445–DSE–P/L–79.	Alascom, Inc., United Utilities, Inc.
(31) St. Michael	14–DSE–P–77, 1071–DSE–P/L–80	Alascom, Inc., Mukluk Telephone Company, Inc.
(32) St. Paul	19–DSE–P–76, 921–DSE–P/L–80	Alascom, Inc., Interior Telephone Company.
(33) Tanunak	56–DSE–P–76, 941–DSE–P/L–80	Alascom, Inc., United Utilities, Inc.
(34) Togiak	95–DSE–P–76, 923–DSE–P/L–80	Alascom, Inc., Interior Telephone Company.
(35) Tooksook Bay	57–DSE–P–75, 939–DSE–P/L–80	Alascom, Inc., United Utilities, Inc.

Appendix B

Proposed Rule

It is proposed to modify Part 25 of the Commission's Rules, 47 CFR 25, by adding a new § 25.391 to read as follows:

§ 25.391 Alaskan earth station authorizations.

(a) For the purposes of this section, an Alaskan Bush earth station is a transmitting earth station located in Alaska, but outside of the 32 largest cities of that state, that is intended to provide, in whole or in part, public message service as defined in § 21.2.

(b) Except as provided for in paragraph (c) below, no application for a construction permit or license renewal for an Alaskan Bush earth station shall be accepted for filing unless the applicant includes a copy of its certification by the appropriate state regulatory agency to provide local telephone exchange service within the community in which the earth station is to be located.

(c) The requirement of paragraph (b) above may be waived for a period of up to three years upon a showing that no entity possesses or has applied for the certificate mentioned in paragraph (b) above, or that the entity possessing such a certificate is unwilling to file an application to construct and operate an earth station in the community. A waiver applicant must file copies with the Alaska Public Utilities Commission and the local exchange carrier, if applicable, and include proof of such service with its waiver application. If such a waiver is granted, the license term for the earth station shall not exceed the term of the waiver.

(d) For purposes of this section, the 32 largest cities are Adak, Anchorage, (Eagle River), Aniak, Barrow, Bethel, Cape Lisburne, Cape Newenham, Cape Romanzof, Cold Bay, Cordova, Dillingham, Fort Yukon, Galena, Iliamna, Indian Mountain, King Salmon, Kodiak, Kotzebue, Lena Point, McGrath, Nome, Put River, Sand Point, Shemya, Sparrevohn, Talkeetna (Bartlett), Tanana, Tin City, Unalakleet, Unalaska, Valdez and Yakutat.

Concurring Statement of Commissioner Robert E. Lee in Re: Ownership of Domestic Satellite Earth Stations in Alaskan Bush Communities

The proposal here to make local telephone exchange certification an eligibility requirement for ownership of earth stations in Alaskan Bush communities presents some provocative issues. I am concurring because I would have preferred to give more attention to these issues in the *Notice*. I hope that the parties to this proceeding will address my concerns in their comments.

The *Notice* proposes to reverse the ownership pattern followed by the rest of the domestic telecommunications system whereby the toll carrier owns the access to the toll system. If the proposal is adopted, local exchange operation will become an eligibility requirement for ownership of a facility used exclusively for toll system access. The *Notice* presumes that, if the local exchange owns the earth station, routine maintenance problems will be solved, toll communications services will be more responsive to local needs and interests, and local exchanges will benefit financially. In short, the proposal is presented as the solution to the problems of communication service in the Alaskan Bush.

I am concerned, however, that the benefits may be more illusory than real. Service to the Alaskan Bush has always been a problem, and it will continue to be a problem under this proposal for the simple reason that the service is a burden financially. This *Notice* merely proposes to shift the ownership of earth stations from the toll carrier to the local exchange carriers. It does not propose to shift the financial burden along with the ownership. Toll ratepayers, both intrastate and intrastate, will be expected to continue subsidizing Bush service through the rates they pay for toll calls.

With regard to routine maintenance, Alascom has been criticized because its centralized maintenance office has not always been able to respond quickly to service outages. This is a problem, but I question whether shifting earth station ownership to local exchange carriers is a necessary solution. Alascom could easily contract with the local carriers to have them provide the same day-to-day maintenance they would provide if they were to own the earth stations.

The *Notice* places a premium on the decision making of the local exchange carriers to build whatever earth stations they deem necessary, useful, or financially beneficial. Thus, the proposed policy may create false incentives to overbuild earth stations—one for every local exchange area rather than one for a cluster of local exchange areas, particularly if the local exchange carriers expect that the cost and a rate of return will be paid out of settlements from the toll systems. Added to the costs of earth stations will be the expenses of maintaining them. These expenses, which presumably will be paid for by the toll ratepayers, will rise as the number of earth stations and centralized maintenance offices increases. I hope that the parties will focus their attention on the impact earth station ownership by local carriers may have on the costs and expenses which ratepayers must pay as well as on the quality of service in Alaska.

The *Notice* assumes that the earth stations will be paid for entirely through the intrastate and interstate settlements process, but it does not address the potential problem of shortfalls. While theoretically there should not be any, the real world does not always function according to theory. I hope that parties will consider whether there could be shortfalls and which ratepayers will bear the burden of covering them.

I am also concerned that this proposal makes Alascom the carrier of last resort in communities without local operating companies while, at the same time, undermining any incentive Alascom might have to provide service in these communities. Alascom will be expected to provide service to communities not served by a local carrier, but it will be allowed to do so only under a waiver which must be renewed every three years. I hope the parties will consider whether this proposal could increase the burden borne by Alascom's ratepayers for Bush service while, possibly, retarding development of service in some areas.

Finally, I believe that this proposal delegates a considerable part of our licensing responsibility to the Alaska Public Utilities Commission and creates possible conflicts between that Commission and the FCC. I hope that the parties will look at the legal and practical consequences of this delegation.

We all want to see a viable communications system in Alaska which maximizes the use of communications facilities and scarce resources, including money. We are looking for the best way to achieve this goal. I trust the parties will advise us of the legal and practical consequences of our options in deciding this earth station ownership issue. I would have preferred to gather this information through an inquiry rather than a rulemaking, but I'm sure that the Commission will thoughtfully review the data generated by this *Notice* before reaching a final decision.

Separate Statement of Commissioner Joseph R. Fogarty

In Re: Policies Governing the Ownership and Operation of Domestic Satellite Earth Stations in the Bush Communities in Alaska—Notice of Proposed Rule Making.

I believe it is entirely wise and proper here for the Commission to proceed by rule making rather than adjudication, to resolve the earth station ownership question presented by the Alaskan Bush applications. *United States* v. *Storer Broadcasting Co.*, 311 U.S. 192 (1956), generally supports the Commission's authority to prescribe by rule eligibility requirements for license applications. This proceeding will allow all interested parties a full and fair opportunity for comment and argument on the eligibility criteria which will best serve the public interest in the optimal use of these facilities.

It is particularly appropriate to engage in rule making on these issues in order to avoid unnecessary duplication, delay, and costs which would attend an oral hearing process.

In the unique context of the special and pressing communications needs of the Alaskan Bush communities, such expedition also clearly serves the public interest.

[FR Doc. 80-33545 Filed 10-27-80; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 80-522; RM-3582]

FM Broadcast Station in South Lake Tahoe, Calif.; Order Extending Time for Filing Comments and Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: Action taken herein extends the time for filing comments and reply comments in the proceeding involving the proposed assignment of FM channels to South Lake Tahoe, California.

DATES: Comments must be filed on or before December 18, 1980, and reply comments on or before January 9, 1981.

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

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Broadcast Bureau, (202) 632-9660.

SUPPLEMENTARY INFORMATION:

Order Extending Time for Filing Comments and Reply Comments

Adopted: October 16, 1980.

Released: October 22, 1980.

By the Chief, Policy and Rules Division:

1. On August 18, 1980, the Commission adopted a *Notice of Proposed Rule Making*, proposing FM channel assignments to South Lake Tahoe, California, (45 FR 58613, published September 4, 1980). Comments are presently due October 21, 1980, and reply comments November 10, 1980.

2. Counsel for Entertainment Enterprises, Inc. filed a request seeking additional time for filing comments and reply comments to and including December 18, 1980, and January 9, 1981, respectively. Counsel states that due to complicated and unexpected events, additional time is needed to prepare and submit data in response to the *Order to Show Cause* of the *Notice*.

3. Since the Commission believes it would be in the public interest to have all the information available to it in arriving at a decision in this proceeding, we are granting the additional time as requested.

4. Accordingly, it is ordered, That the dates for filing comments and reply comments in BC Docket 80-522 (RM-3582) are extended to and including December 18, 1980, and January 9, 1981, respectively.

5. This action is taken pursuant to authority found in Sections 4(i), 5(d)(1), and 303(r) of the Communications Act of 1934, as amended, and Section 0.281 of the Commission's Rules.

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 80-33532 Filed 10-27-80; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 78-251; FCC 80-557]

Petition to Institute a Notice of Inquiry and Proposed Rulemaking on the Airing of Public Service Announcements by Broadcast Licensees

AGENCY: Federal Communications Commission.

ACTION: Report and Order; Termination of Proposed Rulemaking.

SUMMARY: The issues raised in a Memorandum Opinion and Order and Notice of Inquiry, FCC 78-602, 43 FR 37725, released August 24, 1978, are resolved by this action. This document allows greater credit to be given to broadcasters for airing public service announcements (PSA's). Specifically, PSA's may be considered in the "other" programming category of the Annual Programming Report for commercial television licensees, as well as in the renewal application forms for commercial radio and television licenses. Broadcast renewal applicants also may use PSA's as illustrative programming on the annual problems-programs list to be placed in a licensee's public file as part of his ascertainment requirement. This action is necessary because inadequate recognition has been given to licensees for airing PSA's, thus perhaps discouraging the broadcasting of such announcements. The intended effect of the action is to more fully recognize the contribution broadcasters make through the airing of PSA's and thus encourage their use where appropriate and effective.

DATE: Effective November 17, 1980.

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

FOR FURTHER INFORMATION CONTACT: Freda L. Thyden, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

In the matter of petition to institute a notice of inquiry and Proposed Rule Making on the Airing of Public Service Announcements by Broadcast Licensees, BC Docket No. 78-251, RM-2712.

Report and Order—Proceeding Terminated

Adopted: September 25, 1980.

Released: October 27, 1980.

1. This proceeding concerns the airing of public service announcements ("PSA's"),[1] by broadcast licensees. Now before the Commission for consideration are the filings generated in response to a *Memorandum Opinion and Order and Notice of Inquiry ("Notice of Inquiry")*,[2] FCC 78-602, 43 FR 37725, released August 24, 1978.

Background

2. In order to place this phase of the proceeding in perspective, we will first provide a brief history of the case to date. On October 11, 1977, by *Memorandum Opinion and Order*, FCC 77-685, the Commission in its initial action in this proceeding denied a petition filed by the Public Media Center *et al.*, to institute a Notice of Inquiry and Proposed Rule Making looking toward the adoption of rules imposing specific obligations on broadcasters as to the number, duration, content and source of PSA's which they should present. Petitioners argued that the adoption of such rules would result in allocating more time (especially during more desirable time periods) for the airing of PSA's and in giving local citizens groups and public service organizations a greater proportion of PSA time than they presently receive. Petitioners expressed the view that broadcasters have not been meeting their public service obligation in this regard and contended that PSA's are often given inadequate exposure, usually in the least favorable hours. Moreover, they contended, local charities and citizens groups obtain little access to PSA time which, they argued, is largely monopolized by well-established charities and other entities by virtue of their connection with the Advertising Council.

3. Petitioners proposed to require that broadcasters present a minimum of three PSA's, totalling a minimum of ninety seconds, every two hours

[1] A public service announcement (PSA) is one for which no charge is made and which promotes programs, activities, or services of Federal, State or local governments (*e.g.*, recruiting, sales of U.S. Savings Bonds, etc.) or the programs, activities or services of nonprofit organizations (*e.g.*, UGF, Red Cross Blood Donations, etc.) or any other announcements regarded as serving community interests. See § 73.1810(d)(4) of the Commission's rules.

[2] A list of the parties filing formal comments and/or reply comments is contained in Appendix B.

throughout the broadcast day.[3] Petitioners also would impose a limitation on the number of those PSA's which a licensee or network could accept from a single entity and require that a certain percentage of PSA's be of local origin. It would also call for making station facilities and technical assistance available to local organizations for production of PSA's responsive to ascertained needs. Petitioners also recommended amending the application forms to enable the reporting of a broadcaster's efforts in these respects. Finally, petitioners suggested that the Commission initiate a wide-ranging study into current licensee and network practices with regard to the production and airing of PSA's. Opposing arguments were presented to the effect that the presentation of PSA's falls within an area of licensee programming discretion which the Commission should not disturb through adoption of the proposal. Moreover, these parties asserted that petitioners had not presented the necessary factual basis for taking the action requested.

4. After considering the arguments in favor and in opposition to the proposal, the Commission concluded in the *Memorandum Opinion and Order* that adoption of the proposal would be an inappropriate intrusion into the sensitive area of programming. Because of this concern the Commission has regularly followed a practice of according the licensee broad discretion in programming matters, including the scheduling and selection of PSA's. We noted that decisions as to the quantity, nature, source and scheduling of PSA's aired depend on the community to be served and each licensee's individual situation. We found that petitioners had not substantiated their allegations that inadequate PSA time was being provided or that it was being scheduled improperly, that is customarily during times of little audience. Regarding the allegation of Advertising Council dominance, all that could be said from the information given us on the Advertising Council's role in regard to PSA time was that Council endorsement might facilitate the airing of PSA's. No basis was given for concluding that without such support, PSA's would be denied access to the broadcast medium.

5. Nonetheless, the Commission did agree with petitioners that PSA's can offer an important public service, and we concluded the *Memorandum Opinion and Order* with a statement stressing the Commission's expectation that licensees would make a good faith effort to tailor and schedule PSA's so as to enhance their effectiveness and to provide a meaningful, local, public service. Thus, we noted, the predominant scheduling of PSA's in "graveyard" hours or perfunctory treatment of such announcements could not be considered the type of reasonable effort expected by the Commission. Further, we indicated an expectation that a significant proportion of PSA's on television should be aired during prime-time and on radio during drive-time.

[3] Petitioners contend that such a rule would not only increase the time given to PSA's but would encourage broadcasters in meeting this requirement to fulfill another of petitioners' goals, *viz.* utilizing new and diverse sources for these announcements.

Notice of Inquiry

6. On August 8, 1978, on petitioners' motion, the Commission reconsidered its decision of October 11, 1977. Although concluding that our earlier action declining to propose a specific rule was fully warranted, our view of the merits of conducting an inquiry had shifted. We had come to believe that such an inquiry could serve a useful purpose. What became apparent from new information submitted in the petition for reconsideration [4] necessary preclude to determining whether specific rules should be contemplated. We noted that interest in the use of PSA's has grown considerably, not only on the part of this Commission. Congress, as well as governmental agencies, such as the Federal Trade Commission and the Department of Health and Human Services (formerly known as the Department of Health, Education and Welfare), are interested in the employment of PSA's in answering public needs, a fact evidenced in joint comments filed by those two agencies in support of the reconsideration request. Important issues thus having been raised, the Commission initiated an inquiry into what role PSA's presently play in serving the public and what role they could or should have in this important regard.

[4] In its petition for reconsideration, the Public Media Center presented data on the PSA practices of certain local broadcasters and of the Advertising Council not previously submitted. This information, in most part, was obtained from composite week logs provided in license renewal applications submitted to the Commission after the petition for rule making was filed and from a government report first available after the initial petition was filed. The government document referred to is a General Accounting Office report dated August 31, 1977, on the *Federal Energy Administration's Contract with the Advertising Council* which concluded that the Ad Council "* * * has the unique capability to encourage national and local media to contribute public service time on television and radio * * *" Petitioners also noted a Department of Transportation procurement request stating that the Ad Council is the only instrument for designing, developing and implementing national public service campaigns accepted by the advertising industry and the information media.

7. Two general categories of questions were raised for inquiry in the *Notice* adopted on August 8, 1978. The first sought information about the present use of PSA's by radio and television broadcasters and is of an essentially factual nature. The second was designed to explore the views of the parties on the possible role of PSA's and any rule or policy changes which they believe could or should be made. The specific questions asked in the *Notice* and the comments responding to these inquiries will be discussed in detail in the following paragraphs.

Category I of the Inquiry:

Questions and Answers Concerning the Present Use of PSA's by Broadcast Licensees.

8. The factual information currently available to the Commission in regard to present use of PSA'a is largely limited to the data requested on applications for license renewal. Radio stations are asked to indicate how many PSA's are aired during the composite week; television stations are also asked to provide this information and to indicate how many PSA's were aired between the hours of 8:00 A.M. and 11:00 P.M. during the composite week. This purely statistical information does not give a full picture of current practices. In order to gather more information as to the number, duration, timing, nature and source of and criteria for PSA's aired, we asked the following questions of broadcast stations and/or other interested parties responding to the *Notice of Inquiry:*

(1) As to the time given to and the timing of PSA's:

(a) How many (the number of) PSA's are usually aired by a station on a weekly basis?

(b) How much total time on a weekly basis is usually devoted to PSA's by broadcasters?

(c) What is the duration in time of the usual PSA's?

(d) How are PSA's generally distributed throughout the day? Specifically, how much time is devoted to PSA's during drive (radio) and prime (TV) time?

(e) How are PSA's distributed between the various days of the week?

(f) How many (the number of) PSA's aired on a weekly basis by broadcasters are directed to children under twelve years of age?

(g) How much total time on a weekly basis is usually devoted to PSA's directed to children under twelve years of age?

(h) How are those PSA's directed to children under twelve years of age distributed throughout the day?

(i) In the case of television stations, how much time is devoted to such PSA's during periods of peak child viewing, for example, between 7 and 9 A.M. and 3 and 7 P.M. on weekdays and on Saturday and Sunday mornings?

(j) How many (the number of) PSA's aired on a weekly basis by broadcasters are directed to youth (between twelve years of age and eighteen)?

(k) How much total time on a weekly basis is usually devoted to PSA's directed to youth (between twelve years of age and eighteen)?

(l) How are those PSA's directed to youth (between twelve years of age and eighteen) distributed throughout the day?

(2) As to the nature of PSA's aired:

(a) List those topics which are often the subject of PSA's.

(b) Are most PSA's concerned with local or national issues? Specifically, what percentage of PSA's on a weekly basis usually deal with local versus national topics of interest? Of those PSA's aired on local matters of interest, how many were broadcast on behalf of local groups or organizations?

(c) Do any PSA's aired deal with controversial issues? If so, what is the usual percentage of controversial PSA's broadcast on a weekly basis?

(d) What topics are usually the subject of PSA's directed to children under twelve years of age?

(e) What topics are usually the subject of PSA's directed to youth (between twelve years of age and eighteen)?

(3) As to the sources of PSA's aired:

(a) What and how many production sources are there for PSA's?

(b) Do broadcasters solicit the production of specific PSA's or are PSA's generally provided to broadcasters for their use?

(c) To what extent, if any, are PSA's provided to broadcasters in package form rather than on an individual basis?

(d) Do broadcasters produce their own PSA's and, if so, to what extent?

(e) What are the costs involved in producing the usual PSA?

(f) To what extent are these costs a factor in the presentation of particular PSA's?

(4) As to the criteria for choosing which PSA's will be aired:

(a) What criteria do broadcasters generally employ in determining which PSA's to air?

(b) Do broadcasters employ their list of ascertained community problems, needs and intersts as a guide in determining which PSA's will be aired?[5] If so, what percentage of PSA's on a weekly basis respond to those problems, needs or interests discovered through the community ascertainment process?

(5) Finally, how useful are PSA's in serving the public?

Summary of Formal Comments

9. Approximately ninety parties filed formal comments in response to the *Notice of Inquiry*. These submissions were filed on behalf of interested individuals, the three major networks, a variety of broadcasters' associations, individual broadcast stations, broadcasting and communications corporations, government agencies, The Advertising Council, national charities, public interest and service organizations, national and local citizens' groups and members of the academic community. Of these submissions, approximately twenty-five filings provided substantial data answering questions asked in Category I of the *Inquiry*.

10. The comments providing statistics can be divided into two categories. One category of submissions includes those filed by broadcast stations or groups of stations. These tend to be reports of PSA performance of the particular faciities. It should be noted at the outset that only those stations wishing to respond did so.[6] Thus, the sample may be considered statistically biased. Also, broadcaster filings concern only individual stations with no comparison to others in the market or other areas. The other category of comments consists of studies of the PSA performance of various groups of broadcast stations (market-wide, state-wide, etc.) by non-licensees. These samples involved either portions of large groups of stations, such as those in a large geographic area, randomly selected, or censuses of all stations in a particular market area. A variety of techniques, such as on-the-air monitoring and examination of station logs, were employed by non-broadcasters to develop their data. The lack of a national sample, however, limits the statistical accuracy of these studies. Nevertheless, we believe the data will serve a useful purpose in assisting the Commission to determine what, if any, action it should take regarding the airing of PSA's.

11. The data provided in the submissions generally suppports the following conclusions[7]:

(1) As to the time given to and the timing of PSA's:

(a) On the average, a little less than 200 PSA's are aired per week per station.[8]

(b) About slightly more than two hours of weekly time is devoted to PSA's.[9]

(c) The usual PSA runs approximately 30 seconds.[10]

(d) PSA's seems to be evenly distributed throughout the day, that is they are not necessarily aired in graveyard hours, but also they are not centered in drive and prime-time periods. The ratio for drive and prime-time periods is not significantly different than the non-drive and prime-time ratio, to the extent that specific data is available.

(e) Among the few comments which deal with the days of the week issue it appears that a higher number of PSA's are presented on weekends than weekdays.

(f) Approximately 7% of all PSA's aired (the number thus is about 14 per week) are specifically directed to children under 12 years of age.[11]

(g) 8½ minutes per week is usually devoted to PSA's directed to children under 12 years of age.

(h) Child-directed PSA's are more common during child viewing time. 20% of child-oriented PSA's are broadcast during programming directed to children.

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[5] As part of the material submitted for renewal of broadcast licenses, applicants are called upon to provide a showing of their efforts to ascertain and respond to the problems, needs and interests of the community which they are licensed to serve. See the *Primer on Ascertainment of Community Problems by Commercial Broadcast Renewal Applicants ("Renewal Primer")*, 57 F.C.C. 2d 418 (1976). See also the *Primer on Ascertainment of Community Problems by Broadcast Applicants ("Primer for New Applicants")*, 27 F.C.C. 2d 650 (1971), which provides ascertainment guidelines for applicants for construction permits for new commercial broadcast stations; and the *Primer on Ascertainment of Community Problems by Noncommerical Educational Broadcast Applicants ("Noncommerical Primer")* 58 F.C.C. 526 (1976), which delineates the ascertainment requirements for all noncommercial educational radio and television applicants, renewal and otherwise.

[6] Among other things, it is likely that broadcast stations most aware of Commission proceedings, as well as those facilities either performing particularly well in the PSA area or most opposed to a PSA rule making, will file comments in this proceeding.

[7] The parties generally have submitted sketchy data. Nevertheless, we believe that the conclusions drawn from the furnished information, with their apparent limitations, shed further light on the PSA situation at the present time.

[8] Taking all reporting stations into consideration, an average of 1 to 1½ PSA's are aired per broadcast hour.

[9] This amounts to from one to two percent of all broadcast time.

[10] PSA's also run for 10, 20 or 60 seconds but rarely, if ever, any longer.

[11] See Docket No. 19142, FCC 79-851, for a *Notice of Proposed Rule Making* released in *The Children's Televeision Programming and Advertising Practices* proceeding. The Notice was pubished in the **Federal Register** on January 9, 1980, Vol. 45 FR 1976, with comments and reply comments due June 16 and August 1, 1980, respectively.

(i) Approximately 1½ minutes per hour are devoted to PSA's during child dominant viewing times.

(j) through (l) The comments addressing these questions, which concern youth (ages 12 through 18) are very few. The limited data, however, indicates figures similar to those reported for children (questions and answers (f), (h) and (i)).

(2) As to the nature of the PSA's aired:

(a) The subject matter of PSA's is varied. Those concerning health and safety, however, appear most common. Also dealt with in PSA's are matters relating to social services, civic activities and environmental concerns.

(b) Few responses were received on the issue of local versus national PSA's. On the average, those submissions dealing with the question indicated that about one-third of the PSA's they aired dealt with local topics or were locally produced.[12]

(c) It appears from the data submitted and general statements made by broadcasters that PSA's concerning controversial matters are not usually aired.

(d) The topics usually the subject of PSA's directed to children under twelve years of age concern, as they do for adults, health and safety.

(e) The topics usually the subject of PSA's directed to youth are drug abuse, alcoholism and venereal disease.

(3) As to the sources of PSA's aired:

(a) Production sources for PSA's are numerous since any organization having access to an audio studio and trained assistance can produce such announcements. Therefore, no specific listing could be developed from the furnished information.

(b) Broadcasters tend to have PSA's provided for them and do not on a general basis solicit the production of specific PSA's.

(c) Although PSA's are sometimes provided on an individual basis, they are generally offered to broadcasters in package form.

(d) Broadcasters produce some of their own PSA's but to what extent was not meaningfully revealed by the furnished data.

(e) The data submitted was inadequate to draw any conclusion on the cost of PSA's.

(f) It appears that in comparison to other types of spot announcements, few costs are involved in PSA production and they are not a significant factor in the presentation of particular PSA's.

[12] The majority of commenters take issue with any Commission differentiation between local and national PSA's, generally stating that national PSA's are only aired if they meet the needs of the particular community involved.

(4) As to the criteria for choosing which PSA's will be aired:

(a) Broadcasters generally state that local public service is the criteria for choosing which PSA's to air, whereas non-broadcast parties conclude that availability and convenience are the criteria employed.

(b) Broadcasters employ their list of ascertained community problems, needs and interests as a guide in determining which PSA's will be aired, however, the degree to which they do so appears to vary widely.

(5) Stations and non-broadcast parties find PSA's are useful in serving the public. A question raised in this context, however, is whether repetition of even worthwhile messages is counter-productive.

12. We believe it will be helpful for later discussion to indicate statistical data provided by particular broadcasters, as well as non-licensees, in order to provide a sampling of the information furnished the Commission. Thereby, a more complete record will be provided for the disposition of the issues in this proceeding. Initially, we note that Boston Broadcasters, the licensee of Station WCVB–TV, reported airing PSA's for 118 organizations during the composite week. The station aired over 2 PSA's, or one minute of PSA time, every hour on the average. 35 percent of WCVB's PSA's are aired between 6 a.m. and 12 noon, 30 percent between 12 noon and 11 p.m. and another 35 percent from 11 p.m. to 6 a.m. The station indicates that a greater proportion of PSA's are aired on weekends; 7 percent of their PSA's are for either adolescents or children, with their subject matter being alcoholism, drug abuse and venereal disease for the former and nutrition and safety for the latter; and 80 percent of their PSA's are local. The topics which are frequently the subject of WCVB's PSA's for adults are health, social services, minority affairs and civic activities. WCVB also notes that PSA's are either provided directly by the public service organizations benefiting from the announcements or the announcements are produced by the station for local public service groups and entities, at a cost to the station of $250 per announcement. It submits that $62,000 was spent by the station in 1977 to produce PSA's. When national organizations furnish the PSA's, states WCVB, it is not uncommon for them to be provided in package form. The subjects of its PSA's transcends, WCVB asserts, problems ascertained through its community ascertainment survey.

13. Another television station submitting data to the Commission is Station WBAY licensed to Nationwide Communications. WBAY averaged less than one PSA per hour for a weekly total of approximately 120 PSA's, 7 percent being directed to children and adolescents. The average duration of the station's PSA's is 30 seconds. They are generally distributed throughout the day and the week. PSA's for children are generally aired from 7 a.m. to 9 a.m. weekdays and on weekend mornings. PSA's directed to teenagers are aired during late afternoon periods. The subject of children's PSA's are nutrition, safety and dental care; those for adolescents are drug abuse and education; and those for adults are health, social services, minority affairs, civic activities and safety and environmental concerns. WBAY considers 75 percent of its PSA's as daily with local issues and concludes that few concern controversial issues. PSA's are given to the station by public service organizations, governmental agencies and the Advertising Council. Again, when national organizations provide PSA's, they are often in package form. 10 percent of WBAY's PSA's are provided in that fashion. Approximately 50 percent of those PSA's aired by WBAY on a weekly basis directory responsive to ascertained community needs.

14. As to radio stations, KEZY generally broadcasts 170 PSA's weekly. These announcements average from 10 to 20 seconds in length and frequently include special announcements which range up to one minute in duration. KEZY's PSA's are generally distributed throughout the day, except during the all-night programming. Such announcements are broadcast in one-hour intervals starting at 6:50 a.m. and continuing in that fashion until 1:50 a.m. the following morning.[13] 29 percent of its PSA's are specifically directed to children under twelve years of age. Approximately 100 PSA's are directed to adolescents. KEZY reports that 90 percent of its PSA's are concerned with local as opposed to national issues. The subject matter of the spots for children are the same as listed for Stations WCVB–TV and WBAY–TV. KEZY reports that its PSA material is typically acquired through community inquiry. PSA's are not generally obtained in package form and 10 percent of its spots are produced at its station. 35 percent of the PSA's carried are directly responsive to ascertained community problems.

15. Turning to the networks, CBS states that it airs about one PSA per hour, but the number of stations clearing

[13] Group W stations (Westinghouse Broadcasting Co.) report that they air on an average of 2 PSA's per hour.

such PSA's varies a great deal.[14] CBS owned radio stations broadcast 60, 30, 20 and 10 second spots but 60 second announcements predominate. 30 second spots are the most popular with CBS owned television stations.[15] As to the CBS television network, there is no significant difference in the scheduling of PSA's between the various days of the week. The TV network usually devotes a minimum of 5½ minutes per week to PSA's designed primarily for children.[16] It is also indicated that a majority of PSA's aired by each of the CBS owned TV stations are broadcast on behalf of local sponsors. CBS argues, however, that it is artificial to distinguish between national and local PSA's. A national topic, it submits, is one which by definition has an impact on many communities. CBS' view is that the Commission's questions in this regard implies a preference against PSA's for national organizations or local chapters as compared to some unspecified and unidentified local and community group. As to PSA's addressing controversial issues, CBS network will not consider them for airing. The topics which are often the subject of CBS' PSA's include education, health, safety, social problems, the environment, community welfare, religion, consumer affairs and government information. According to its comments, the majority of PSA's are provided to CBS TV Network and CBS owned stations in package form.[17] That is, three or four or sometimes more PSA's of different length and perhaps content are often received from a single organization. Many of the unsolicited PSA's CBS receives are produced by the public service sponsors themselves.[18] A large number of PSA's are produced by the CBS-owned stations and the CBS Radio Network on behalf of public service sponsors who lack the technical expertise or financial resources to produce their own air-quality PSA's. According to CBS, an average PSA costs a public service sponsor anywhere from $5,000 to $12,000 to produce. It is the general experience of the CBS-owned stations that irrespective of whether there is a conscious decision for PSA's to mirror ascertained needs, the great majority of PSA's broadcast do in fact directly respond to problems discovered through the community ascertainment process. The network also indicates that its stations receive substantial feedback in the form of letters and telephone calls describing various benefits to public service sponsors from exposure given their spots.

16. Turning to some of the specific comments submitted by non-licensees, we note the study of radio PSA's aired in several midwestern states done by Soley and Redd of Michigan State University. They found a wide variance in the number of PSA's aired, a variance that could not be explained by traditional economic and programming factors. The average number of PSA's aired in this survey was 1.3 per hour.[19] In looking at the material submitted on children's programming in the Boston market, submitted by Action for Children's Television ("ACT"), we note that a little over one minute per hour was devoted to PSA's. 20 percent of these spots were considered by ACT to be directed specifically to children with most classified as general or adult oriented in content analysis.[20] The largest share of the PSA's, that is 40 percent, concerned health and safety. ACT reported that few PSA's were in fact local.

17. New York City broadcast stations were examined by Jan Geller who found the most PSA's were scheduled in non-drive and non-prime hours.[21] Most PSA's were found to be neutral in terms of content controversy, an observation supported by station executives interviwed who noted that this was station policy. Few minority-oriented PSA's were aired,[22] according to Geller who also submitted that little attention was given to the scheduling and production of PSA's.

18. The Public Media Center also viewed a number of facilities and found them wanting. As to Station WABC–TV, New York City, petitioners assert that 63.6 percent of all PSA's aired were before 8 a.m. and after 11 p.m., with only 30.6 percent of total PSA time being given to local organizations. As to WCBS–TV, New York City, most PSA's, it is submitted, were aired before 7 a.m. and after 3 a.m., with nearly 30 percent of all PSA time parcelled out to just seven public service campaigns. None of these spots concerned controversial issues. In regard to KTBU–TV, San Francisco, California, although only 164 PSA's were aired during a particular week, that being June 18–24, 1978, petitioners note the station's strong commitment to local PSA's, some of which even addressed controversial topics. KTBU devotes a substantial amount of its PSA time to daylight hours and petitioners state that in their opinion a reasonable portion of prime-time is given to PSA's. Other stations were evaluated, such as WTOP–TV, Washington, D.C., with over 3 hours a week of PSA's, the bulk being in daytime. Petitioners further note that on a weekly basis WTOP gave 3 prime time minutes to PSA's with national PSA campaigns being generally favored over local. Additional data is provided on other broadcast stations with similar fluctuations indicated.

19. Also of interest is the submission filed by the Heart, Lung and Blood Institute of the Department of Health and Human Services citing a 20 percent drop in cardiovascular disease in recent years and attempting to correlate the drop with the airing of PSA's on the subject. Also, the Georgia Department of Human resources quotes a mail survey of theirs which reports that 70 percent of broadcast stations in Georgia use the PSA's sent to them by that Department frequently. Although these submissions are not strictly statistically accurate, we believe their notation is informative.

Category II of the Inquiry: Questions and Answers Concerning the Possible Future Role of PSA's

20. Before discussing those comments which address the subject of what role PSA's now play and what that role could or should be in the future, we point out that the Commission's rules do not presently impose a PSA obligation on broadcasters. Rather, as was stated in our earlier *Memorandum Opinion and Order*, nothing more is specified than that the licensee proceed with good faith. Consequently, in the *Notice of Inquiry* we invited interested parties to indicate whether they thought a specific requirement should be imposed on broadcasters in regard to the presentation of PSA's. Specifically, we asked whether such a requirement was

[14] ABC indicates less than one PSA per hour broadcast.

[15] The duration of PSA's broadcast on NBC–TV usually ranges from 10 to 60 seconds, with 30 second spots being most common. Radio PSA's are usually 10 to 60 seconds, with 30 second spots beimg most common. Radio PSA's usually 10 to 15 seconds long.

[16] NBC–TV stations try to schedule children's PSA's during children's programs. NBC radio stations are generally programmed to attract an audience over 18 years and, therefore, do not broadcast PSA's directed to children.

[17] ABC reports that PSA's generally are provided on an individual basis rather than in package form.

[18] Accordingl to ABC, the overwhelming majority of PSA's aired are voluntarily provided from outside non-profit public service oriented organizations.

[19] The Interfaith Centers Justice analyzed the schedules of Detroit area broadcast stations and determined that the number of PSA's aired was limited, that is less than requested by petitioners.

[20] The FTC asserts that half of the PSA's scheduled during children's television time which is monitored were directed toward a general audience. The FTC also argues that there is limited airing of nutritional PSA's directed its children.

[21] The Interfaith Centers for Racial Justice determined that most PSA's aired by Detroit area stations were broadcast in non-peak audience hours.

[22] The PSA's aired by Detroit area stations, according to the Interfaith Centers, were usually of general appeal rather than directed toward specific and/or minority audiences.

necessary to ensure that broadcasters air a reasonable number of PSA's. Might we encourage rather than require their presentation if we provided some recognition for airing a greater number of these announcements. This question was raised since present Commission procedures provide little credit to licensees for the airing of PSA's. Although these announcements, to a certain extent, may be used to meet community ascertainment requirements for renewal, as well as for the grant of a construction permit for a new station,[23] they may not be listed as illustrative programming on the annual problem-programs list to be placed in the public file.[24] Nor, for that matter, does the Annual Programming Report (FCC Form 303A), which is to be filed by commercial television licensees and permittees, note the time given to PSA's during the composite week. The only programming categories to be reported are "news," "public affairs" and "other," the last category being exclusive of entertainment, sports and PSA's.

21. In considering whether greater credit should be given to broadcasters for airing PSA's, we raised for inquiry the question of what weight should be given or what procedure established for crediting licensees for a particular level of performance in this regard. For instance, does the record support the consideration of PSA'as as "other programming" on the Annual Progamming Report for the total amount of time given to PSA's.[25] Comments were also invited on possible ways of giving greater recognition to, and thus encouraging the airing of, PSA's during drive and prime-time, perhaps by considering them the equivalent of twice the amount of time presented at other hours.

22. In view of our current concern with children's programming, as indicated by our present inquiry into the matter, we raised the issue of whether (and if so how) licensees should receive credit for broadcasting PSA's tailored for children and youth during programs directed to them, as well as during other programs frequently viewed by them.[26] Comments were also invited on possible ways of encouraging the airing of those announcements. Similarly, should broadcasters receive credit for airing PSA's which serve other specialized audiences, such as those directed to the Spanish speaking and captioned for the deaf?

23. Another matter for consideration in this inquiry is whether radio and television should be treated differently with respect to any PSA obligation imposed or credit given to broadcasters. If so, in what way? Also, should the PSA definition be modified and, if so, in what manner? Specifically, should any new definition reflect the particular purposes to which PSA's may be put? For instance, PSA's may be employed in campaigns concerned with good nutrition, preventive medicine, employment, and consumer items. Should the PSA definition refer to such purposes and/or include a statement that controversial matters may be the subject of PSA's. These were the specific questions asked of those commenting. Of course, they were also invited to make any suggestion they considered pertinent to the subject matter of the proceeding.

Summary of Formal Comments

24. Of the approximately ninety parties filing formal comments in response to the *Notice*,[27] some provide data in answer to the factual questions asked in Category I of the *Inquiry* but do not offer an opinion on the adoption of either specific rules or a credit system for PSA's. As to the filing expressing a viewpoint, that being approximately seventy, slightly more than half were against any Commission action being taken. Of the submissions remaining, half were against specific regulations but in favor of credit procedures and half were in favor of particular PSA rules.

Comments Favoring the Adoption of Specific PSA Rules

25. Those parties favoring the adoption of specific PSA regulations generally argue, as does the United Church of Christ, that most if not all PSA's are scheduled during time slots when commercial messages have not been sold. A number of commenters contend that most broadcast stations will air PSA's during prime-time only if they are required to do so. Volunteer programs, they submit, are not consistent or constant. The Interfaith Centers for Racial Justice also allege that the data provided in answer to questions asked in Category I of the *Inquiry* indicates that television stations, especially network owned facilities, are incapable of carrying out any Commission policy unless quantitive standards are established. Proponents contend that minimum quantitative standards for PSA's are constitutionally permissible and statutorially authorized and are an appropriate mechanism for dealing with what they view as inadequate PSA practices.

26. Various parties attest to the value of PSA's, stating that they can bring the public's attention to signficant social problems. In fact, the Federal Trade Commission ("FTC") notes that a spot message broadcast to a widespread audience is a uniquely effective means of communicating with the public. PSA's can also be useful tools for stimulating a healthy commercial marketplace submits the FTC. PSA's distributed by the Federal Government or nonprofit groups can be used to complement commercial messages, educate the public, disseminate nonbrand comparative produce information and generally improve the quality of consumer choice. The FTC asserts that PSA's are the only cost effective means for government agencies and non-profit organizations with limited funds to communicate with vast numbers of consumers. But PSA's will not have this meaningful impact, it submits, if their timing and frequency is left entirely to the discretion of the broadcasters.

27. Proponents of specific PSA rules also argue, as do individuals Peter Thurston and James Murray, that a relationship must be formulated in the use of the public airways which gives public service messages parity with advertising. As an example of data supporting this opinion, the Southern California Committee for Open Media indicates that while the typical radio station in the Santa Barbara market gives about one percent of its time for PSA's, these same stations allocate an average of twelve to twenty percent of their time for the broadcast of commercial advertisements. Thus, it is argued that a formula should be established which recognizes that PSA's

[23] See Question and Answer 29 of the *Renewal and New Applicant Primers* where it is stated that PSA's may be broadcast to treat ascertained community problems, needs and interests. Also to be noted is Question and Answer 30 of both *Primers*, in which we stated our misgivings about relying solely on PSA's to treat ascertained needs.

[24] See Question and Answer 33 of the *Renewal Primer* and paragraph 48 of the *Noncommercial Primer* for the licensee's obligation to document on an annual basis its efforts to program to meet ascertained community needs. Specifically, the licensee must place in its public inspection file a list of no more than ten significant problems, needs and interests ascertained during the preceding twelve months. Concerning each problem, need or interest listed the licensee must also indicate and describe typical programs broadcast in response to those problems. Such programs are not to include either PSA's or ordinary news coverage.

[25] If a number of PSA's are aired together as a "community bulletin," a licensee presently may receive credit for their broadcast under the category "other programming."

[26] Children's programs are presently defined as those programs produced for children, not those programs viewed by children.

[27] For a description and listing of the parties filing formal comments and reply comments in this proceeding, see para. 9*supra*, and Appendix B *infra*, respectively.

are to be used for promoting public interest concepts and programs in the same manner as paid advertising. Such a PSA/commercial ratio should not only be established, it is submitted, but maintained throughout the broadcast day so that the public through PSA's enjoys the same access to prime time as does the corporate advertiser. In addition, some proponents of specific PSA regulations believe that broadcaster should be required, also on a formula basis, to provide production time and professional program development services.

28. Finally, a few advocates of specific rules in the PSA sphere suggest even more stringent measures than those recommended by petitioners. For instance, the Council on Children, Media and Merchandising ("Council on CM & M") advises that not only should broadcasters be required to report their PSA performance on an annual basis as well as at renewal time, but that stations be required to report monthly on various aspects of their PSA performance to their local viewers. Also, the Council on CM & M recommends that the Commission publish a report of all stations' activity in the PSA sphere.

Comments Opposing Any Commission Action Regarding PSA's

29. A number of arguments were offered in opposition to any Commission action being taken in regard to PSA's, that is, any inquiry into or recognition of PSA performance or the adoption of rules mandating a particular level of PSA activity. As stated by Combined Communications Corporation ("CCC") and the National Broadcasting Company ("NBC"), many opponents believe that any rules requiring broadcasters to air a particular number of PSA's, to air them at a particular time or to air those promoting a particular organization would amount to censorship violative of Section 326 of the Communications Act as well as the First Amendment. It is asserted that these provisions prohibit government intrusion into decisions affecting program content. Thus, programming matters have traditionally been left to the discretion of individual licensees, State opponents, rather than governed by regulatory action. Additionally, such commenters as Storer Broadcasting Company and the National Association of Broadcasters ("NAB") conclude that the mere existence of the inquiry may have a chilling effect on broadcasters' future programming decisions despite the Commission's lack of authority to act on the information gathered in this proceeding. The Columbia Broadcasting System ("CBS") also submits that any offer of credit to encourage broadcaster performance in this area is nothing more than another Commission attempt to regulate by means of the raised eyebrow in order to achieve what cannot be attained by the enactment of new rules.

30. In addition to the jurisdictional argument made by some opposing parties, many commenters assert that PSA regulations are unnecessary since broadcasters already meet their public interest responsibilities in this regard. Station KRCR–TV states that this is an area in which no evidence exists that licensees are providing an insufficient number of PSA's, improper placing of such announcements [28] or denying organizations telecast time for the airing of PSA's.[29] In fact, the National Radio Broadcasters Association submits that radio licensees, without government proding, are already providing ample service of the type envisioned by the Commission in its *Notice*. Also, some commenters are concerned that should the Commission establish a quantitative PSA rule, it will become an industry standard and, in effect, the industry maximum.

31. Opponents also argue that adopting quantitative guidelines will affect the quality of a station's PSA efforts. They submit that increasing the amount of PSA's would not necessarily improve the value [30] or effectiveness of such announcements [31] or the overall service a station provides its audience. Of concern to numerous commenters, such as WJER Radio, Inc., is the possibility that imposing specific regulations would in effect indicate a preference for PSA's over programming in meeting public problems and needs. By narrowing broadcasters' programming choices to inflexible governmental standards, states the Daily Telegraph Printing Company, the Commission would remove the licensee's freedom to build a record based on its editorial judgment of the program mix to best serve local needs. [32] Opponents also argue that it would be impossible to derive a standard that is sufficient to meet the needs of large communities without being too great a burden on the stations in small communities. [33] All three networks, among numerous other commenters, take particular note of the Commission's traditional approach of viewing a station's overall performance rather than a particular program type to determine whether the public interest has been served.

32. Finally, opponents submit that regulating the airing of PSA's by broadcasters is inappropriate in light of current social and political trends favoring reductions of governmental interference in the free market system. Such commenters as the American Broadcasting Companies ("ABC") argue that the adoption of specific PSA requirements would, and in fact the inquiry itself does, contravene the Commission's announced policy of deregulation.

Comments Favoring a Credit System

33. There are a substantial number of commenting parties who while opposing any rules, policies or mandatory reporting requirements that would embody specific standards concerning the scheduling and airing of PSA's, do favor an improved system of crediting the broadcast of PSA's.[34] It is suggested

[28] In one of the nine reply pleadings filed in this proceeding, Queen City Communications, Inc., submits that the most significant conclusion to be drawn from the evidence submitted by petitioners is that broadcasters do not follow uniform practices regarding PSA's. Queen City contends that this lack of uniformity is proof that our current system of broadcasting works. True diversity, it states, can exist only if broadcasters are given maximum freedom and discretion to program their own stations.

[29] A significant number of groups, such as the American Radio Relay League, the Boy Scouts of America, the President's Council of Physical Fitness and Sports, the Lexington League of Women Voters and the United Negro College Fund indicate no difficulty in getting their PSA's aired and, thus, see no valid reason for the adoption of any specific PSA requirements. The Lexington League of Women Voters, however, believes that a credit system to encourage the airing of PSA's is an appropriate Commission action.

[30] One factor in determining the right amount of PSA time, it is alleged, is the season of the year. For instance, in the fall when the United Way Campaign takes place there is a particular need to publicize its events.

[31] Metromedia, Inc., submits that a few well produced spots can be far more effective in achieving the desired goal than longer boring spots that are aired *ad nauseum* and are an irritant to the audience. Also Lawrence Soley of the Department of Telecommunications of Michigan State University states that empirical research has indicated that the understanding and effect of a message is maximized with two to five exposures. He submits that advertisers are now realizing that advertising clutter decreases the effectiveness of a message. The addition of PSA's would increase clutter, he argues, making the added PSA less effective as well as decreasing the effectiveness of the paid commercial announcement.

[32] Commenters submit that a radio station with a format based principally upon musical appeal may find that PSA's are most effective when kept short and well separated, whereas a station with an all talk format may elect to treat the organizations and activities that are traditionally the subject of PSA's in more comprehensive program-length fashion.

[33] Harte-Hanks Southern Communications, Inc., notes that a broadcast station in a large community may find it necessary to include a large amount of PSA's in order to accommodate many and varied community services needing publicity, whereas a station in a smaller market with fewer such services would likely perceive a need for fewer PSA's.

[34] ABC argues that the Commission should not establish by indirect procedures what it must legally avoid doing by direct regulation and thus states that

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by the Pennsylvania Association of Broadcasters that before the Commission considers adopting a specific regulatory scheme, it should observe the attitude of broadcasters if they are allowed greater credit for airing PSA's. Various parties note that by giving greater recognition to PSA's, licensees will be encouraged to improve their PSA performance.

34. Some commenters suggest that PSA's be accorded at least equal status with other forms of public affairs and informational programming. Other parties specifically recommend that licensees be permitted to list PSA's under "other" programming or "public affairs."[35] In fact, Strafford Broadcasting Corporation submits that a credit in the public affairs category should only be issued a station at renewal time for broadcasting a "substantial" amount of PSA's dealing with issues It is further argued that broadcasters should not be required to report the airing of PSA's in this fashion for the extra paper work caused by an additional reporting requirement could serve to discourage certain broadcasters from airing PSA's. Thus, Belo Broadcasting Corporation recommends that licensees be permitted, on an optional basis, to log PSA's by duration, program type and program source and to include time devoted to PSA's in any program reports or composite week analysis presently required by the Commission.

35. The comments varied as to what credit weight should be given for airing PSA's generally or for their broadcast on particular subjects or at particular times. For instance, Westinghouse Broadcasting Company suggests that the number of PSA's broadcast should be reported rather than, or perhaps in addition to, the time devoted to PSA's. Whereas, Belo Broadcasting, as noted above, recommended the crediting of PSA's by length of time. [36] A number of broadcast stations believe that licensees should receive special consideration for serving specialized audiences. Also, Station KMET–FM, Los Angeles, California, is most amenable to having drive-time PSA's considered the equivalent of twice the amount of time of a PSA presented in other hours.[37] Another comment stresses that the promise of extra programming credit for each ascertainment based PSA aired in prime or drive-time could be enough of a prod to save PSA's from the late-night early-morning graveyard.

The PSA Definition

36. The PSA definition was another matter raised for comment in this proceeding. The opinions were varied on this subject. Certain parties argued that any change in the PSA definition to reflect specific purposes to which PSA's may be put would involve problems of government favoritism of certain ideas and causes in suppression of others. Therefore, NBC argues that a definition geared to some government specified purpose for PSA's would run afoul of the First Amendment. On the other hand, Westinghouse Broadcasting Company believes that is not necessary to change the definition of a PSA to reflect the specific purposes to which PSA's may be put. It is submitted that PSA's currently address a wide range of issues and any topical limitations are not called for at this time.

37. A number of other commenters disagree, however, with the above opinions. For instance, the United Cerebral Palsy Association submits that the FCC definition is limited and does not reflect the true scope of PSA's. Also, Care, Inc., suggests that the definition be clarified to indicate that the information presented by these announcements be a service to the public. As to specific suggestions, some commenters recommend that the Commission affirmatively state that controversial issues might be dealt with in PSA's, while others suggest that the definition be clarified so as to particularly include non-routine weather announcements. A few parties proposed particular definitions such as the following suggested by the Advertising Council:

> A PSA is an announcement for which no commercial charge is made by the broadcasters or by the non-profit agency, government body or individual providing the message, the purpose of which is to improve the health, safety, welfare or enhancement of people's lives and the more effective and beneficial functioning of their community, state or region. Such messages shall not be commercial, political or designed to influence legislation.

The Committee for Open Media also recommended a new PSA definition. It reads as follows:

> A Public Service Announcement is a non-routine, non-billable broadcast message which: (1) Informs viewers or listeners about a service program or activity of communi[illegible] interest or (2) which provides a form for individuals or groups to express their ideas, viewpoint or opinions. Time signals, routine weather announcements and station promotional announcements are not PSA's.

Different Treatment of Radio and TV Concerning PSA's

38. Certain parties expressed the belief that there is little value in treating radio and television differently. The Public Service Council indicated that it is the responsibility of the organizations wishing to utilize PSA's to think of these two communications services as separate media able to perform in different ways to meet educational objectives,[38] but saw no need for regulatory differentiation. Other commenters argue that the establishment of quantitative guidelines would be based on the assumption that there is an unlimited number of PSA organizations clamoring for carriage. While this may be the case in large metropolitan markets, asserts Midwest Family Stations ("Midwest"), it is not the case for thousands of stations located in small communities. Midwest also contends that PSA regulations would have quite a negative effect on daytime-only radio stations. If such a station is to avoid announcement clutter, it would have to cut back on the number of commercials carried per hour. This might have a very negative effect on the often tenuous economic viability of stations with limited hours of operation. Finally, it is noted by Metromedia that this proceeding as it relates to radio should be terminated in view of the proceeding looking toward the substantial deregulation of radio.[39]

Summary of Informal Comments

39. There were approximately 170 informal comments filed with the Commission in this proceeding. The

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it is not in favor of a credit system. Further along in its comments, however, ABC submits that if the Commission means that additional credit would represent no more than acknowledgment that PSA's may be utilized by broadcasters in ways that may not have been appropriately recognized in the past, then we have no basic disagreement with the approach.

[35] The Public Media Center *et al.*, the petitioners in this proceeding, however, emphasize the belief that licensees should not be allowed to use PSA's for illustrative programming credit unless the Commission also adopts regulations ensuring that broadcasters achieve minimum quantitative PSA levels. To do the former, it is argued, without adopting minimum PSA standards would permit licensees to air less public affairs programming without assuring that the licensee would air more PSA's.

[36] Some parties view the giving of credit to brodcasters for meeting or exceeding their PSA commitment as a form a bribery.

[37] It is argued by a few broadcasters that once PSA's are given weighted credit, depending on the time of broadcast or the target audience, the government has inevitably made a judgment as to what should be broadcast and when. NBC contends that this would improperly encroach upon and limit broadcaster discretion protected by the First Amendment.

[38] For example, the Council indicates that television is superior to radio for reaching children from ages two through fourteen.

[39] Few reply comments were filed in this proceeding. They have been considered and where warranted have already been discussed. No further discussion of these reply submissions would serve any useful purpose.

majority of these submissions favored specific PSA rules requiring broadcasters to air certain amounts of PSA's during prime or drive-time or other desirable time periods. Although most of the arguments in favor of regulation did not specifically mention the amount or duration of PSA's which should be required by the Commission, proponents all noted the important public service role played by PSA's.

40. Informal proponents of Commission action in the PSA sphere submit, as did a number of formal commenters, that the Advertising Council monopolizes the PSA field to the detriment of non-Council sponsored public service organizations. They also viewed this proceeding as an effort to define in a more exact fashion a broadcaster's responsibility to air PSA's to serve the public interest. Consequently, proponents argued that PSA's meeting ascertained community problems should be given credit at renewal time. Many commenters asserted, again as formal parties did, that PSA's are a more effective means of meeting community needs than lengthy public affairs programs. Those favoring as well as those opposing PSA requirements submitted that whether the informational message is prepared by a "local" or "national" source is irrelevant as long as the announcement is pertinent and appropriate to the needs of the local community.

41. Informal opponents to PSA requirements submitted that it s inappropriate to further regulate at this time since the government is presently considering deregulating several industries including the radio broadcast sphere. A number of broadcasters comment that PSA rules will increase record keeping and paperwork to be filed with the Commission at renewal time, thus imposing an economic burden on licenses. As indicated by a number of formal parties, informal opponents submit that PSA requirements intrude into the area of broadcasters' programming discretion protected by Commission rules. Finally, opposing comments contend that there is no documented evidence of abuses or deficiences in the present PSA system.

Discussion

42. After studying the record of this proceeding, we have concluded that further rule making is inadvisable. We do not believe that the record supports proposing the adoption of rules imposing specific obligations on television and radio broadcasters as to the number, duration, content and source of PSA's which they should present. The evidence does not indicate that inadequate PSA time is being provided or that it is being scheduled improperly if viewed in light of a broadcaster's total programming. Decisions as to the quantity, nature, source and scheduling of PSA's aired depend on the community to be served and each licensee's individual situation. We hesitate to regulate in the sensitive area of programming and thus have regularly followed a practice of according the lisensee broad discretion in programming matters, including the scheduling and selection of PSA's. It has become evident, however, from the information gathered in this proceeding, that greater recognition of the contribution broadcasters make through their airing of PSA's will encourage the use of these announcements where appropriate and effective. Thus, we are modifying our present procedures to enable licensees to receive greater credit for their public interest performance in the PSA sphere if they wish it.

43. In proceeding with our discussion, we will address the significant arguments raised in the comments filed in response to the *Notice of Inquiry*. Initially, it is noted that since specific PSA rules are not thought necessary or appropriate, we need not reach the issue of whether the First Amendment or Section 326 of the Communications Act bars the adoption of particular regulations concerning the airing of PSA's. As to recognizing the value of PSA's, generally all the parties, as well as the Commission, acknowledge what effective tools PSA's can be in transmitting messages to the public. However, we disagree with those commenters who submit that PSA's will only be aired during drive and prime-time if broadcasters are required to do so. The statistical data submitted and analyzed indicates that PSA's are presently aired during these time periods to a meaningful degree although not in a concentrated amount. Further, there is merit to the assertion that any quantitative PSA rule may become an industry standard which, in effect, is the industry maximum. Therefore, such a regulation might have the unfortunate effect of inhibiting the airing of numerous PSA's.

44. Even if one is convinced that PSA "clutter" will lead to PSA ineffectiveness, and we do not find adequate evidence to draw such a conclusion, we do believe that quantitative guidelines are not a fair measure in themselves of a station's PSA efforts. The particular community must be taken into account in regard not only to subject, but also to the number and the time of broadcast. What is of value to an agricultural community is often different from an industrial or suburban area. In addition to the type of community being served, a particular broadcaster's PSA performance should be evaluated in terms of its total programming in meeting its service area's problems and needs. Similarly, a formula giving public service messages parity with commercial advertisements may well overlook the economic realities of broadcasting as a business.

45. No PSA rules are being imposed on broadcasters. Rather, licensees are being provided with an optional system allowing them greater credit, if they seek it, for their PSA performance. Consequently, an accurate crediting of PSA's does not contravene the Commission's policy to deregulate those broadcast areas which could operate more efficiently and effectively under marketplace conditions. Indeed, we note that the failure to credit PSA's might well have discouraged their broadcast. Modification of our credit procedures will merely be an acknowledgment that PSA's have been utilized by broadcasters to serve their respective audiences.

46. Having decided that greater credit should be provided for the airing of PSA's, the question arises as to what weight should be given and what procedure established for crediting licenses for a particular level of PSA performance. We do not agree with those commenters suggesting that PSA's be considered "public affairs" programming. Muddying the definitional waters does not appear to have any merit. In fact, we are concerned that it would discourage the airing of program-length material meeting community problems. Nor is such a classification necessary to achieve our goals. Considering PSA's in the "other" programming category of the Annual Programming Report for commercial television licensees, as well as in the renewal application forms for commercial radio and television licenses,[40] will provide adequate credit

[40] In a current rule making proceeding (RM–2898), the Commission is considering deleting the requirement that commercial television stations file the Annual Programming Report (FCC Form 303–A). Also being considered in that docket is the use of short form as the basic application for license renewal and a detailed long form application to be filed by a randomly selected sample of licensees. Even if at the completion of the rule making process the filing of Form 303–A is no longer required and the short form renewal application is adopted, those licensees completing the long form and those randomly selected for audit by the FCC Field Operations Bureau will be expected to indicate how they have programmed their stations. In those situations, licensees will have the opportunity to include PSA's in their "other" programming

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without any apparent negative effect on the broadcasting of public affairs materials.[41] This is not, however, a mandatory policy. Commercial licensees are required to indicate the length of time they operate in particular categories, these being "news," "public affairs" and "other." Although not specifically excluded from the "other" category, PSA's have not been included because broadcasters have not been required to maintain records indicating the length of time their PSA's aired. Licensees may now wish to keep such records in order to exercise their option to include their PSA performance in the "other category.[42]

47. We are considering the employment of PSA's as illustrative programming on the annual problems-programs list for it has become apparent that although PSA's do not possess the length or depth of longer programming, it is the very fact that they are brief, catchy, repetitive announcements that accounts for their dealing in a more effective fashion with certain community problems.[43] This is an important aspect of the PSA role. The problems-programs list which is placed yearly in a station's public file is required of all commercial licensees, even those in smaller markets who are exempt from other ascertainment reporting.[44] This requirement is also imposed on noncommercial educational radio and television applicants, permittees and licensees with the exception of licensees, such as those offering wholly instructional programming, who are exempt from ascertainment requirements. These broadcasters, as well as broadcasters generally, may not only find PSA's more effective than other programming in meeting certain community needs, but a sounder economic method for fulfilling their ascertainment responsibilities. This last factor is of particular importance to stations whose economic viability is not an assured matter. Therefore, we believe it appropriate to allow broadcasters the use of PSA's for purposes of the problems-programs list. However, the use of PSA's should not be a broadcaster's primary method for responding to ascertained needs. Where appropriate they may be used to meet community problems. Where ascertained interests necessitate lengthy discussions, such announcements would be an inappropriate vehicle.

48. A policy of crediting only a "substantial" or "significant" number of spots aired would appear to have a negative effect on the PSA performance of broadcasters. This is just the situation we are attempting to remedy here. That suggestion will not be adopted, nor will the proposal suggesting that prime and drive-time PSA's be considered the equivalent of twice the amount of time as they would be if presented at other hours. The record evidence has not indicated great interest in a double credit procedure. Moreover, the airing of a PSA at 7 p.m. rather than 6 p.m. does not necessarily make it more worthwhile. A value judgment can only be reached if all the facts of the situation are known, that is the particular PSA aired and the particular community in which it is aired. More specifically, was it a PSA directed to children, adolescents, homemakers or breadwinners? Was the PSA aired in traditional drive-timne in the a.m. hours in a farm community? If so, that PSA may have less, rather than more value. If double drive and prime-time credit or double credit for airing PSA's directed to children, youth, the Spanish speaking, etc., were given, we would, in effect, be penalizing communities not fitting the traditional mold of the industrial city or encouraging the broadcast of PSA's during ineffective time periods or for population segments not to any significant extent part of the station's audience, *e.g.*, PSA's aired on radio for children. In view of these difficulties, we considered a complex credit system providing for the many differences discussed above and found such a procedure wanting in merit. If such a system were to be equitable, the particulars of each PSA aired would need to be known. The record keeping this would entail on the part of licensees, as well as the expenditure of time it would cost Commission staff, does not appear warranted by any resulting gains. The system of credit, adopted herein, has the advantage of acknowledging the significant role PSA's play while not becoming an encumbrance.

49. No modification of the PSA definition appears warranted.[45] It has proven to serve its purpose well. The key elements of this term are "no charge" and "serving community interests." Its broad phraseology enables broadcasters to determine what best serves their service areas. Although some parties have complained that PSA's concerning controversial issues are not aired, data was submitted in this proceeding to indicate that indeed such spots were aired although this is not generally the case. Not only does the present definition in no way discourage the airing of such announcements, but controversial spots may be particularly appropriate when responding to ascertained problems. Any definition which more fully described the subject matter allowed might well have a limiting effect on which PSA's receive exposure and thus could be considered an inappropriate programming intrusion.

50. We also conclude that radio and television not be treated differently with respect to the action taken here. The modified procedures adopted today can equally serve both radio and television stations and their audiences. In fact, the very purpose of adopting the credit system is to allow for a true representation of the PSA performance of each individual station, whether radio or television, whether in an agricultural or industrial community, or whether in a small or large market.[46]

51. Where we can achieve a goal without regulation, the public interest is well served. This has been done by the action taken today. Greater credit is given broadcasters for airing PSA's to encourage their use where an appropriate vehicle to impart information to the audience. Thus, the public receives a substantial benefit at a

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category. In any event, all licensees would continue to retain their composite week logs in their public files and may include PSA's in the "other" category of these records.

[41] The "other" category provided in the application form for new non-commercial facilities (FCC Form 340) and for renewal (FCC Form 342) is distinctly different from the "other" category for commercial stations in that, among other things, it includes sports programs. Because of this difference in its nature, no real purpose would be served by permitting PSA's to be included in the "other" category for noncommercial stations. We also note that there was no indication in the record that such an action was desired, least of all warranted.

[42] We no longer see any valid reason for distinguishing between collective PSA's (community bulletins) and individual announcements. A broadcaster may make a good faith determination that PSA's aired throughout the day in 30, 60 or 90 second spots are more effective than 2-minute spots for its particular audience. In either case, he should receive credit for that performance.

[43] PSA's may presently be used to respond to problems ascertained by applicants for construction permits for new commercial stations. If such announcements are proposed, they are to be identified with the community problem or problems they are designed to meet. See Question and Answer 29 of the *Primer for New Applicants*.

[44] Commercial radio and television stations licensed to communities with a population of 10,000 or less and which are located outside all officially designated Standard Metropolitan Statistical Areas are presently exempt from Commission inquiry into the manner in which they become aware of community problems and needs.

[45] See n. 1 *supra*.

[46] The Commission is presently reviewing the existing scope of radio regulation in a rule making proceeding, BC Docket No. 79-219. Action taken in that docket could mandate removal of the ascertainment requirements currently imposed on radio broadcasters including the obligation to file a problems-programs list, as well as removing any logging requirements for these licensees. If this proves to be the case, the credit procedures provided in this decision, as they affect radio stations, will have limited effect.

lower regulatory cost, while the broadcaster is enabled to serve his particular community as it requires and not himself be required to meet an artificial standard of performance.

52. Accordingly, it is ordered, pursuant to the authority contained in Sections 4(i) and 303 of the Communications Act of 1934, as amended, that the *Primer on Ascertainment of Community Problems by Commercial Broadcast Renewal Applicants,* and the *Primer on Ascertainment of Community Problems by Noncommercial Educational Broadcast Applicants* are amended, effective November 17, 1980, as described above and set forth in the attached Appendix A.

53. It is further ordered, That this proceeding is terminated.

54. For further information concerning this proceeding contact Freda Lippert Thyden, Broadcast Bureau, (202) 632–7792.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

1. In the *Primer on Ascertainment of Community Problems by Commercial Broadcast Renewal Applicants,* paragraph 43 is revised to read as follows:

43. Although we decline to credit ordinary "news inserts" (see § 73.3526(a)(9) of the rules) for purposes of the problems-programs list, public service announcements may be used to respond to significant problems and needs. There is no need for this Commission to defend the importance it attaches to news broadcasts in serving the community of license. While news inserts can sometimes respond to problems and needs, they ordinarily do not possess the length or depth to proceed toward a meeting or solution of problems. For this purpose, we seek programs. It is clear from the *Further Notice* that our concept of a "program," particularly on radio, is flexible enough to accommodate even the all-news station, 53 F.C.C. 2d at 6, and that no licensee which takes seriously its non-entertainment programming obligations will have any trouble finding matter for its problems-programs list. Although public service announcements are not programs in the traditional sense, their very nature, that is brief, catchy messages tailored to the community's needs appears to have made them an effective vehicle for addressing various community problems. Consequently, we are allowing the use of public service announcements to respond to the listed 10 significant problems and needs. However, their use should not be a broadcaster's primary method for responding to ascertained needs. As to NAB's suggestion that the list should be triennial rather than annual in scope, we are not persuaded. While we have elected to change the Community Leader Checklist from annual to triennial (see paras. 13–14, *supra*), the rationale applied in modification of that document does not hold for the problems-programs list. The latter possesses a limit of no more than 10 significant problems for each yearly list, while, theoretically at least, there are no ceilings on leader interviews. More importantly, ascertainment remains *continuous,* in the resolution reached here, whether interviews are counted every year or every three years. And the problems-programs list, as an evaluative tool for broadcaster and citizen respecting the programming results of a continuous ascertainment, rightly deserve more "continuity," or frequency, than the triennial compilation would provide. As for the NAB's concern with the broad overview of a licensee's program service, presumably that is met through appending to the renewal application problems-programs list from each year of the expiring term—not to mention other information of three-year scope found in the same application.

2. In the *Primer on Ascertainment of Community Problems by Commercial Broadcast Renewal Applicants,* Question and Answer 29 are revised to read as follows:

Question 29. In what form may matter be broadcast to treat ascertained community problems, needs and interests?

Answer. Programs, news and public service announcements. This includes station editorials, ordinary and special news inserts, program vignettes, and the like. (But see Question and Answer 33 below regarding the exclusion from the yearly problems-programs list of ordinary news inserts of breaking events.)

3. In the *Primer on Ascertainment of Community Problems by Commercial Broadcast Renewal Applicants,* Question and Answer 33 are revised to read as follows:

Question 33. What documentation must be placed in the station's public inspection file regarding the licensee's efforts to program to meet asertained community problems, needs and interests?

Answer. Each year on the anniversary date of the filing of the station's application for renewal of license, the licensee must place in its public inspection file a list of no more than ten significant problems, needs and interests ascertained during the preceding twelve months. Concerning each problem, need or interest listed the licensee must also indicate typical and illustrative programs broadcast in response to those problems, needs and interests indicating the title of the program or program series, its source, type, a brief description thereof, time broadcast and duration. Such programs do not include news inserts of breaking events (the daily or ordinary news coverage of breaking newsworthy events). However, public service announcements may be used to respond to the listed ten significant problems. Their use, however, should not be a broadcaster's primary method for responding to these needs.

4. In the *Primer on Ascertainment of Community Problems by Noncommercial Educational Broadcast Applicants,* paragraph 48 is revised to read as follows:

Problems-Program List

48. All non-exempt [13] licensees, radio and television alike, are required to deposit yearly in their public files a list of up to 10 significant problems and needs existing in their service area during the preceding 12 months, and a related list of illustrative programming presented during that period to treat those problems and needs. This list should demonstrate the link between each specific problem and the illustrative program meeting it. Public service announcments may be used to respond to the listed 10 significant problems and needs. They may not, however, be a broadcaster's primary method for responding to such needs. Placement in the station file should occur on the anniversary date of the filing of the renewal application, and, upon sending of that application to the Commission, all such annual problems-programs lists from the term about to expire should be transmitted with it. The requirement also applies to ascertainments in support of applications other than renewal in which cases the lists of problems would be derived from the six-month pre-filing surveys and the programs should be prospective offerings over the initial term of the license.

Appendix B.—Parties Filing Comments

Action for Children's Television
American Broadcasting Companies, Inc.
Antares Broadcasting Company
Basic Communications, Inc.
Bates County Broadcasting Company
Belo Broadcasting Company
Bonneau, Dorothy & Pat
Bonneville International Corporation
Boston Broadcasters, Inc.
Buffalo Broadcasting Co., Inc.
Burlington Graham Broadcasting Company, Inc.
CBS, Inc.
Care, Inc.
Carthage Broadcasting Company, Inc.
Catholic Diocese of Madison, Wisconsin
Combined Communications Corp.
Committee for Open Media
Council on Children, Media, and Merchandising
Daily Telegraph Printing Company, et al.
Firestone, Charles M., UCLA Communications Law Program
Fisher Broadcasting, Inc.
*Federal Trade Commission
Forward Communications Corp., et al.
General Services Administration
Georgia Association of Broadcasters
Georgia Department of Human Resources
Gulf Coast Broadcasting Co.
Harte-Hanks Southern Communications
Interfaith Centers for Racial Justice, Inc.

[13] Exempt licensees include those offering wholly instructional programming and those operating under Class D, 10–watt authorizations. See paras. 49 and 50 *infra.*

* The comments marked with an asterisk were late-filed but since their consideration is not prejudicial to any party, we have decided to consider them in this proceeding.

Ives, Timothy R. (WJBC–WBNQ)
KEZY, Inc.
KSLA–TV, Inc.
KROC & KROC–FM, KXRB & KIOV–FM, KBLS & KTYD–FM
King TV5
LERC Amateur Radio Club
Lexington League of Women Voters
Lively, Don
Maryland-District of Columbia-Delaware Broadcasters Association, Inc.
Media Access Project
Meriwether, Gordon K., Jr.
Metromedia, Inc.
Michiana Telecasting Corporation
Michigan State University
Midwest Family Stations
*Midwest Radio-Television
Murran, James A., Ph. D.
National Association of Broadcasters
National Association of State Foresters
National Broadcasting Company, Inc.
National Cancer Institute
National Easter Seal Society for Crippled Children and Adults
National Office Boy Scouts of America
National Radio Broadcasters Association
Nationwide Communications, Inc.
Nebraska Broadcasters Association
New Mexico Wildlife Federation
Northern Community Radio
Oakland Livingston Human Service Agency
Oregonians for Utility Reform
Partners in English
Pennsylvania Association of Broadcasters
Public Media Center
Radio Santa Cruz
Sacramento Valley Television, Inc.
Santa Barbara Area Broadcasters
Shenandoah Communications, Inc.
Southern California Committee for Open Media
Southern Minnesota Broadcasting Company
Springfield Television, Inc.
Storer Broadcasting Corporation
Strafford Broadcasting Corp.
The Advertising Council, Inc.
The American Radio Relay League
The Ohio Association of Broadcasters
The President's Council on Physical Fitness and Sports
The Public Service Council, Inc.
The United Negro College Fund
Thurston, Peter W.
United Cerebral Palsy Association, Inc.
United Church of Christ
United States Department of Agriculture Forest Service
United Way of America
University of Wisconsin, Milwaukee
Vacationland Broadcasting Company, Inc.
WFAA–TV
WJER Radio, Inc.
WLW
WNDU AM, FM, TV
WRNR
*Westinghouse Broadcasting Company

Parties Filing Reply Comments

American Broadcasting Companies, Inc.
CBS, Inc.
Communications Media Center
National Association of Broadcasters
National Broadcasting Company, Inc.
Public Media Center
Queen City Communications, Inc.
The Advertising Council, Inc.
WSAU–TV, WSAU, WIFC–FM, et al.

[FR Doc. 80–33460 Filed 10–27–80; 8:45 am]
BILLING CODE 6712–01–M

*The comments marked with an asterisk were late-filed but since their consideration is not prejudicial to any party, we have decided to consider them in this proceeding.

Notices

Federal Register
Vol. 45, No. 210
Tuesday, October 28, 1980

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

National Forest System Advisory Committee; Notice of Meeting

The National Forest System Advisory Committee will meet in Santa Fe, New Mexico, November 12–14, 1980.

This Committee, comprised of 12 members from a broad spectrum of geographic and interest areas, advises the Secretary of Agriculture and the Forest Service on the planning and management of the National Forests. The meeting will highlight the complex cultural setting in the Southwest and the opportunities and challenge this presents to management and use of natural resources. Special emphasis will be on grazing and energy resources and the importance of human resource programs locally and in the conduct of Forest Service programs.

The first day a general overview of the Region's resources, their national significance and the cultural setting affecting the development and management of those resources will be presented as an introduction for the field trip to take place the second day. The field trip will provide an on-the-ground opportunity to see and discuss examples of the opportunities and challenges. The final day will be devoted to a panel discussion on energy and range forage by New Mexico State University and a panel of concerned citizens. The Committee will also take this opportunity to discuss and develop positions on those issues which have surfaced during previous portions of the meeting. Phillip L. Thornton, Acting Deputy Assistant Secretary for Natural Resources and Environment, and Kay Ceniceros, Advisory Committee chairperson will cochair the meeting.

The meeting will be open to the public. Persons who wish to attend should notify Floyd J. Marita, Executive Secretary, USDA-Forest Service, P.O. Box 2417, Room, 3021–S, Washington, D.C. 20013, telephone (202) 447–6341. Written statements may be filed with the Committee before or after the meeting.

Lennart E. Lundberg,
Acting Deputy Chief.
October 23, 1980.

[FR Doc. 80–33528 Filed 10–27–80; 8:45 am]
BILLING CODE 3410–11–M

Soil Conservation Service

High-Vocational School Grounds, Critical Area Treatment R.C. & D. Measure, Tennessee; Finding of No Significant Impact

AGENCY: Soil Conservation Service, U.S. Department of Agriculture.

ACTION: Notice of finding of no significant impact.

FOR FURTHER INFORMATION CONTACT:
Mr. Donald C. Bivens, State Conservationist, Soil Conservation Service, U.S. Courthouse, Room 675, 801 Broadway Street, Nashville, Tennessee 37203, telephone 615–251–5473.

Notice: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the High-Vocational School Grounds Critical Area Treatment RC&D Measure, White County, Tennessee.

The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Donald C. Bivens, State Conservationist, has detemined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for treatment of eroding areas on the grounds of the High-Vocational School in White County, Tennessee. The planned works of improvement include sloping, fertilizing, liming, and seeding to perennial grasses and legumes.

The Notice of a Finding of No Significant Impact (FNSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Donald C. Bivens. The FNSI has been sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the FNSI are available to fill single copy requests at the above address.

Implementation of the proposal will not be initiated until November 28, 1980.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular No. A–95 regarding State and local Clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: October 14, 1980.

Joseph W. Haas,
Deputy Chief for Natural Resource projects.

[FR Doc. 80–33497 Filed 10–27–80; 8:45 am]
BILLING CODE 3410–16–M

Jacob Swamp Watershed, North Carolina; Finding of No Significant Impact

AGENCY: Soil Conservation Service, Department of Agriculture.

ACTION: Notice of finding of no significant impact.

FOR FURTHER INFORMATION CONTACT:
Jesse L. Hicks, State Conservationist, Soil Conservation Service, P.O. Box 27307, Raliegh, North Carolina 27611, telephone number 919–755–4210.

Notice: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Jacob Swamp Watershed Plan Supplement No. 3, Robeson County, North Carolina.

The environmental assessment of this federally assisted action indicates that the project will not cause signficant local, regional, or national impacts on the environment. As a result of these findings, Jesse L. Hicks, State Conservationist, had determined that the preparation and review of an

environmental impact statement are not needed for this project.

The planned works of improvement include picnic tables, boat ramps, a swimming beach and bathhouse. Rennovation of two borrow pits will include shoreline construction to enhance fishing.

The Notice of Finding of No Significant Impact (FNSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Jesse L. Hicks, State Conservationist. The FNSI has been sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the FNSI are available to fill single copy requests at the above address.

Implementation of the proposal will not be initiated until November 28, 1980.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: October 14, 1980.

Joseph W. Haas,

Deputy Chief for Natural Resource Projects.

[FR Doc. 80–33498 Filed 10–27–80; 8:45 am]

BILLING CODE 3410–16–M

Lower Plum Creek Watershed, Texas; Finding of No Significant Impact

AGENCY: Soil Conservation Service, Department of Agriculture.

ACTION: Notice of finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: Mr. George C. Marks, State Conservationist, Soil Conservation Service, 101 South Main Street, Temple, Texas 76501, telephone number 817–774–1214.

Notice: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Lower Plum Creek Watershed, Caldwell and Hays Counties, Texas.

The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, George C. Marks, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for the application of critical area treatment on 1,150 acres of eroding lands and installation of five floodwater retarding structures. These measures will consist of practices such as clearing, shaping, preparation for vegetating, mulching, fertilizing, vegetating, fencing and installation of appurtenant grade stabilization structures such as pipe drops, drop inlets, formless concrete chutes, diversions and small embankments. The vegetation to be established will include trees, shrubs, vines, grasses and legumes as appropriate at each of the erosional sites.

The Notice of Finding of No Significant Impact (FNSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. George C. Marks. The FNSI has been sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the FNSI are available to fill single copy requests at the above address.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: October 14, 1980.

Joseph W. Haas,

Deputy Chief for Natural Resource Projects.

[FR Doc. 80–33499 Filed 10–27–80; 8:45 am]

BILLING CODE 3410–16–M

Seneca Creek Watershed, Maryland; Finding of No Significant Impact

AGENCY: Soil Conservation Service, Department of Agriculture.

ACTION: Notice of finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald R. Calhoun, State Conservationist, Soil Conservation Service, Room 522, 4321 Hartwick Road, College Park, Maryland 20740, telephone (301) 344–4180.

Notice: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Seneca Creek Watershed, Montgomery County, Maryland.

The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Gerald R. Calhoun, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a land treatment plan for reducing crop and forest land erosion and controlled animal waste above the proposed Little Seneca Lake emergency water supply and recreation reservoir.

Water quality will be improved through reduced delivery of sediment, nutrients, and fecal coliform bacteria. Planned measures include grassed waterways, minimum tillage, stripcropping, animal waste management systems, improved cover practices and other related conservation practices.

The Notice of Finding of No Significant Impact (FNSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Gerald R. Calhoun. The FNSI has been sent to various, Federal, State, and local agencies and interested parties. A limited number of copies of the FNSI are available to fill single copy requests at the above address.

Implementation of the proposal will not be taken until November 28, 1980.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: October 14, 1980.

Joseph W. Haas,

Deputy Chief for Natural Resource Projects.

[FR Doc. 80–33500 Filed 10–27–80; 8:45 am]

BILLING CODE 3410–16–M

CIVIL AERONAUTICS BOARD

[Docket Nos. 20051 and 20700]

Airline Scheduling Committees, Various Air Taxi Operators; Change in Procedural Schedule

On October 16, 1980, the Air Transport Association (ATA) filed a motion in the above dockets requesting

the Board to extend the deadline for filing comments to Order 80–9–148 from November 14, 1980 until December 12, 1980. We will extend the deadline until December 8, 1980. Replies will be due on January 5, 1981.

In order to update our service list in the proceeding, we request that all persons interested in receiving comments notify us within ten days of the date of publication of this notice. Requests to be placed on the updated service list should be addressed to: Ava Kleinman, B–72, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428 (202) 6730–5345.

We will issue an amended service listed shortly thereafter, so that comments and replies may be properly and promptly served.

Dated at Washington, D.C., October 23, 1980.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80–33526 Filed 10–27–80; 8:45 am]

BILLING CODE 6320–01–M

[Docket 38767]

New York Air Fitness Investigation; Hearing

Notice is hereby given, pursuant to the Federal Aviation Act of 1958, as amended, that a hearing in the above-entitled proceeding is assigned to be held on November 17, 1980, at 9:30 a.m. (local time), in Room 1003, Hearing Room "A", Universal North Building, 1875 Connecticut Avenue, NW., Washington, D.C., before the undersigned administrative law judge.

Dated at Washington, D.C., October 22, 1980.

Elias C. Rodriguez,

Administrative Law Judge.

[FR Doc. 80–33524 Filed 10–27–80; 8:45 am]

BILLING CODE 6320–01–M

[Docket 37294; Order 80–10–118]

Priority and Nonpriority Domestic Service Mail Rates Investigation; Order Fixing Final Service Mail Rates

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 21st day of October, 1980.

By Order 80–9–114, served September 22, 1980, the Board directed all interested persons to show cause why we should not establish the proposed domestic service mail rates as the final rates of compensation for the period October 1 through December 31, 1980. Trans World Airlines, Inc. and Pan American World Airways, Inc. filed notices of objection and answers to that order noting that they had detected a calculation error affecting the proposed rates.

We agree that a calculation error was made and that the rates proposed in Appendix A of Order 80–9–114 should be modified. The escalation factor of 112.21 percent which is applied to the linehaul and terminal-taxi rates is correct. However, it appears that the proposed rates reflect instead the use of a 111.21 percent escalation factor. The attached Appendix reflects the correct final rates using the 112.21 percent escalation factor. This also affects the rates for weight in excess of the minimum chargeable weight for containers and we have modified those rates, too.

Accordingly, pursuant to the Federal Aviation Act of 1958, as amended, particularly, Sections 204(a) and 406, and the Board's Procedural Regulations promulgated in 14 CFR, Part 302.

1. The fair and reasonable rates of compensation to be paid in their entirety by the Postmaster General pursuant to the provisions of section 406 of the Federal Aviation Act of 1958, as amended, to the carriers for the transportation by aircraft of that mail described in Order 79–7–16, ordering paragraph 3, subparagraphs (c), (d) and (e), between the points listed in subparagraph (c), *supra*, the facilities used and useful therefor, and the services connected therewith, for the period October 1 through December 31, 1980, or until further Board order, are those set forth in the attached Appendix.

2. We amend Order 79–7–16, ordering paragraph 3(g), by adding to it the following:

	Standard container (cents)	Daylight container (cents)
October 1, 1980 through December 31, 1980	3.751	3.721

3. The fair and reasonable temporary rates of compensation for the transportation of mail by aircraft in domestic service for the period from January 1, 1981, until further Board order are the final rates established for the period October 1 through December 31, 1980.

4. The terms and conditions applicable to the transportation of each class of mail at the rates established here are those set forth in Order 79–7–16.

5. A copy of this order shall be served upon all parties to this proceeding.

We shall publish this order in the **Federal Register.**

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

Appendix A.—*Final Domestic Service Mail Rates*

[Oct. 1 through Dec. 31, 1980]

	Calendar year 1974 rates [1] (cents)	Escalation factors [2] (percent)	Final rates Oct. 1, 1980, through Dec. 31, 1980 (cents)
Linehaul charge per billing ton-mile:			
Sack	11.49	112.21	24.38
PAL	6.50		13.79
Standard container	8.79		18.65
Daylight container	7.05		14.96
Terminal charge per pound originated:			
Capacity:			
Taxi:			
Sack	.991	112.21	2.103
PAL	.728		1.545
Standard container	.979		2.078
Daylight container	.973		2.065
Departure:			
Sack	1.186	42.30	1.688
PAL	.873		1.242
Standard container	1.176		1.673
Daylight container	1.164		1.656
Noncapacity:			
Sack	6.064	72.48	10.459
PAL	6.052		10.438
Standard container	1.746		3.012
Daylight container	1.747		3.013
Total terminal charge per pound originated:			
Sack	8.241		14.250
PAL	7.653		13.225
Standard container	3.901		6.763
Daylight container	3.884		6.734

[1] Order 78–11–80, Appendix F.
[2] Appendix B, Order 80–9–114.

[FR Doc. 80–33523 Filed 10–27–80; 8:45 am]

BILLING CODE 6320–01–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 165]

Resolution and Order Approving the Application of the Commercial Development Co. of Puerto Rico for a Foreign-Trade Zone in Guaynabo, P.R., Within the San Juan Customs Port of Entry

Proceedings of the Foreign-Trade Zones Board, Washington, D.C., Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Commercial Development Company of Puerto Rico, filed with the Foreign-Trade Zones Board (the Board) on April 7, 1980 requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone in Guaynabo, Puerto Rico, within the San Juan Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to Section 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board's Executive Secretary for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant To Establish, Operate, and Maintain a Foreign-Trade Zone in the City of Guaynabo, P.R., Within the San Juan Customs Port of Entry

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Commercial Development Company of Puerto Rico (the Grantee) has made application (filed on April 7, 1980) in due and proper form to the Board, requesting the establishment, operation and maintenance of a foreign-trade zone in the City of Guaynabo, within the San Juan Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and

Whereas, the Board has found that the requirements of the Act and the Board's Regulations (15 CFR Part 400) are satisfied;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 61 at the location mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, said grant being subject to the provisions, conditions, and restrictions of the Act and the Regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Operation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from Federal, State, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone sites in the performance of their official duties.

The Grantee shall notify the Executive Secretary of the Board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, D.C. this 20th day of October 1980, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Homer E. Moyer, Jr.,

Acting Chairman and Executive Officer.

Attest:

John J. DaPonte, Jr.,

Executive Secretary.

[FR Doc. 80-33451 Filed 10-27-80; 8:45 am]

BILLING CODE 3510-25-M

[Order No. 168]

Extension of Operational Authority for Foreign-Trade Subzone No. 44A, Woodbridge, N.J.

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR Part 400), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the operational authority for Foreign-Trade Subzone No. 44A, Woodbridge, New Jersey, approved on October 19, 1978, is due to expire on October 19, 1980;

Whereas, the Department of Labor and Industry of the State of New Jersey, Grantee of the subzone, has applied to the Board for authority to extend this operation for two years because of

delays in activation of the parent zone in Morris County, New Jersey;

Whereas, notice inviting public comments was given in the **Federal Register** on October 2, 1980 (45 FR 65269), and no opposition has been expressed; and,

Whereas, the Board has found that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that approval of the requested extension is in the public interest;

Now, therefore, the Board hereby orders:

Operational authority for Foreign-Trade Subzone No. 44A, Woodbridge, New Jersey, is hereby extended to October 19, 1982, effective as of October 19, 1980.

Signed at Washington, D.C. this 17th day of October, 1980.

Homer E. Moyer, Jr.

Acting Secretary of Commerce, Chairman and Executive Officer, Foreign-Trade Zones Board.

Attest:

John J. DaPonte, Jr.,

Executive Secretary, Foreign-Trade Zones Board.

[FR Doc. 80-33452 Filed 10-27-80; 8:45 am]

BILLING CODE 3510-25-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting Import Restraint Levels for Certain Cotton Textile Products From the Republic of Singapore

October 23, 1980.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Adjusting the ceiling and removing the sublimits for cotton trousers in Category 347/348 produced or manufactured in the Republic of Singapore and exported during the agreement year which began on January 1, 1980.

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463) and August 12, 1980 (45 FR 53506).)

SUMMARY: Pursuant to the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of September 21 and 22, 1978, as amended, between the Governments of the United States and the Republic of Singapore, notes have been exchanged which arrive at an agreed position with regard to the data discrepancy in this category. As a result of the settlement between the two governments, the level for Category 347/348 is being increased by 114,162 dozen to 644,412 dozen. The sublimits under this category are removed.

EFFECTIVE DATE: November 5, 1980.

FOR FURTHER INFORMATION CONTACT: Ronald J. Sorini, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377-5423).

SUPPLEMENTARY INFORMATION: On December 20, 1979, there was published in the **Federal Register** (44 FR 75440) a letter dated December 14, 1979 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs, which established levels of restraint for certain specified categories of cotton, wool and man-made fiber textile products, produced or manufactured in Singapore, which may be entered into the United States for consumption, or withdrawn from warehouse for consumption, during the twelve-month period which began on January 1, 1980 and extends through December 31, 1980. In the letter published below, in accordance with the terms of the bilateral agreement, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to adjust the twelve-month level previously established for Category 347/348.

Edward Gottfried,

Acting Chairman, Committee for the Implementation of Textile Agreements.

October 24, 1980.

Committee for the Implementation of Textile Agreements,
Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229.

Dear Mr. Commissioner: On December 14, 1979, the Chairman of the Committee for the Implementation of Textile Agreements directed you to prohibit entry for consumption, or withdrawal from warehouse for consumption during the twelve-month period which began on January 1, 1980 and extends through December 31, 1980 of cotton, wool and man-made fiber textile products, produced or manufacturered in Singapore, in certain specified categories, in excess of designated levels of restraint. The Chairman further advised you that the levels of restraint are subject to adjustment.[1]

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of September 21 and 22, 1978, as amended, between the Governments of the United States and the Republic of Singapore; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on November 5, 1980, and for the twelve-month period beginning on January 1, 1980 and extending through December 31, 1980, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Categories 347/348, produced or manufactured in Singapore, in excess of the following adjusted level of restraint. The sublimits for the category are being dropped for the current agreement year.

Category	Adjusted 12-mo level of restraint [2]
347/348	644,412 dozen.

[2] The levels of restraint have not been adjusted to reflect any imports after December 31, 1979.

The actions taken with respect to the Government of the Republic of Singapore and with respect to imports of cotton textile products from Singapore have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will by published in the **Federal Register.**

Sincerely,

Edward Gottfried,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 80-33642 Filed 10-27-80; 8:45 am]

BILLING CODE 3510-25-M

Announcing a New Export Visa Requirement for Cotton, Wool and Man-Made Fiber Apparel Products From the Republic of Singapore

October 24, 1980.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Establishing a new visa requirement for cotton, wool and man-made fiber apparel exported from the Republic of Singapore.

SUMMARY: The Governments of the United States and the Republic of Singapore have exchanged letters establishing a new export visa

[1] The term "adjustment" refers to those provisions of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of September 21 and 22, 1978, as amended, between the Governments of the United States and the Republic of Singapore which provide, in part, that: (1) within the aggregate and applicable group limits, specific limits and sublimits may be exceeded by designated percentages; (2) specific levels may be increased for carryover and carry-forward up to 11 percent of the applicable category limit; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

requirement for cotton, wool and man-made fiber apparel products in Categories 330–359, 431–459 and 630–659, produced or manufactured in the Republic of Singapore. (See Attachments A through F.)

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on February 28, 1980 (45 FR 31372), as amended on April 23, 1980 (45 FR 27463) and August 12, 1980 (45 FR 53506)).

EFFECTIVE DATE: November 5, 1980 for apparel products in Categories 330–359, 431–459, 630–659, regardless of the date of export. Apparel products, except cotton trousers in Category 347/348, that have been exported prior to November 5, 1980 will be granted visa waivers until December 31, 1980 by the Committee for the Implementation of Textile Agreements (CITA). A facsimile of the format for a request for waiver of visa follows this notice at Attachment G. Two copies of such requests should be addressed to the Office of Textiles and Apparel, International Agreements and Monitoring Division, U.S. Department of Commerce, Room 2814, 14th & Constitution Avenue, N.W., Washington, D.C. 20230, Attention: WAIVERS. A self-addressed stamped envelope should accompany each waiver request. Waiver requests will be validated by an official of the Committee for the Implementation of Textile Agreements (CITA) and returned to importers as promptly as possible for submission by them to the U.S. Customs port of entry.

Visa waivers for goods in Category 347/348 that have been exported prior to October 21, 1980 will be issued by the Singapore Embassy, 1824 R Street, N.W., Washington, D.C. 20009, using the same waiver format (in triplicate and with self-addressed stamped envelope enclosed) as described above. These waivers will also be validated by the Committee for the Implementation of Textile Agreements (CITA) and returned directly to importers.

SUPPLEMENTARY INFORMATION: Effective on November 5, 1980, cotton, wool and man-made fiber apparel products in Categories 330–359. 431–459 and 630–659, produced or manufactured in the Republic of Singapore, shall be visaed or have a visa waiver, regardless of the date of export, in order to be entered into the United States for consumption, or withdrawn from warehouse for consumption.

Merchandise in Categories 330–359, 431–459 and 630–659 imported for the personal use of the importer, not for resale, does not require a visa, regardless of value.

Shipments shall be visaed by the placing of an original stamped marking (the visa) in blue ink on the front of the invoice (Special Customs Invoice form 5515, successor document, or commercial invoice, when such form is used) and will be signed by a designated official of the Government of the Republic of Singapore. A list of officials authorized to issue visas follows this notice at Attachment H. A facsimile of the visa stamp is published as an enclosure to the letter to the Commissioner of Customs which also follows this notice.

Interested parties are advised to take all necessary steps to insure that cotton, wool and man-made fiber apparel products, produced or manufactured in the Republic of Singapore, which are to be entered into the United States for consumption, or withdrawn from warehouse for consumption, will meet the stated visa requirement.

The letter published below from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs establishes the new export visa requirement.

FOR FURTHER INFORMATION CONTACT: Ronald J. Sorini, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230. (202/377–5423).

Edward Gottfried,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[Attachment A]

Tan Song Chuan,
Department of Trade.

Dear Song Chuan: Pursuant to paragraph 10 ot the bilateral textile agreement between Singapore and the United States, I would like to propose the following arrangements with regard to the current problem in Category 347/348.

1. The United States Government (USG) will take all appropriate steps to lift its embargo on Category 347/348 imports from Singapore so that, as a result of the final settlement of data discrepancies for the 1977, 1978, and 1979 agreement years, and taking into account 1980 swing, the USG will permit entry of 54,800 dozen pair above the effective embargoed level of 493,900 dozen pair. The date on which the embargo is to be lifted shall be determined by the two Governments, depending upon discussions on the establishment of a visa system as indicated below. The action shall not prejudice the claims of either government regarding the eventual resolution of the data discrepancies for the 1980 agreement year. It is intended solely to facilitate the orderly flow of trade pending technical discussions within the next few days.

2. An immediate statistical review shall be undertaken by appropriate USG authorities to determine if there have been any mechanical tabulation errors in registering Singapore exports of Category 347/348 products to the United States. This review shall cover Category 347/348 products exported to the United States after January 1, 1980, to the latest data available to the USG authorities. Should such errors be found, they immediately will be credited or debited, as the case may be, to the 1980 agreement year import figure (on a date of export basis).

3. The USG upon request by the Government of Singapore (GOS) shall raise the 1980 adjusted limit on Category 347/348 of 552,900 dozen pair up to an additional 10,000 dozen pair. Nothwithstanding the preceding sentence, if the result of the review described in paragraph 2 is a net credit to the benefit of the GOS, then the 10,000 dozen pair limitation in the preceding sentence shall be reduced by the amount of such net credit. Furthermore, if the review of data discrepancies described in paragraph 7 demonstrates that the USG's Category 347/348 import figures (by date of export) are correct for 1980, then any increase made under this paragraph in the 552,900 dozen pair adjusted limit shall be debited against the 1981 agreement year limit for Category 347/348.

4. It is understood that this arrangement does not constitute a precedent regarding future implementation of the bilateral textile agreement.

5. The two Governments will enter into a visa agreement to cover apparel items. This agreement will take effect as quickly as possible and, in any event, no later than January 1, 1981.

6. If a visa agreement cannot be implemented before January 1, 1981, then the GOS will provide to the U.S. Embassy in Singapore the export licenses issued for Category 347/348 on a weekly basis through December 31, 1980.

7. The USG will dispatch a technical team to Singapore as soon as possible to begin discussions, inter alia, on possible visa arrangements and on the apparent data discrepancies in Category 347/348 for the 1980 agreement year to date. In turn, the GOS will dispatch its appropriate technicians to Washington,to review with appropriate USG authorities, the GOS official export data, including export licenses, against USG import receipts, including customs invoices.

8. The two Governments will accelerate their joint efforts to determine the cause(s) of persistent data discrepancies in Category 347/348, and other categories as appropriate.

If the above proposal is acceptable to you, this letter and your letter of confirmation shall constitute an administrative arrangement under the terms of paragraph 10 of our bilateral agreement of September 21 and 22, 1978, as amended.

With every good wish.

Sincerely,

Frank V. Nash,

Economic/Financial Officer, Embassy of the U.S.A.

[Attachment B]

Mr. Anthony Tan Song Chuan,
Leader, Singapore Textile Delegation, Government of the Republic of Singapore.

Dear Song Chuan: I propose on behalf of my Government that the following visa

system be established for exports to the United States of cotton, wool and man-made fiber textiles and textile products from the Republic of Singapore.

1. Each commercial shipment of cotton, wool and man-made apparel products will be accompanied by an export visa issued by an official authorized by your Government. The visa will be stamped in blue ink on the front of the invoice (Special Customs Invoice Form 5515, successor document or commercial invoice). Each visa will include the signature of the official issuing the visa, the visa number and the date of issuance of the visa.

2. Your Government will provide my Government originals in duplicate of the visa stamp marking. Your Government will also provide the names of the officials authorized to issue textile export visas, and subsequently, notifications of any changes therein. A minimum number of officials will be authorized to issue visas.

3. Cotton, wool and man-made fiber apparel products which are not accompanied by an original export visa in accordance with the provisions of Paragraph 1 of this letter will be denied entry by my Government except upon specific request of your Government.

4. My Government will publish in the **Federal Register** the visa requirements set out in this letter upon receipt of (a) your letter confirming your Government's acceptance of this letter's proposals, and (b) the authorized visa stamp and names of the officials authorized by your Government to issue export visas. The visa system proposed by this letter will become effective November 5, 1980, for all apparel regardless of the date these goods were exported from the Republic of Singapore.

5. Either Government may terminate this visa system by giving 90 days written notice to the other.

If the foregoing proposal is acceptable to your Government, this letter and your letter of acceptance on behalf of your Government shall constitute an administrative arrangement between our two Governments.

Sincerely,

Donald McConville,

Chairman, U.S. Textile Delegation to Singapore, Government of the United States of America.

[Attachment C]

Mr. Donald McConville,

Chairman, U.S. Textile Delegation to Singapore, Government of the United States of America.

Dear Don: In response to your letter of October 20, 1980, proposing a visa system, I am pleased to confirm that my Government accepts your proposal.

Sincerely,

Anthony Tan Song Chuan,

Leader, Singapore Textile Delegation, Government of the Republic of Singapore.

[Attachment D]

Mr. Donald McConville,

Chairman, U.S. Textile Delegation to Singapore, Government of the United States of America.

Dear Don: Regarding your concern over the possibility of unwarranted disadvantaging of importers that could occur from immediate enforcement of the visa requirement for imports from Singapore under textile Categories 347 and 348, I wish to assure you of my Government's desire to cooperate in avoiding such situations.

My Government's intentions with respect to goods in Categories 347 and 348 with dates of export prior to October 21, 1980, are as follows:

A. For goods which have previously received proper export authorization from the Government of Singapore and which have not as of this date cleared U.S. Customs: My Government is notifying immediately all Singaporean exporters to submit new special Customs invoices for visaing. Exporters shall be instructed to forward such viased invoices to their customers by expeditious means. Should an exporter for any reason fail to cooperate, the Singapore Embassy in Washington, D.C. will be prepared to authorize visa waivers for shipments verified to have received export authorizations from the Government of the Republic of Singapore.

B. For goods which were not covered by a previous export authorization but were demonstrably sourced in Singapore: Providing there is no reason to believe that the importer, despite having exercised reasonable commercial caution, would have been aware that the exporters had not complied with the applicable laws and regulations of the Government of Singapore, my Government will consider appropriate adjustments. Adjustments visa or authorization of a visa waiver permitting entry with appropriate charge, and/or assisting the importer in obtaining compensation. Recognizing the importance of timing in textile matters, these will be considered on an expeditious basis.

Anthony Tan Song Chuan,

Leader, Singapore Textile Delegation, Government of the Republic of Singapore.

[Attachment E]

Mr. Donald McConville,

Chairman, U.S. Textile Delegation to Singapore, Government of the United States of America.

Dear Don: In the operation of the textile visa system that we signed on October 20, 1980, we have agreed to make the system effective as of November 5, 1980, without regard to the date the goods have been exported from Singapore.

As an interim measure to impede the free flow of exports from Singapore to the United States as little as possible, I request that the United States, until December 31, 1980, grant visa waivers automatically to apparel exported from Singapore on or before November 5, 1980. The automatic waiver provision should not apply to any products in Categories 347/348 of the textile agreement in effect between our Governments.

Sincerely,

Anthony Tan Song Chuan,

Leader, Singapore Textile Delegation, Government of the Republic of Singapore.

[Attachment F]

Mr. Frank Nash,

Economic/Financial Officer, Embassy of the United States of America, 30 Hill Street, Singapore 06170.

Dear Frank: Thank you for your letter of 14 October 1980 regarding the arrangements to the current problems in Categories 347/348.

I confirm that this proposal is acceptable to the Government of the Republic of Singapore.

Kindest regards,

Tan Song Chuan,

For Director, Department of Trade.

[Attachment G]

Application for Visa Waiver

To: Office of Textiles and Apparel, International Agreements Division, Room 2814, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Attention: Waivers.

Port of Entry: (Indicate where appropriate whether seaport or airport).

Name and Address of Importer:

Name and Telephone Number of Customs Broker:

Description of Merchandise:

Category and TSUSA Number:

Quantity (Units as set out in TSUSA):

Entry Number or Bill of Lading Number:

Name of Carrier:

Date of Export:

Exporter:

[Attachment H]

Officials of the Government of the Republic of Singapore Authorized to Issue Textile Export Visas:

Cheong Choy Hoong
Indira Devi
Yeong Wai Kuen
Tay Guek Khiam
Aiyadurai Rogini
Nancy Lum Pui Siong

October 24, 1980.

Committee for the Implementation of Textile Agreements,

Commissioner of Customs,

Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of September 21 and 22, 1978, as amended, between the Government of the United States and the Republic of Singapore; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on November 5, 1980 and until further notice, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber apparel products in Categories 330–359, 431–459 and 630–659, produced or manufactured in the Republic of Singapore, regardless of the date of export, for which the Government of the Republic of Singapore has not issued an appropriate export visa, fully described below.

The export visa will be an original circular stamp in blue ink on the front of the invoice

(Special Customs Invoice Form 5515, successor document, or commercial invoice, when that form is used) and will be signed by an authorized official of the Government of the Republic of Singapore. A facsimile of the visa stamp is enclosed.

Merchandise for the personal use of the importer and not for resale does not require a visa, regardless of value.

You are further directed to permit entry into the United States for consumption and withdrawal from warehouse for consumption of designated shipments of cotton, wool and/or man-made fiber apparel products, produced or manufactured in the Republic of Singapore, notwithstanding the designated shipment or shipments do not fulfill the aforementioned visa requirements, whenever requested to do so in writing by the Chairman of the Committee for the Implementation of Textile Agreements (CITA).

Beginning November 5 and ending December 31, 1980, all visa waivers will be authorized by the Committee for the Implementation of Textile Agreements (CITA). The waiver will be forwarded to the importer who will present it to the appropriate Customs port for inclusion as part of his entry documentation. Enclosed is a facsimile of the visa waiver that will be used, including the validating stamp of the Committee for the Implementation of Textile Agreements (CITA). Only the original stamp in blue ink, signed by an authorized official of the Committee for the Implementation of Textile Agreements, will be accepted.

A detailed description of the textile catetories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463) and August 12, 1980 (45 FR 53506).

In carrying out the above directions, the Commissioner of Customs shall construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The action taken with respect to the Government of the Republic of Singapore and with respect to imports of cotton, wool and man-made fiber apparel products from Singapore has been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register.**

Sincerely,

Edward Gottfried,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Enclosures.

Visa Stamp for Cotton, Wool and Man-Made Fiber Textile Products Exported to the United States

APPLICATION FOR VISA WAIVER

To: Office of Textiles and Apparel,
International Agreements Division,
Room 2814,
U.S. Department of Commerce,
14th and Constitution Avenue, N.W.,
Washington, D.C. 20230.
Attention: Waivers.

Port of Entry: (Indicate where appropriate whether seaport or airport).
Name and Address of Importer:
Name and Telephone Number of Customs Broker:
Description of Merchandise:
Category and TSUSA Number:
Quantity (Units as set out in TSUSA):
Entry Number or Bill of Lading Number:
Name of Carrier:
Date of Export:
Exporter:

CITA

Authorization for release if determined to be of Singapore Origin. If subject to Customs import control, report thru Customs quota system.

Sig. _____
Date _____
Ref. No. _____

[FR Doc. 80-33643 Filed 10-27-80; 8:45 am]
BILLING CODE 3510-25-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Organization of the Joint Chiefs of Staff, National Defense University Panel of the Board of Visitors for National Defense University and Defense Intelligence School; Meeting

The President of the National Defense University has scheduled a meeting of the National Defense University Panel of the Board of Visitors for National Defense University and Defense Intelligence School on Tuesday, November 25, 1980, from 0830–1145 and 1330–1600. The meeting will be held in the Hill Conference Center, Theodore Roosevelt Hall, Building 61, Fort Lesley J. McNair, Washington, D.C. The discussions will include progress and plans for the National Defense University and the curricula, faculty, and students of the Industrial College of the Armed Forces and the National War College. The meeting is open to the public, but the limited space available for observers will be allocated on a first-come, first-served basis. To reserve space, interested persons should write or phone (693–1075), the Assistant to the President, National Defense University, Fort Lesley J. McNair, Washington, D.C. 20319.

M. S. Healy,

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

October 23, 1980.

[FR Doc. 80-33522 Filed 10-27-80; 8:45 am]
BILLING CODE 3810-70-M

National Security Agency/Central Security Service

Privacy Act of 1974; New System of Records

AGENCY: National Security Agency/Central Security Service.

ACTION: Notice of new record system.

SUMMARY: The National Security Agency is adding a new records systems subject to the Privacy Act of 1974 Pub. L. 93–579 (5 U.S.C. 552a). This new system is identified as GNSA13, entitled: NSA/CSS Archival Records. The record system notice is set forth below.

DATES: This system shall be effective as proposed without further notice on December 1, 1980 unless comments are received on or before 30 November which would result in a contrary determination and require republication for further comment.

ADDRESS: Send comments to the Office of the General Counsel, National Security Agency, Ft. George G. Meade, MD 20755.

FOR FURTHER INFORMATION CONTACT: LCdr M. E. Bowman, JAGC, USN (address as above) Telephone (Area code 301) 688–6054.

SUPPLEMENTARY INFORMATION: The National Security Agency record system notice as prescribed by the Privacy Act of 1974, have been published in the Federal Register as follows:

FR Doc. 79–37052 (44 FR 74422) December 17, 1979.

FR Doc. 80–25325 (45 FR 55508) August 20, 1980.

FR Doc. 80–29791 (45 FR 65648) October 3, 1980.

The National Security Agency has submitted a new system report on September 29, 1980 for this system in accordance with the provisions of 5 U.S.C. 552a(o) of the Privacy Act.

M. S. Healy,

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

GNSA13

SYSTEM NAME:

NSA/CSS Archival Records

SYSTEM LOCATION:

Primary System—National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755. Decentralized Segments—Each staff, line, contract, and field element as authorized and appropriate.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have contributed to the cryptographic archives and individuals who are significant to the history of signals intelligence.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include organizational files, correspondence, tape recorded interviews, forms, documents, reports, films, magnetic tapes, microfiche, and other related items of crypologic archival interest, most of which are 20 or more years old and have been adjudged to be permanent U.S. Government records not yet declassified.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 90–260, Public Law 81–754, Public Law 86–36, 5 U.S.C. § 552, Executive Order 12065, Executive Order 12036.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To enable the historian to locate source materials; to permit systematic review of classified records; to facilitate access to retired records; and to provide a source from which response to public queries for NSA/CSS records can be more expeditiously handled and, if possible, declassified.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hard copy, microforms, magnetic tape, magnetic disk and pictures.

RETRIEVABILITY:

Generally by subject matter; as to that material furnish by an individual or about an individual significant to the history of crytography by name or other unique indentifier significant to the subject matter and the individual.

SAFEGUARDS:

Secure limited access facilities and within those facilities containers appropriate to the level of classification of particular records.

RETENTION AND DISPOSAL:

Records are permanent, are reviewed periodically for declassification and copies of records declassified are transferred to the National Archives and Records Service of the General Services Administration.

SYSTEM MANAGER AND ADDRESS:

Director, NSA, Ft. George G. Meade, Md. 20755.

NOTIFICATION PROCEDURE:

Requests from individuals for notification shall be in writing addressed to Chief, Office of Policy, National Security Agency/Central Security, Ft. George G. Meade, Md. 20755.

CONTESTING RECORD PROCEDURES:

The NSA/CSS rules for contesting contents and appealing initial determinations may be obtained by written request addressed to Chief, Office of Policy, National Security Agency, Ft. George G. Meade, Md. 20755.

RECORD SOURCE CATEGORIES:

Individual contributors and operational/administrative files; other sources as appropriate.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Parts of this system may be exempt under 5 U.S.C. § 552a(k)(1) and (k)(4) for additional information, see agency rules contained in 32 CFR Part 299a, (NSA/CSS Regulation 10–35).

[FR Doc. 80–33633 Filed 10–27–80; 8:45 am]

BILLING CODE 3810–70–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[Docket No. ERA–R–80–33]

Report to the Department of Energy on "Designing Methods for Distributing Petroleum During a Shortage and Selecting Standby Distribution Mechanisms"

AGENCY: Economic Regulatory Administration.

ACTION: Notice of Cancellation of Public Hearing

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice of the cancellation of the public hearing on the Report to the Department of Energy on "Designing Methods for Distributing Petroleum During a Shortage and Selecting Standby Distribution Mechanisms" (45 FR 63909, September 26, 1980) scheduled for 9:30 a.m. on October 29, 1980, in Room 208, Dirksen Building, 219 South Dearborn, Chicago, Illinois. The Washington, D.C. hearings remain scheduled for November 13 and December 2, 1980.

FOR FURTHER INFORMATION CONTACT:

Lorrain Hall (Office of Public Hearings Division), Economic Regulatory Administration, Room B–210, 2000 M Street, N.W., Washington, D.C. 20461 (202) 653–3971.

William L. Webb (Office of Public Information), Economic Regulatory Administration, Room B–110, 2000 M Street, N.W., Washington, D.C. 20461 (202) 653–4055.

William E. Caldwell (Office of Regulatory Policy), Economic Regulatory Administration, Room 7202, 2000 M Street, N.W., Washington, D.C. 20461 (202) 653–3256.

Joel Yudson (Office of General Counsel), Department of Energy, Room 6A–127, 1000 Independence Avenue, S.W., Washington, D.C. 20585 (202) 252–6744.

Issued at Washington, D.C. on October 21, 1980.

F. Scott Bush,

Assistant Administrator, Office of Regulatory Policy, Economic Regulatory Administration.

[FR Doc. 80–33574 Filed 10–27–80; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER80-379 and ER80-380]

Utah Power & Light Co.; Amended Rate Filing

October 21, 1980.

Take notice that Utah Power and Light Company on October 8, 1980, tendered for filing revisions of documents originally filed on May 9, 1980, as follows:

Docket No. ER80-379

Ownership and Management Agreement between Deseret Generation and Transmission Co-operative (Deseret) and Utah Power dated September 15, 1980, approved by the Utah Public Service Commission on July 23, 1980. (Supersedes the Ownership and Management Agreement, including the Power Sales Contract, submitted on May 9, 1980.)

Docket No. ER80-380

Resale Electric Service Agreement between Utah Power and Deseret dated ————, 1980, together with Exhibits "A", "B", and "C". (Supersedes Resale Electric Service Agreement submitted on May 9, 1980. Utah Power's FERC Electric Tariff Sheets, Original Volume No. 1, have not been changed from the listing shown in our transmittal letter submitted May 9, 1980.)

The significant changes in the revised Ownership and Management Agreement herein filed as compared to the original filing are: (i) a reduction in the ownership interest to be purchased in Hunter II by Deseret from 49% to 39%; (ii) a provision for the purchase of certain common facilities associated with Hunter II which were to be leased under the original agreement, the total purchase price remaining essentially unchanged, however; (iii) the elimination of (a) all contractual provisions required by the earlier leveraged-lease financing arrangements, (b) an earlier buy-back arrangement, and (c) the percentage adder related to the supply of emergency power, pursuant to the Commission Order No. 84. The amended Resale Electric Service Agreement is substantially the same as that originally filed in Docket No. ER80-380, except that a provision relating to rates for power and energy in excess of contract demands and providing for a 15% adder has been revised to provide for a charge of one mill/kwh or such other cost-supported percentage as the Commission may approve pursuant to Order No. 84.

Utah Power indicates that the filings on May 9, 1980, were predicated on an Ownership and Management Agreement under which Deseret was to purchase an undivided 49% interest in Utah Power's 400-megawatt Hunter II Generating Unit in Central Utah for approximately $115 million. The purchase was to be financed under a leverage-lease arrangement which required that the sale be consummated prior to the commercial operation of the Unit. On May 30, 1980, FERC issued an "Order Accepting for filing and Suspending Proposed Rate Changes, Granting Waiver of Notice Requirements, Consolidating Proceedings and Establishing Procedures." The filings were suspended for one day and permitted to become effective on June 1, 1980, subject to refund. Thereafter, the transactions could not be completed prior to the date the Unit was declared commercial on June 4, 1980, and consequently Utah Power, on June 23, 1980, filed a cancellation notice for the purpose of withdrawing the filings in both Dockets. Subsequenty, on July 25, 1980, Deseret filed a "Conditional Protest and Petition to Intervene" with the Commission. According to Utah Power the primary purpose of Deseret's petition was to afford an opportunity to consider whether or not it would be in the best interests of the Commission Staff and the parties to go forward with proceedings in Docket No. ER80-379 and ER80-380 in light of new financing arrangements completed by Deseret and approved by the Utah Public Service Commission in lieu of filing the revised agreements for the Hunter II purchase and sale in new dockets. Utah Power interposed no objection to Deseret's Petition at that time, and now respectfully requests the Commission's permission to withdraw the Notice of Cancellation. Utah Power states that the revised agreements submitted herewith are acceptable to both parties and have been approved by the Utah Commission.

In the original filings of May 9, 1980, an effective date of June 1, 1980 was proposed by Utah Power. The Company now requests an effective date as of the date of the sale, which it anticipates will be on October 24, 1980.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.10). All such petitions or protests should be filed on or before October 30, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33465 Filed 10-27-80; 8:45 am]

BILLING CODE 6450-85-M

ENVIRONMENTAL PROTECTION AGENCY

[TSH-FRL 1644-8; OPTS 00017]

Administrator's Toxic Substances Advisory Committee; Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a meeting of the Administrator's Toxic Substances Advisory Committee from 8:30 am to 5:00 pm on Thursday, November 20, 1980, and from 8:30 am to 12 Noon on Friday, November 21, 1980. The meeting will be held in rooms 3906-3908, Waterside Mall, EPA, 401 M Street, S.W., Washington, D.C. It will be open to the public.

FOR FURTHER INFORMATION CONTACT: Ms. Marsha Ramsay, Executive Secretary Administrator's Toxic Substances Advisory Committee, Office of Pesticides and Toxic Substances (TS-793), Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460. In Washington, D.C.: (202) 755-4854.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to discuss matters related to EPA's implementation of the Toxic Substances Control Act (Pub. L. 94-569). The agenda includes a presentation and discussion of the Committee's report on the implementation of TSCA in its first three years, and recommendations for the future; an update on the implementation of the Toxic Substances Control Act; and a general discussion of issues pertaining to the control of the use of chlorofluorocarbons (CFC's). At the afternoon session on November 20, time will be set aside for study group work sessions.

The meeting will be open to the public and time will be set aside for public comments. Any member of the public wishing to present an oral or written statement should contact Ms. Marsha Ramsay at the address or phone number listed above.

Dated: October 21, 1980.

Steven D. Jellinek,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 80-33482 Filed 10-27-80; 8:45 am]

BILLING CODE 6560-31-M

[TSH-FRL 1645-7; OPTS-00018]

Interagency Toxic Substances Data Committee; Cancellation of Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The November meeting of the Interagency Toxic Substances Data Committee has been cancelled.

FOR FURTHER INFORMATION CONTACT: Nan Fremont (TS-793), Executive Secretary, Interagency Toxic Substances Data Committee, Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460, (202-755-8040).

SUPPLEMENTARY INFORMATION: The regular meetings of the Interagency Toxic Substances Data Committee take place on the first Tuesday of each month at 9:30 a.m. and are open to the public. The meetings are held in: Room 2010, New Executive Office Building, 17th St. and Pennsylvania Ave. NW., Washington, D.C. 20006.

The November meeting has been cancelled. The next meeting of the Interagency Toxic Substances Data Committee will take place on December 2, 1980.

Dated: October 23, 1980.

Nan Fremont,

Executive Secretary, Interagency Toxic Substances Data Committee.

[FR Doc. 80-33488 Filed 10-27-80; 8:45 am]

BILLING CODE 6560-31-M

[SA-FRL 1644-7]

Science Advisory Board Clean Air Scientific Advisory Committee; Open Meeting

November 13-14, 1980.

Under Pub. L. 92-463, notice is hereby given of a meeting of the Clean Air Scientific Advisory Committee of the Science Advisory Board. The meeting will be held November 13-14, 1980, starting at 9:15 am of each day in Rooms 3906-08 Mall, EPA Headquarters, 401 M Street, SW, Washington, D.C. 20460.

The purpose of the meeting is to allow the Committee to review and provide its advice to EPA on the June 1979 external review draft with annotated changes based on comments received during the public comment period, July-November 1979 of EPA's revised air quality criteria document for the oxides of nitrogen. Copies of this document may be obtained by writing Ms. Diane Chappel, Environment Criteria and Assessment Office, MD-52, EPA, Research Triangle Park, NC 27711, or by calling Ms. Chappel at (919) 541-2525.

The Committee will also review and provide advice to EPA on the first external draft staff paper entitled, "Preliminary Assessment of Health and Welfare Effects Associated with Nitrogen Oxides for Standard Setting Purposes." Copies of this document may be obtained by writing Mr. Michael Jones, Office of Air Quality Planning and Standards, Strategies and Air Standards Divisions, MD-12, EPA, Research Triangle Park, NC 27711, or by calling Mr. Jones at (919) 541-5231.

The meeting is open to the public. Any member of the public wishing to obtain information shall contact Mr. Terry F. Yosie, Science Advisory Board Staff Officer at (202) 755-6634, by close of business November 7, 1980.

Richard M. Dowd,

Director, Science Advisory Board.

October 22, 1980

[FR Doc. 80-33480 Filed 10-27-80; 8:45 am]

BILLING CODE 6560-34-M

[TSH-FRL 1644-3; OPTS-51162]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Section 5(d)(2) requires EPA to publish in the **Federal Register** certain information about each PMN within 5 working days after receipt. This Notice announces receipt of three PMN's and provides a summary of each.

DATE: Written comments by December 5, 1980.

ADDRESS: Written comments to: Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-447, 401 M St. SW., Washington, D.C. 20460 (202-755-8050).

FOR FURTHER INFORMATION CONTACT: Rachel S. Diamond, Chemical Control Division (TS-794), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-221, 401 M St. SW., Washington, D.C. 20460, (202-426-3980).

SUPPLEMENTARY INFORMATION: Section 5(a)(1) of TSCA [90 Stat. 2012 (15 U.S.C. 2604)], requires any person who intends to manufacture or import a new chemical substance to submit a PMN to EPA at least 90 days before manufacture or import commences. A "new" chemical substance is any substance that is not on the Inventory of existing substances compiled by EPA under section 8(b) of TSCA. EPA first published the Initial Inventory on June 1, 1979. Notices of availability of the Inventory were published in the **Federal Register** of May 15, 1979 (44 FR 28558-Initial) and July 29, 1980 (45 FR 50444-Revised). The requirement to submit a PMN for new chemical substances manufactured or imported for commercial purposes became effective on July 1, 1979.

EPA has proposed premanufacture notification rules and forms in the **Federal Register** issues of January 10, 1979 (44 FR 2242) and October 16, 1979 (44 FR 59764). These regulations, however, are not yet in effect. Interested persons should consult the Agency's Interim Policy published in the **Federal Register** of May 15, 1979 (44 FR 28564) for guidance concerning premanufacture notification requirements prior to the effective date of these rules and forms. In particular, see page 28567 of the Interim Policy.

A PMN must include the information listed in section 5(d)(1) of TSCA. Under section 5(d)(2) EPA must publish in the **Federal Register** nonconfidential information on the identity and use(s) of the substance, as well as a description of any test data submitted under section 5(b). In addition, EPA has decided to publish a description of any test data submitted with the PMN and EPA will publish the identity of the submitter unless this information is claimed confidential.

Publication of the section 5(d)(2) notice is subject to section 14 concerning disclosure of confidential information. A company can claim confidentiality for any information submitted as part of a PMN. If the company claims confidentiality for the specific chemical identity or use(s) of the chemical, EPA encourages the submitter to provide a generic use description, a nonconfidential description of the potential exposures from use, and a generic name for the chemical. EPA will publish the generic name, the generic use(s), and the potential exposure descriptions in the **Federal Register**.

If no generic use description or generic name is provided, EPA will

develop one and after providing due notice to the PMN submitter, will publish an amended **Federal Register** notice. EPA immediately will review confidentiality claims for chemical identity, chemical use(s), the identity of the submitter, and for health and safety studies. If EPA determines that portions of this information are not entitled to confidential treatment, the Agency will publish an amended notice and will place the information in the public file, after notifying the submitter and complying with other applicable procedures.

After receipt, EPA has 90 days to review a PMN under section 5(a)(1). The section 5(d)(2) **Federal Register** notice indicates the date when the review period ends for each PMN. Under section 5(c), EPA may, for good cause, extend the review period for up to an additional 90 days. If EPA determines that an extension is necessary, it will publish a notice in the **Federal Register.**

Once the review period ends, the submitter may manufacture the substance unless EPA has imposed restrictions. When the submitter begins to manufacture the substance, he must report to EPA, and the Agency will add the substance to the Inventory. After the substance is added to the Inventory, any company may manufacture it without providing EPA notice under section 5(a)(1)(A).

Therefore, under the Toxic Substances Control Act, summaries of the data taken from the PMN's are published herein.

Interested persons may, on or before December 5, 1980, submit to the Document Control Officer (TS–793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E–447, 401 M St., SW, Washington, DC 20460, written comments regarding these notices. Three copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the document control number "[OPTS–51162]" and the specific PMN number. Comments received may be seen in the above office between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 5, 90 Stat. 2012 (15 U.S.C. 2604))

Dated: October 21, 1980.

Warren R. Muir,

Deputy Assistant Administrator for Toxic Substances.

PMN 80–276.

The following summary is taken from data submitted by the manufacturer in the PMN.

Close of Review Period. January 4, 1981.

Manufacturer's Identity. Celanese Plastics & Specialties Co., 26 Main St., Chatham, NJ 07928.

Specific Chemical Identity. Specific chemical identity claimed confidential. Generic name provided: Styrene acrylic polymer.

Use. Specific use claimed confidential. Generic use provided: Chemical component.

Production Estimates

	Kilograms per year	
	Minimum	Maximum
1st year	0	50,000
2d year	100,000	200,000
3d year	200,000	450,000

Physical/Chemical Properties

Non-volatile by weight—47–49 percent.
Viscosity (Gardner Holdt)—K–O.
Acid value (mg.KOH/g)—205–215.
Flash point (set aflash)—95°F.
Weight/gallon—8.4–8.5 lb.
Appearance—Clear.
Solubility of polymer—Soluble in ketone, toluene/xylene, butanol, glycol esters, and alkali pH >8; insoluble in water.

Toxicity Data. No data on the PMN substance were submitted.

Exposure.

Activity	Exposure route	Maximum number exposed	Maximum duration		Concentration (ppm)	
			Hours/day	Days/year	Average	Peak
Manufacture	Skin	40	8	120		
Processing	Skin	60	8	100		
Use	Skin	250	8	200		

Environmental Release. The manufacturer states that 100 to 10,000 kilograms of the new substance may be released to the environment (land) per year.

PMN 80–277.

The following summary is taken from data submitted by the manufacturer in the PMN.

Close of Review Period. January 4, 1981.

Manufacturer's Identity. E. I. du Pont de Nemours & Co., Inc., 1007 Market St., Washington, DE 19898.

Specific Chemical Identity. Claimed confidential business information. Generic name provided. Modified terpolymer of mixed alkyl acrylates.

Use. Isolated intermediate.

Production Estimates. Claimed confidential business information.

Physical/Chemical Properties. Claimed confidential business information.

Toxicity Data.

Skin irritation test (rabbits)—Mild irritant.

Eye irritation test (rabbits)—Very slight irritant.

Occupational Exposure.

Activity/site	Potential route(s)	Number of potentially exposed workers	Maximum duration of exposure
Manufacturing, Philadelphia, PA	Dermal	2/shift	2 shifts/da; 8 hr/da; 5 da/yr.
Toledo, OH (alternate site)	Dermal	2/shift	2 shifts/da; 8 hr/da; 5 da/yr.
Customer	Dermal	3	1/2 hr/da; 200 da/yr.

Environmental Release/Disposal. Manufacturer's site. E. I. du Pont states that there will be no disposal involved as wash solvent will be recycled and consumed in subsequent batches in the manufacturing process.

Any customer's site. Environmental release will be minimal and incidental; destruction of waste products will be by incineration or land disposal.

PMN 80–278

The following summary is taken from data submitted by the manufacturer in the PMN.

Close of Review Period. January 4, 1981.

Manufacturer's Identity. E. I. du Pont de Nemours & Co., Inc., 1007 Market St., Wilmington, DE 19898.

Specific Chemical Identity. Claimed confidential business information. Generic name provided. Modified terpolymer of mixed alkyl acrylates.

Use. Isolated intermediate.

Production Estimates. Claimed confidential business information.

Physical/Chemical Properties. Claimed confidential business information.

Toxicity Data.

Skin irritation test (rabbits)—Moderate to strong irritant.

Eye irritation test (rabbits)—Moderate to mild irritant.

Occupational Exposure.

Activity/site	Potential route(s)	Number of potentially exposed workers	Maximum duration of exposure
Philadelphia, PA	Dermal	2/shift	2 shifts/da; 8 hr/da; 5 da/yr.
Toledo, OH (alternate site)	Dermal	2/shift	2 shifts/da; 8 hr/da; 5 da/yr.
Customer	Dermal	3	½ hr/da; 200 da/yr.

Environmental Release/Disposal. Manufacturer's site. E. I. du Pont states that there will be no disposal involved as wash solvent will be recycled and consumed in subsequent batches in the manufacturing process.

Any customer's site. Environmental release will be minimal and incidental; destruction of waste products will be by incineration or land disposal.

[FR Doc. 80-33477 Filed 10-27-80; 8:45 am]

BILLING CODE 6560-31-M

[TSH-FRL 1644-4; OPTS-51086B]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces a voluntary suspension by the submitter of the review period for two premanufacture notices (PMN) on the new chemical substances benzenamine, 4,4'-methylene bis [*N*-(1-methylhexylidene)] and benzenamine, 4,4'-methylene bis [*N*-(1-methylbutylidene)] identified as PMN 80-137 and PMN 80-138 respectively.

DATE: Written comments by October 30, 1980.

ADDRESS: Written comments to: Document Control Officer (TS-793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-447, 401 M St. SW., Washington, DC 20460 (202-755-8050).

FOR FURTHER INFORMATION CONTACT: Kirk Maconaughey, Chemical Control Division (TS-794), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-210, 401 M St. SW., Washington, DC 20460, (202-426-3936).

SUPPLEMENTARY INFORMATION: Section 5(a)(1) of TSCA [90 Stat. 2012 (15 U.S.C. 2604)], requires any person who intends to manufacture or import a new chemical substance to submit a PMN to EPA at least 90 days before manufacture or import commences. A "new" chemcial substance is any substance that is not on the Inventory of existing substances compiled by EPA under section 8(b) of TSCA. After receipt, EPA has 90 days to review a PMN. Under section 5(c), EPA, for good cause, may extend the review period for up to an additional 90 days. If EPA determines that an extension is necessary, it will publish a notice in the **Federal Register.**

EPA issued a notice of receipt of two PMN's with a a summary of each, published in the **Federal Register** of July 18, 1980 (45 FR 48243). The PMN's were submitted by a certain company who claimed confidentiality of its identity as provided for in section 14 of TSCA. The PMN's were for the manufacture of the new substances benzenamine, 4,4'-methylene bis [*N*-(1-methylhexylidene)] (PMN 80-138) and benzenamine, 4,4'-methylene bis [*N*-(1-methylhexylidene)] (PMN 80-137).

The conclusion of the 90-day review period for the two PMN's was established as September 15, 1980. This period was subsequently extended to October 30, 1980. The extension, section 5(c) notice, was published in the **Federal Register** of September 18, 1980, (45 FR 62198).

The manufacturer has requested that the premanufacture review for both PMN's be temporarily suspended. The period was extended in order to provide EPA additional time to (1) evaluate the need for additional data on the PMN substances, (2) determine the need for regulatory control in light of EPA's concerns about the PMN substances, and (3) examine possible control options. Extension of the notice period preserves EPA's authority to initiate a regulatory action under section 5 of TSCA if the Agency concludes that such an action is appropriate.

During the 45-day extension period, the manufacturer met with EPA to discuss possible control options that would be implemented to protect workers both in manufacturing and processing operations. The Agency and the company are negotiating these control options at the present time. The manufacturer requested a suspension of the review period in order to provide additional time for these negotiations. Without such a suspension, the Agency would be forced to proceed with its time schedule and serve a section 5(e) order on the manufacturer on October 30, 1980. The manufacturer feels that such a rigid and limited time schedule might not be advantageous to the successful negotiation of an agreed-upon solution. Accordingly, the review period has been suspended for an indefinite period of time to allow negotiations to proceed.

Dated: October 21, 1980.

Warren R. Muir,

Deputy Assistant Administrator for Toxic Substances.

[FR Doc. 80-33478 Filed 10-27-80; 8:45 am]

BILLING CODE 6560-31-M

[TSH-1644-5; OPTS-51092A]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces a voluntary suspension by the submitter of the notice review period for two premanufacture notices (PMN) on the new substances phosphorodithioic acid, *O, O'*-di(isohexyl, isoheptyl, isooctyl, isodecyl) mixed esters, zinc salt and phosphorodithioic acid, *O, O'*-di(isohexyl, isoheptyl, isooctyl, isodecyl) mixed esters identified as PMN 80-146 and PMN 80-147 respectively.

ADDRESS: Written comments to: Document Control Officer (TS-793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm.

E–447, 401 M St. SW., Washington, DC 20460 (202–755–8050).

FOR FURTHER INFORMATION CONTACT: Kirk Maconaughey, Chemical Control Division (TS–794), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E–210, 401 M St. SW., Washington, DC 20460, (202–426–3936).

SUPPLEMENTARY INFORMATION: Section 5(a)(1) of TSCA [90 Stat. 2012 (15 U.S.C. 2604)], requires any person who intends to manufacture or import a new chemical substance to submit a PMN to EPA at least 90 days before manufacture or import commences. A "new" chemical substance is any substance that is not on the Inventory of existing substances compiled by EPA under section 8(b) of TSCA. After receipt, EPA has 90 days to review a PMN.

EPA issued a notice of receipt of two PMN's identified as PMN 80–146 and PMN 80–147 with a summary of each, published in the **Federal Register** of July 23, 1980 (45 FR 41954). The PMN's were submitted by a certain company who claimed confidentiality of its identity as provided for in section 14 of TSCA. The PMN's were for the manufacture of the new substances phosphorodithioic acid, *O, O'*-di(isohexyl, isoheptyl, isooctyl, isodecyl) mixed esters, zinc salt (PMN 80–146) and phosphorodithioic acid, *O, O'*-di(isohexyl, isoheptyl, isooctyl, isodecyl) mixed esters (PMN 80–147). The completion of the 90-day review period for both PMN's was originally set for September 23, 1980.

On September 17, 1980 the submitter requested that the premanufacture review period for both PMN's be temporarily suspended until such time that subchronic toxicity data on the substance in PMN 80–146 becomes available. Since the substance in PMN 80–147 is the intermediate for preparation of the other compound, the submitter felt it appropriate that both review periods be suspended simultaneously. Accordingly the review period has been suspended for an indefinite period of time for submission of this data.

The manufacturer states that the preliminary pathology data will be available in early November, 1980 at which time the company will evaluate and forward the data to EPA. At that time the notice review period may be reinstated.

Dated: October 21, 1980.

Warren R. Muir,

Deputy Assistant Administrator for Toxic Substances.

[FR Doc. 80-33479 Filed 10-27-80; 8:45 am]

BILLING CODE 6560-31-M

[TSH-FRL 1645-5; OPTS-51155]

Fatty Acids, Esters With Polyols; Premanufacture Notice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Section 5(d)(2) requires EPA to publish in the **Federal Register** certain information about each PMN within 5 working days after receipt. This Notice announces receipt of a PMN and provides a summary.

DATE: Written comments by November 21, 1980.

ADDRESS: Written comments to: Document Control Officer (TS–793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E–447, 401 M St., SW., Washington, DC 20460, (202–755–8050).

FOR FURTHER INFORMATION CONTACT: Cynthia Work, Chemical Control Division (TS–794), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E–206, 401 M St., SW., Washington, DC 20460, (202–426–2601).

SUPPLEMENTARY INFORMATION: Section 5(a)(1) of TSCA [90 Stat. 2012 (15 U.S.C. 2604)], requires any person who intends to manufacture or import a new chemical substance to submit a PMN to EPA at least 90 days before manufacture or import commences. A "new" chemical substance is any substance that is not on the Inventory of existing substances compiled by EPA under section 8(b) of TSCA. EPA first published the Initial Inventory on June 1, 1979. Notices of availability of the Inventory were published in the **Federal Register** of May 15, 1979 (44 FR 28558-Initial) and July 29, 1980 (45 FR 50544-Revised). The requirement to submit a PMN for new chemical substances manufactured or imported for commercial purposes became effective on July 1, 1979.

EPA has proposed premanufacture notification rules and forms in the **Federal Register** issues of January 10, 1979 (44 FR 2242) and October 16, 1979 (44 FR 59764). These regulations, however, are not yet in effect. Interested persons should consult the Agency's Interim Policy published in the **Federal Register** of May 15, 1979 (44 FR 28564) for guidance concerning premanufacture notification requirements prior to the effective date of these rules and forms. In particular, see page 28567 of the Interim Policy.

A PMN must include the information listed in section 5(d)(1) of TSCA. Under section 5(d)(2) EPA must publish in the **Federal Register** nonconfidential information on the identity and use(s) of the substance, as well as a description of any test data submitted under section 5(b). In addition, EPA has decided to publish a description of any test data submitted with the PMN and EPA will publish the identity of the submitter unless this information is claimed confidential.

Publication of the section 5(d)(2) notice is subject to section 14 concerning disclosure of confidential information. A company can claim confidentiality for any information submitted as part of a PMN. If the company claims confidentiality for the specific chemical identity or use(s) of the chemical, EPA encourages the submitter to provide a generic use description, a nonconfidential description of the potential exposures from use, and a generic name for the chemical. EPA will publish the generic name, the generic use(s), and the potential exposure descriptions in the **Federal Register.**

If no generic use description or generic name is provided, EPA will develop one and after providing due notice to the submitter, will publish an amended **Federal Register** notice. EPA immediately will review confidentiality claims for chemical identity, chemical use(s), the identity of the submitter, and for health and safety studies. If EPA determines that portions of this information are not entitled to confidential treatment, the Agency will publish an amended notice and will place the information in the public file, after notifying the submitter and complying with other applicable procedures.

After receipt, EPA has 90 days to review a PMN under section 5(a)(1). The section 5(d)(2) **Federal Register** notice indicates the date when the review period ends for each PMN. Under section 5(c), EPA may, for good cause, extend the review period for up to an additional 90 days. If EPA determines that an extension is necessary, it will publish a notice in the **Federal Register.**

Once the review period ends, the submitter may manufacture the substance unless EPA has imposed restrictions. When the submitter begins to manufacture the substance, he must report to EPA, and the Agency will add the substance to the Inventory. After the substance is added to the Inventory, any company may manufacture it without

providing EPA notice under section 5(a)(1)(A).

Therefore, under the Toxic Substances Control Act, a summary of the data taken from the PMN is published herein.

Interested persons may, on or before November 21, 1980, submit to the Document Control Officer (TS–793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E–447, 401 M St., SW, Washington, DC 20460, written comments regarding this notice. Three copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the document control number "[OPTS–51155]" and the PMN number. Comments received may be seen in the above office between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Warren R. Muir,

Deputy Assistant Administrator for Toxic Substances.

(Sec. 5, 90 Stat. 2012 (15 U.S.C. 2604)).

Dated: October 16, 1980.

PMN 80–262.

Closed of Review Period. December 21, 1980.

Manufacturer's Identity. Claimed confidential business information. Generic information provided:

Annual sales—In excess of $500 million.

Exposure.

Activity	Exposure route	Maximum number exposed	Maximum duration		Concentration (ppm)	
			Hours/day	Days/year	Average	Peak
Manufacture	Dermal	6	2	14	0–1	

Environmental Release/Disposal.

Media—Amount/Duration of Chemical Release (kg/yr.)
Air—Less than 10. 24 hr/da; 14 da/yr.
Water—Less than 10. 12 hr/da; 14 da/yr.
Land—100–1,000 kg/yr.

After use, the product will be recovered for either reuse or burning. The water or reaction is sent to the water system before being discharged to the receiving stream.

[FR Doc. 80–33487 Filed 10–27–80; 8:45 am]

BILLING CODE 6560–31–M

[TSH FRL 1645–4; OPTS–51154]

Polymer of: Palm Oil, Coconut Oil, Pentaerythritol, Benzoic Acid, Phthalic Anhydride, and Maleic Anhydride; Premanufacture Notice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Section 5(d)(2) requires EPA to publish in the **Federal Register** certain information about each PMN within 5 working days after receipt. This Notice announces receipt of a PMN and provides a summary.

DATE: Written comments by November 21, 1980.

ADDRESS: Written comments to: Document Control Officer (TS–793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E–447, 401 M St. SW., Washington, DC 20460. (202–755–8050).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Chemical Control Division (TS–794), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E–206, 401 M St. SW., Washington, DC 20460 (202–426–2601).

SUPPLEMENTARY INFORMATION: Section 5(a)(1) of TSCA [90 Stat. 2012 (15 U.S.C. 2604)], requires any person who intends to manufacture or import a new chemical substance to submit a PMN to EPA at least 90 days before manufacture or import commences. A "new" chemical substance is any substance that is not on the Inventory of existing substances compiled by EPA under section 8(b) of TSCA. EPA first published the Initial Inventory on June 1, 1979. Notices of availability of the Inventory were published in the **Federal Register** on May 15, 1979 (44 FR 28558-Initial) and July 29, 1980 (45 FR 50544-Revised). The requirement to submit a PMN for new chemical substances manufactured or imported for commercial purposes became effective on July 1, 1979.

EPA has proposed premanufacture notification rules and forms in the **Federal Register** issues of January 10, 1979 (44 FR 2242) and October 16, 1979 (44 FR 59764). These regulations, however, are not yet in effect. Interested persons should consult the Agency's Interim Policy published in the **Federal Register** of May 15, 1979 (44 FR 28564) for guidance concerning premanufacture notification requirements prior to the effective date of these rules and forms. In particular, see page 28567 of the Interim Policy.

A PMN must include the information listed in section 5(d)(1) of TSCA. Under section 5(d)(2) EPA must publish in the **Federal Register** nonconfidential information on the identity and use(s) of the substance, as well as a description of any test data submitted under section 5(b). In addition, EPA has decided to

Manufacturing site—East-north central U.S.

Standard Industrial Classification Code—2869 "Industrial Organic Chemicals".

Specific Chemical Identity. Claimed confidential business information. Generic named provided: Fatty acids, esters with polyols.

The following summary is taken from data submitted by the manufacturer in the PMN.

Use. Claimed confidential business information. The manufacturer states that the substance will be used in a contained use (80%) and in an open use (20%) that will release less than 50 kilograms (kg) of the substance to the environment per year.

Production Estimates. Claimed confidential business information.

Physical/Chemical Properties.

Specific gravity 25° C/25° C—0.89.
Viscosity, cs at 25° C—126.
Flash point (COC), °F—480.
Gardner color—6.
Acid number—8.
Hydroxyl number—20.
Solubility in water—Negligible.

Toxicity Data. The manufacturer states that: There are no toxicological tests conducted on this new substance; the low toxicity of the ingredients used to make this new substance and its intended end-uses indicate there should be no hazard to human health or to the environment.

publish a description of any test data submitted with the PMN and EPA will publish the identity of the submitter unless this information is claimed confidential.

Publication of the section 5(d)(2) notice is subject to section 14 concerning disclosure of confidential information. A company can claim confidentiality for any information submitted as part of a PMN. If the company claims confidentiality for the specific chemical identity or use(s) of the chemical, EPA encourages the submitter to provide a generic use description, a nonconfidential description of the potential exposures from use, and a generic name for the chemical. EPA will publish the generic name, the generic use(s), and the potential exposure descriptions in the **Federal Register.**

If no generic use description or generic name is provided, EPA will develop one and after providing due notice to the submitter, will publish an amended **Federal Register** notice. EPA immediately will review confidentiality claims for chemical identity, chemical use(s), the identity of the submitter, and for health and safety studies. If EPA determines that portions of this information are not entitled to confidential treatment, the Agency will publish an amended notice and will place the information in the public file, after notifying the submitter and complying with other applicable procedures.

After receipt, EPA has 90 days to review a PMN under section 5(a)(1). The section 5(d)(2) **Federal Register** notice indicates the date when the review period ends for each PMN. Under section 5(c), EPA may, for good cause, extend the review period for up to an additional 90 days. If EPA determines that an extension is necessary, it will publish a notice in the **Federal Register.**

Once the review period ends, the submitter may manufacture the substance unless EPA has imposed restrictions. When the submitter begins to manufacture the substance, he must report to EPA, and the Agency will add the substance to the Inventory. After the substance is added to the Inventory, any company may manufacture it without providing EPA notice under section 5(a)(1)(A).

Therefore, under the Toxic Substances Control Act, a summary of the data taken from the PMN is published herein.

Interested persons may, on or before November 21, 1980, submit to the Document Control Officer (TS–793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E–447, 401 M St. SW., Washington, D.C. 20460, written comments regarding this notice. Three copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the document control number "[OPTS–51154]" and the PMN number. Comments received may be seen in the above office between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 5, 90 Stat. 2012 (15 U.S.C. 2604))

Dated: October 19, 1980.

Warren R. Muir,

Deputy Assistant Administrator for Toxic Substances.

PMN 80–261.

Close of Review Period. December 21, 1980.

Manufacturer's Identity. Claimed confidential business information. Generic information provided: Manufacturing site—East-north central U.S. Standard Industrial Classification Code—285.

Specific Chemical Identity. Polymer of: Palm oil, coconut oil, pentaerythritol, benzoic acid, phthalic anyhdride, and maleic anhydride.

The following summary is taken from data submitted by the manufacturer in the PMN.

Use. Claimed confidential business information. The manufacturer states that the substance will be used in an open use that will release less than 50 kilograms (kg) of the substance to the environment per year and that the use may possibly involve exposure to skin and eyes.

Production Estimates

	Kilograms per year	
	Minimum	Maximum
1st year	100,000	220,000
2nd year	150,000	200,000
3rd year	100,000	150,000

Physical/Chemical Properties.

	Polymer solution	Dried polymer
Solid content	60.9	
Density	1.0 g/ml	1.28 g/ml.
Solubility in water		0.01 percent at 20°C.
Number average molecular weight	720–910	
Weight average molecular weight	2800–3200	
Flash point (closed cup)	123°F.	Above 212°F.
Hydroxyl value	186 mg KOH/g	
Acid number	9.3 mg KOH/g	
Elemental Analysis		Percent C=69.31. Percent H= 9.93. Percent O=20.76.
Chemical oxygen demand (ugO/g)	1,790,000	

Toxicity Data of Raw Materials.

Pentaerythritol. The LD_{50} in rats is 16 g/kg. A limit for an "inert" dust of 10 mg/m^3 is recommended by the American Conference of Governmental Industrial Hygienists (ACGIH).

Phthalic anhydride. The oral LD_{50} in rats is 800–1,600 mg/kg, and the Threshold Limit Value (TLV) is less than 25 mg/m^3. Phthalic anhydride is a potent skin, eye, and upper respiratory irritant and can cause skin, and possibly pulmonary sensitization.

Maleic anhydride. The oral LD_{50} in rats is 400–800 mg/kg. the skin LD_{50} in the guinea pig was greater than 20 g/kg. A TLV of 1 mg/m^3 is recommended by ACGIH. Maleic anhydride causes burns to the skin and eyes.

Benzoic acid. the oral LD_{50} in rats is 2,530 mg/kg. Acute and chronic toxicity by ingestion is low. Prolonged contact with skin may cause irritation and have a keratolytic effect.

Rule 66 mineral spirits. Used as a solvent in the reaction. ACGIH recommends a TLV of 100 parts per million (ppm).

Exposure.

Activity	Exposure route	Maximum number exposed	Maximum duration		Concentration (ppm)	
			Hours/day	Days/year	Average	Peak
Manufacture	Inhalation dermal.	3	16	16		1–10
Disposal	Inhalation dermal.	2	2	8		0–1

Environmental Release/Disposal.

Media—Amount/Duration of Chemical Release (kg/yr.)
Air—Less than 10. 16 hr/da; 16 da/yr.

The submitter states that: Each reactor at the manufacturing plant is equipped with an exhaust and fume condenser; effluent (airborne) is treated by an exhaust fume scrubber; scrubber water goes to biological treatment lagoons with a sixty day retention period; and sludge is landfilled.

[FR Doc. 80-33486 Filed 10-27-80; 8:45 am]

BILLING CODE 6560-31-M

[PH-FRC 1645-2; PF-202]

Certain Pesticide Chemicals; Filing of Pesticide and Food Additive Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that certain companies have filed requests with the EPA to establish tolerances for residues of pesticide chemicals in or on raw agricultural commodities and animal feeds.

ADDRESSES: Written comments and inquiries should be directed to: Designated Project Manager (PM), Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SE., Washington, D.C. 20460.

Written comments may be submitted while a petition is pending before the agency. The comments are to be identified by the document control number "[PF-202]" and the specific petition number. All written comments filed pursuant to this notice will be available for public inspection in the product manager's office from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: The designated product manager at the telephone number given in each petition.

SUPPLEMENTARY INFORMATION: EPA gives notice that the following pesticide petitions have been submitted to the agency to establish tolerances for residues of certain pesticide chemicals in or on certain raw agricultural commodities and animal feeds in accordance with the Federal Food, Drug, and Cosmetic Act. The analytical method for determining residues, where required, is given in each specific petition.

OF2413. Union Carbide Corp., 7825 Baymeadows Way, Jacksonville, FL 32216. Proposes amending 40 CFR 180 by establishing a tolerance for residues of the insecticide thiodicarb (dimethyl *N,N'*-[thiobis[(methylimino)carbonyloxy]] bis[ethanimidothioate]) in or on the raw agricultural commodities: cottonseed at 0.4 part per million (ppm), soybean seed at 0.1 ppm, and soybean (straw) at 0.2 ppm. (PM-12, Jay S. Ellenberger, Rm. E-303, 202-426-2635).

FAP OH5275. Union Carbide Corp., 7825 Baymeadows Way, Jacksonville, FL 32216. Proposes amending 21 CFR 561 by establishing a regulation permitting residues of the insecticide thiodicarb (dimethyl *N,N'*-[thiobis[(methylimino)carbonyloxy]] bis[ethanimidothioate]) on the commodities cottonseed hulls at 0.8 ppm and soybean hulls at 0.4 ppm. (PM-12, Jay S. Ellenberger, Rm. E-303, 202-426-2635).

PP OF2406. Shell Oil Co., Suite 200, 1025 Connecticut Ave., NW., Washington, D.C. 20036. Proposes amending 40 CFR 180.362 by establishing a tolerance for residues of hexakis [2-methyl-2-phenylpropyl)-distannoxane] and its organotin metabolites calculated as hexakis [2-methyl-2-phenylpropyl) distannoxane] in or on the raw agricultural commodity strawberries at 10.0 ppm. The proposed analytical method for determining residues is by thin layer chromatography. (PM-12, Jay S. Ellenberger, Rm. E-303, 202-426-2635).

PP OF2401. American Cyanamid, PO Box 400, Princeton, NJ 08540. Proposes amending 40 CFR 180.361 by establishing a tolerance for the combined residues of pendimethalin [*N*-(1-ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine] in or on the raw agricultural commodity rice grain at 0.05 ppm. The proposed analytical method for determining residues is gas chromatography with a Nickel-63 electron capture detector. (PM-25, Robert J. Taylor, Rm. E-359, 202-755-2196).

(Sec. 408(d)(1), 68 Stat. 512, (7 U.S.C. 135); 409(b)(5), 72 Stat. 1786, (21 U.S.C. 348))

Dated: October 17, 1980.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 80-33484 Filed 10-27-80; 8:45 am]

BILLING CODE 6560-32-M

[PH-FRL 1645-3; OPP-30135A]

Elanco Products Co.; Approval of Application To Register a Pesticide Product Containing New Active Ingredient

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Elanco Products Co. has been granted approval to register the product NIBROXANE which contains the active ingredient 5-bromo-2-methyl-5-nitro-1,3-dioxane which was not previously registered in another product.

FOR FURTHER INFORMATION CONTACT: John H. Lee, Product Manager (PM) 31, Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, Rm. E-322, 401 M St. SW., Washington, D.C. 20460, (202-426-9411).

SUPPLEMENTARY INFORMATION: EPA issued a notice that was published in the **Federal Register** of July 25, 1977 (42 FR 37848) that Elanco Products Co., Box 1750, Indianapolis, IN 46206, had submitted an application to register a pesticide product containing a new active ingredient, NIBROXANE. Active ingredient: 5-bromo-2-methyl-5-nitro-1,3-dioxane at 98%. The application proposed that the product be classified for manufacturing use as an anti-bacterial preservative. Notice of this registration is given in accordance with 40 CFR 162.7(d)(2).

This application was approved September 10, 1980, and the product has been assigned the EPA Registration No. 147-1110. A copy of the approved label and list of data references used to support registration are available for public inspection in the office of the product manager.

The data and other scientific information used to support registration, except for material specifically protected by section 10 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (92 Stat. 819; 7 U.S.C. 135) will be available for public inspection in the Information Services Branch, Rm. EB-35, EPA, 202-426-8850 in accordance with section 3(c)(2) of FIFRA, within 30 days after the registration date of September 10, 1980.

Requests for data must be made in accordance with the provisions of the freedom of information act and must be addressed to the Freedom of Information Office (A–101), EPA, 401 M St. SW., Washington, D.C. 20460. Such requests should: (1) identify the product by name and registration number and (2) specify the data or information desired.

(Sec. 3(c)(5), 92 Stat. 824, (7 U.S.C. 135)).

Dated: October 17, 1980.

James M. Conlon,

Acting Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 80–33485 Filed 10–27–80; 8:45 am]

BILLING CODE 6560–32–M

[PHS-FRL 1645–1; PP 9G2160/T267]

Fluridone; Establishment of a Temporary Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA has established a temporary tolerance for residues of the herbicide fluridone (1-methyl-3-phenyl-5-[3-trifluoromethyl)phenyl]-4-(1*H*)-pyridinone) in or on fish at 0.1 part per million (ppm).

FOR FURTHER INFORMATION CONTACT: Richard Mountfort, Product Manager (PM) 23, Rm. E–351, Registration Division (TS–767), Office of Pesticide Programs, Evironmental Protection Agency, 401 M St., SW., Washington, DC 20460, (202–755–1397).

SUPPLEMENTARY INFORMATION: Elanco Products Co., A Division of Eli Lilly and Co., P.O. Box 1750, Indianapolis, IN 46206 has submitted a pesticide petition (9G2160) to the EPA. The petition requested that a temporary tolerance be established for residues of the herbicide fluridone (1-methyl-3-phenyl-5-[-trifluoromethyl)phenyl]-4-(1*H*)-pyridinone) in or on fish at 0.1 ppm.

This temporary tolerance is being estabilised to permit the marketing of fish when treated in accordance with an experimental use permit (1471–EUP–67) which has been issued under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, (92 Stat. 819, 7 U.S.C. 136). A food additive regulation (FAP9H5202) was established for residues of fluoridone in potable water resulting from use of pesticide under the experimental use permit.

The scientific data reported and other relevant material were evaluated, and it has been determined that the tolerance is adequate to protect the public health.

The temporary tolerance has been established on the condition that the temporary tolerance and the experimental use permit be used with the following provisions:

1. The total amount of the active herbicide to be used will not exceed the quantity authorized by the experimental use permit.

2. Elanco Product Co. will immediately notify the EPA of any finding from the experimental use that have a bearing on safety. The company will also keep records of production, distribution, and performance, and on request make these records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This temporary tolerance will expire August 20, 1981. Residues not in excess of this temporary tolerance remaining in or on fish after expiration of this tolerance will not be considered actionable if the pesticide is legally applied during the term, and in accordance with, provisions of the experimental use permit and temporary tolerance. This temporary tolerance may be revoked if the experimental use permit is revoked, or if any scientific data or experience with this pesticide indicate such revocation is necessary to protect the public health.

(Sec. 408. (j), 68 Stat. 561, (21 U.S.C. 136(a)(j))

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 80–33483 Filed 10–27–80; 8:45 am]

BILLING CODE 6560–32–M

[A5 FRL 1643–4]

Ohio; Extension of the Interim Enforcement Policy for Sulfur Dioxide Emission Limitations

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice for extension of the interim enforcement policy for sulfur dioxide emission limitations in Ohio.

SUMMARY: By this notice, the U.S. Environmental Protection Agency is extending the policy concerning the enforcement of the sulfur dioxide emission limitations in Ohio beyond February 11, 1981. This policy was originally published in the **Federal Register** on February 11, 1980 (45 FR 9101).

This policy was intended to focus the Agency's enforcement resources on those sources of SO2 which presented the greatest environmental threat while the issue of sulfur variability was under review. Although it is now clear that the review and rulemaking procedure will not be completed by February 1981, it is anticipated that this process will be completed by March 1, 1982. Therefore, this policy will be extended until March 1, 1982.

FOR FURTHER INFORMATION CONTACT: Ms. Charlie Smith (312) 353–1681.

Dated: October 17, 1980.

John McGuire,

Regional Administrator.

[FR Doc. 80–33481 Filed 10–27–80; 8:45 am]

BILLING CODE 6560–26–M

[OPTS 10004; FRL 1644–2]

TSCA Chemical Assessment Series; Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing the availability of "Chemical Screening: Initial Evaluations of Substantial Risk Notices, section 8(e), July 1, 1979–January 31, 1980," Volume 2, in the *TSCA Chemical Assessment Series.*

FOR FURTHER INFORMATION CONTACT: Document Control Officer (TS–793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E–447, 401 "M" St., SW, Washington, D.C. 20460, (202) 755–8050.

FOR ORDERING: John B. Ritch Jr., Industry Assistance Office, Environmental Protection Agency, Rm. E–429, 401 "M" St., SW, Washington, D.C. 20460, Toll Free: (800–424–9065), Washington, D.C.: (202–554–1404).

SUPPLEMENTARY INFORMATION: A collection of status reports (evaluations) prepared by scientists in EPA's Office of Pesticides and Toxic Substances (OPTS) on submissions received from chemical manufacturers, processors, and distributors under section 8(e) of the Toxic Substances Control Act (TSCA) between July 1, 1979, and January 31, 1980, has been published in the *TSCA Chemical Assessment Series* and is available to the public.

The information in the volume on the reported chemicals may not be widely known and may, because it provides specific examples of submitted information and EPA's evaluation of it, help anyone subject to section 8(e) to understand better the types of information that should be submitted to the EPA. In addition, this compilation of status reports describes Agency procedures for the processing of information received under section 8(e).

Comments

Because the chemical assessments published in the *TSCA Chemical Assessment Series* often will reflect initial or intermediate steps in EPA's

evaluation of a chemical under TSCA, the Agency welcomes the submission of additional information for or comments on its evaluations. Such submissions will be considered either at a subsequent step in the assessment of the subject chemical or in the decision not to proceed with further evaluation. Comments on this volume should bear the identifying docket number OPTS–10004.

Ordering

The Industry Assistance Office (IAO) in OPTS is distributing all volumes in the *TSCA Chemical Assessment Series.* IAO is maintaining two mailing lists: a subscription list of persons who want to receive all volumes in the series and a notification list of persons who want to receive announcements of individual volumes as they become available.

Persons on the subscription list automatically receive the volumes in the Series. A copy will be sent to the manufacturers of a volume's subject chemical substance, known to OPTS through the public TSCA Chemical Substance Inventory. Requests for a volume can be made by persons on IAO's notification list by telephoning the IAO (toll-free 800–424–9065 or, in Washington, D.C., 554–1404) or writing to IAO at the address given here.

Generally, five thousand copies of each volume will be printed. After this supply is exhausted, copies can be purchased from the National Technical Information Service (NTIS), whose "PB" reference number can be found in the OPTS "Comprehensive List of Scientific and Technical Reports," also available from IAO.

Dated: October 20, 1980.

Warren R. Muir,

Deputy Assistant Administrator, Office of Toxic Substances.

[FR Doc. 80-33476 Filed 10-27-80; 8:45 am]

BILLING CODE 6560-31-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 17, 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.: 17–40.

Filing party: Gerald J. Flynn, Chairman, Far East Conference, 40 Rector Street, New York, New York 10006.

Summary: Agreement No. 17–40 modifies Article 1 of the basic agreement of the Far East Conference to provide authority for the parties to establish, modify and rescind rules relating to the extension of credit, including authority to adopt a credit agreement with shippers desiring credit and to deny credit privileges to delinquent shippers.

Agreements Nos. 7100–25, 7670–21, 7770–20, and 9214–26.

Filing party: Howard A. Levy, Attorney at Law, Suite 727, 17 Battery Place, New York, New York 10004.

Summary: Agreements Nos. 7100–25, 7670–21, 7770–20, and 9214–26 would amend, respectively, the North Atlantic United Kingdom Freight Conference Agreement, North Atlantic Baltic Freight Conference Agreement, North Atlantic French Atlantic Freight Conference Agreement, and North Atlantic Continental Freight Conference Agreement by increasing the amount of the financial guarantee from $25,000 to $100,000, that each member of each respective Conference is required to furnish.

Agreement No. 9925–3.

Filing party: John R. Mahoney, Esquire, Burlingham Underwood & Lord, One Battery Park Plaza, New York, New York 10004.

Summary: Agreement No. 9925–3 is a proposal by the parties to the Pacific America Container Express Cooperative Working Arrangement to extend the expiration date of the basic agreement for 10 years, through March 31, 1991.

Agreement No.: 9976–5.

Filing party: John R. Attanasio, Esquire, Billig, Sher & Jones, P.C., Suite 300, 2033 K Street, N.W., Washington, D.C. 20006.

Summary: Agreement No. 9976–5, among the members of the Mediterranean Associated Conferences, would extend the term of the basic agreement for a period of three (3) years through March 2, 1984, beyond the present termination date of March 2, 1981.

Agreement No. 10267–5.

Filing party: Howard A. Levy, Esquire, Suite 727, 17 Battery Place, New York, New York 10004.

Summary: Agreement No. 10267–5 is a proposal by the parties to the Container Carriers Discussion Agreement to extend the expiration date of the basic agreement for 3 years, through March 31, 1984.

Agreement No.: 10404.

Filing party: John R. Mahoney, Esquire, Burlingham Underwood & Lord, One Battery Park Plaza, New York, New York 10004.

Summary: Agreement No. 10404 is a proposed Joint Service Agreement between The East Asiatic Company, Ltd. and Knutsen Line, A/S, that will operate under the name EAC-Knutsen Line in the trades between U.S. Pacific Coast ports and ports in Asia, Oceana, and Western/Northwestern Australia, along with trades between points/ports and other points/ports to the extent that the routing is via the aforedescribed trade areas. Each party agrees not to compete with the Joint Service, but may individually carry certain cargo by use of special carriers. The parties shall both either belong to or operate independently from conferences, and will file their own tariff in trades when they do not belong to a conference. EAC-Knutsen Line proposes to use no more than 10 vessels, with carrying capacity of approximately 8,855 container slots together with 5,957,100 cubic feet bale of conventional breakbulk space. The parties will agree on the appointment of common agents and the use of common terminals and stevedores. A committee comprised of representatives of each party will conduct day-to-day operations in an office(s) established by the parties. A pool will administer money flow, with service revenue to be collected, payments to be made for operating expenses, and remaining revenues to be distributed to the parties. Each party maintains a 50 percent pool share. The agreement is proposed to remain in effect for 5 years from the date of its approval.

By Order of the Federal Maritime Commission.

Dated: October 23, 1980.

Francis C. Hurney,

Secretary.

[FR Doc. 80-33510 Filed 10-27-80; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 80–75]

Cargo Export Corp. v. Intermodal Container Service, Ltd., Bangladesh Shipping Corp. and Peralta Shipping Corp.; Filing of Complaint and Assignment

Notice is given that a complaint filed by Cargo Export Corporation against Intermodal Container Service, Ltd., Bangladesh Shipping Corporation and Peralta Shipping Corporation was served October 21, 1980. The complaint

alleges that respondents knowingly and willfully combined and conspired to obtain and permit transportation by water at less than the rates otherwise applicable in violation of section 16 of the Shipping Act, 1916; subjected complainant to rates for transportation in violation of sections 14, 16 and 18 of the Shipping Act, 1916; and further engaged in an unlawful and unreasonable practice in violation of section 17 and unlawful retaliation in violation of section 14 of the Act.

This proceeding has been assigned to Administrative Law Judge Joseph N. Ingolia. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record.

Francis C. Hurney,

Secretary.

[FR Doc. 80-33512 Filed 10-27-80; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 80-72]

North River Insurance Co. and Northwestern National Insurance Co. v. Federal Commerce and Navigation Co., Ltd.; Filing of Complaint and Assignment

Notice is given that a complaint filed by North River Insurance Company and Northwestern National Insurance Company against Federal Commerce and Navigation Company, Ltd. was served October 21, 1980. Complainants allege that respondent, by defending a cargo damage suit of complainants more vigorously than other cargo suits has violated sections 14, 16 and 17 of the Shipping Act, 1916.

This proceeding has been assigned to Chief Administrative Law Judge John E. Cograve. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record.

Francis C. Hurney,

Secretary.

[FR Doc. 80-33511 Filed 10-27-80; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Public Health Service; Alcohol, Drug Abuse, and Mental Health Administration; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HM (Alcohol, Drug Abuse, and Mental Health Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (38 FR 1654, January 11, 1974, as amended most recently in pertinent part at 44 FR 49311, August 22, 1979) is amended to reflect the complete reorganization of the National Institute on Alcohol Abuse and Alcoholism, Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA). The reorganization accomplishes the following: (1) creates an Office of Policy Analysis, a Division of Occupational Alcoholism Programs, and a Division of State and Community Assistance; (2) abolishes the Office of Program Development and Analysis and the Division of Resource Development; (3) revises the functional statements and titles for: the Office of Program Support—to be retitled the Office of Planning and Resource Management; the Division of Special Treatment and Rehabilitation—to be retitled the Division of Alcoholism Services Development; and (4) modifies the rest of the functional statements of the Institute.

Section HM-B, Organization and Functions, is amended as follows:

Under ADAMHA (HM), delete all functional statements for the *National Institute on Alcohol Abuse and Alcoholism (HMC)* and substitute the following:

National Institute on Alcohol Abuse and Alcoholism (HMC)

Provides leadership, policies, and goals for the Federal effort in the prevention, control, and treatment of alcohol abuse and alcoholism and the rehabilitation of affected individuals. In carrying out these responsibilities the Institute: (1) conducts and supports basic and applied alcohol related investigations, by means of extramural and intramural research programs; (2) conducts and supports research on the development and improvement of alcoholism services delivery, administration and financing; (3) supports alcoholism services programs and projects; (4) supports the training of personnel in research, prevention, control, and treatment of alcoholism; (5) collaborates with and provides technical assistance to State and community efforts in planning, establishing, improving, coordinating and evaluating alcohol abuse and alcoholism programs; (6) plans, supports and stimulates the development and expansion of occupational alcoholism programs; (7) collaborates with, provides assistance to and encourages other Federal agencies, national, international, State and local organizations, hospitals, and voluntary groups to facilitate and expand programs for the prevention of alcohol abuse and alcoholism, and for the care, treatment and rehabilitation of alcoholic persons; (8) provides technical assistance in the development, implementation and administration of an alcoholism detection, referral, and treatment program for Federal civilian employees within the Public Health Service; and (9) carries out administrative and financial management, policy development, planning and evaluation, and public information functions which are required to implement such programs.

Office of the Director (HMC1)

(1) Provides leadership, coordination, and direction in the development and implementation of Institute policies, goals and priorities; (2) plans, directs and provides overall administration of the program and management activities of the Institute; (3) serves as the focal point for the Department's efforts on alcohol abuse and alcoholism; (4) conducts and coordinates interagency, intergovernmental, international and public affairs activities of the Institute; (5) develops Institute program evaluation policy and plans, directs and coordinates program evaluation activities of the Institute; (6) acts as liaison with special populations; and (7) monitors the conduct of the equal employment opportunity activities of the Institute.

Office of Policy Analysis (HMC12)

(1) In conjunction with program offices of the Institute, develops and recommends to the Director, National Institute on Alcohol Abuse and Alcoholism, program policies for potential application at the national,

State or local level; (2) monitors broad social policy issues surrounding the field of alcoholism, including labeling of alcoholic beverages, and alcohol beverage control laws; (3) prepares a variety of special alcoholism reports in response to Congressional, departmental, and programmatic needs for alcohol information; (4) serves as the Institute focal point for the development of service financing programs designed to improve and increase the financing of alcoholism services at national, State and local levels; and (5) conducts legislative analyses and provides legislative services.

Office of Extramural Policy and Project Review (HMC14)

(1) Plans, administers and coordinates peer and objective review of grant applications and contract proposals; (2) develops Institute review policies and procedures, provides orientation and guidance on such policies and procedures, and monitors the review process to ensure quality of review and conformance to policy; (3) recommends nominees for review groups; (4) administers the committee management function; (5) coordinates and assures the development of and adherence to program policies related to Institute extramural activities; (6) collects and analyzes data relating to grant applications and contract proposals reviewed, and makes recommendations, as necessary, for changes in Institute committee structure and/or referral guidelines; (7) collaborates with other Institute and OA offices to ensure adequate exchange of information and assure optimum effectiveness of the review process; and (8) participates in the review of proposed DHHS, PHS and ADAMHA policies and documents affecting peer and objective review.

Office of Planning and Resource Management (HMC15)

(1) Coordinates Institute planning activities and participates in the preparation of Institute-wide program plans; (2) analyzes program plans developed within the divisions, and monitors implementation of the plans; (3) provides administrative management support to the Institute in such areas as (a) financial management, (b) grants and contracts management, and (c) administrative services; (4) develops administrative management policies, procedures and guidelines, and conducts management studies of Institute programs and operations; (5) maintains liaison with the management staff of the Office of the Administrator and implements within the Institute general management policies prescribed by ADAMHA and higher authorities; and (6) provides correspondence control services for the Institute.

Division of Alcoholism Services Development (HMC7)

(1) Plans, develops, supports and evaluates a wide range of innovative treatment and rehabilitation demonstration programs directed toward the reduction of alcohol abuse and alcoholism among general and special population groups; (2) develops, tests and implements model treatment and rehabilitation programs, and provides support for replicating these programs; (3) develops and monitors a system for collecting and analyzing information from NIAAA-supported treatment project grants; (4) analyzes the content and quality of alcoholism treatment and rehabilitation programs administered by the division, in order to improve service delivery and the quality of care; (5) conducts health services assessment activities in relation to alcoholism services delivery programs; and (6) plans, develops, supports and evaluates training programs to ensure the availability of qualified and competent personnel working in the alcoholism field.

Division of State and Community Assistance (HMC6)

(1) Plans, develops, supports and evaluates federally funded projects administered by States and communities which support efforts to develop programs dealing with alcohol abuse and alcoholism services; (2) develops national policy and the regulatory framework for the preparation of comprehensive State plans, which pertain to the establishment and delivery of alcoholism services; (3) reviews, evaluates and approves individual State plans and recommends modification; (4) provides assistance and support to State and community governments and collaborates with them in the establishment and development of State and community sponsored alcohol training, prevention, treatment and rehabilitation programs; (5) plans, develops, supports and evaluates the Institute's voluntary resource development program; (6) administers the program of special grants to States, which implements the provisions of the Uniform Alcoholism and Intoxication Treatment Act; and (7) develops and implements a system to collect and analyze information from State-supported alcoholism programs.

Division of Occupational Alcoholism Programs (HMC8)

(1) Plans, develops, supports and evaluates programs within labor unions, occupational groups, individual industries and local Government employee organizations, for the identification and treatment of employees with problems related to alcohol abuse; (2) provides technical assistance and consultation to the Office of Personnel Management, Department of Health and Human Services, Public Health Service, regional offices, and other agencies, in the development and administration of appropriate alcoholism programs for other Federal civilian employees; (3) maintains close liaison with, and provides technical assistance to public and private organizations, to promote the development of effective occupational alcoholism programs; (4) develops, tests and implements model occupational alcoholism programs and provides support for replicating these programs; and (5) stimulates and supports the communication of information related to occupational alcoholism programs, through conferences, workshops and meetings.

Division of Prevention (HMC3)

(1) Develops and analyzes national policies and strategies for the prevention of alcohol abuse and alcoholism; (2) plans, develops, supports and evaluates a broad range of alcohol prevention programs and activities; (3) develops, tests and implements model prevention and public education programs and provides support for replicating these programs throughout the Nation; (4) plans and develops a wide range of alcoholism prevention strategies and initiatives, including national or local public media programs; (5) collaborates with other Federal agencies, such as the Bureau of Alcohol, Tobacco and Firearms, Department of Transportation, Veterans Administration, Federal Trade Commission and the Food and Drug Administration in the development of alcohol prevention activities; (6) collaborates with, and provides technical assistance to public agencies and other nonprofit organizations in the development and implementation of alcoholism prevention programs; and (7) stimulates and supports the communication of educational and programmatic material dealing with alcoholism prevention, through the activities of the National Clearinghouse for Alcohol Information, and by means of conferences, scientific journals, and other publications.

Division of Extramural Research (HMCA)

(1) Plans, develops, and supports programs of basic and applied research on the multiple determinants and processes of alcoholism and other alcohol-related problems; on the prevention of alcohol abuse; and the diagnosis, treatment, and rehabilitation of persons who abuse alcohol; (2) develops and supports clinical research to assess the efficacy of therapeutic procedures for the treatment of alcoholism and alcohol-related disorders; (3) administers the Institute's National Research Centers program; (4) administers the Institute's research scientists development and research training programs; (5) evaluates the results of research supported by the Division, and stimulates the dissemination of research findings and the interpretation of research data, through consultation and the development of conferences; symposia and major scientific publications; and (6) collaborates with other national and international agencies, universities and scientific organizations undertaking studies related to alcoholism and alcohol abuse.

Division of Intramural Research (HMCB)

(1) Plans, develops and conducts a program of basic and applied alcohol research, including metabolic, epidemiological, preclinical and clinical investigations, on the multiple determinants and processes of alcoholism and other alcohol-related problems and in the areas of prevention, diagnosis, treatment, and rehabilitation; and (2) collaborates with other agencies, universities, and scientific organizations in the conduct of basic and applied research on alcohol and its effects.

Dated: October 21, 1980.

Patricia Roberts Harris,

Secretary.

[FR Doc. 80-33467 Filed 10-27-80; 8:45 am]

BILLING CODE 4110-88-M

Health Care Financing Administration

Medicare Program; Exclusion From Medicare Coverage of Bilateral Carotid Body Resection to Relieve Pulmonary Distress

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of a HCFA ruling.

SUMMARY: This notice announces a HCFA ruling that restates Medicare policy that the surgical procedure known as bilateral carotid body resection, performed to relieve respiratory distress, is not a covered service. The Medicare statute (section 1862(a)(1) of the Social Security Act) and regulations (42 CFR 405.310(k)) preclude reimbursement for items or services not found to be reasonable and necessary for the diagnosis and treatment of illness or injury or to improve the functioning of a malformed body member. One criterion we have used is the safety and effectiveness of the procedure. Available evidence does not show that bilateral carotid body resection to relieve pulmonary distress is safe and effective. The HCFA ruling assures uniform Medicare policy on coverage of this surgical procedure.

EFFECTIVE DATE: Effective for services furnished after October 28, 1980.

FOR FURTHER INFORMATION CONTACT: Henry J. Hehir, Director, Division of Medical Services Coverage Policy, 301-594-8561.

SUPPLEMENTARY INFORMATION: The text of the HCFA ruling reads as follows:

EXCLUSION FROM MEDICARE COVERAGE OF BILATRAL CAROTID BODY RESECTION TO RELIEVE PULMONARY DISTRESS

HCFAR 80-2

Purpose: This ruling restates policy regarding Medicare coverage of bilateral carotid body resection to relieve pulmonary distress.

Citations: Section 1862(a)(1) of the Social Security Act (42 U.S.C. 1395y(a)(1)); 42 CFR 405.310(k); 20 CFR 422.408.

Pertinent History: The Medicare statute prohibits payment for any expenses incurred for items or services "which are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member" (section 1862(a)(1) of the Act). The Health Care Financing Administration (HCFA) has interpreted this statutory provision to exclude from Medicare coverage medical and health care services and items that are not demonstrated to be safe and effective by acceptable clinical evidence. HCFA's source of medical advice on issues of medical safety and efficacy of services and items is the Public Health Service (PHS), National Center for Health Care Technology.

Bilateral carotid body resection is sometimes performed to relieve the symptoms of pulmonary conditions such as asthma and emphysema. While this is not a common surgical procedure, a number of claims have been submitted for Medicare reimbursement. Because of questions about its efficacy and safety, HCFA requested PHS review of the procedure for purposes of Medicare coverage.

PHS has consistently advised HCFA that the bilateral carotid body resection procedure, performed to relieve the symptoms of pulmonary conditions such as asthma and emphysema, lacks general acceptance by the professional medical community because of questions concerning efficacy and safety. A thorough review of these questions was conducted in 1978 by a panel of physician specialists convened by the National Heart, Lung and Blood Institute of the National Institutes of Health (NIH). The panel reviewed all published articles on bilateral carotid resection and obtained comments and opinions from physicians, including surgeons, who were knowledgeable and experienced in the use of this surgical procedure as a treatment for pulmonary distress. In a report (Report of Task Force on Bilateral Carotid Body Resection, dated March 10, 1978) (Appendix I), the NIH panel reaffirmed earlier PHS decisions that there was not sufficient evidence to establish the safety and efficacy of the bilateral carotid body resection procedure for relief of pulmonary distress. The panel indicated its concern with the risks to the patient during the period of hospitalization for the procedure. In addition, the panel noted that "theoretical considerations suggest that the risk of hypoventilation may be increased, especially in patients with chronic obstructive pulmonary disease".

Based on this advice, HCFA issued an instruction to carriers and intermediaries in January, 1979 that Medicare does not cover carotid body resection to relieve pulmonary symptoms. (See Appendix II, *Part A Intermediary Manual,* Chapter II—Coverage of Services Appendix, Coverage Issues.) This is the normal manner in which HCFA announces such decisions.

There have been many decisions by Departmental Administrative Law Judges (ALJs), however, that have not applied this policy and have concluded that bilateral carotid body resections were "reasonable and necessary". In 1979 the Social Security Administration's Appeals Council conducted a consolidated hearing regarding claims for bilateral carotid body resection and determined that the claims were payable under Medicare. HCFA has reviewed those proceedings, and concluded that the coverage policy on this procedure should continue to reflect the medical advice given by PHS.

The purpose of this ruling, therefore, is to make our coverage decision binding on ALJs and the Appeals Council. (See 20 CFR 422.408.)

HCFA consulted with PHS when preparing this ruling, and again received advice that there is still insufficient clinical evidence to establish that bilateral carotid body resection is a safe and effective treatment for pulmonary diseases. Furthermore, there is a continued concern that the procedure is unsafe due to the risk of increased hypoventilation.

Ruling: Bilateral carotid body resection performed to relieve and treat pulmonary symptoms and diseases is not established as safe and effective and, therefore, is excluded from Medicare coverage under the authority of section 1862(a)(1) of the Act.

Effective Date: As explained above, we have previously issued policy in manual instructions excluding this service from Medicare coverage. However, since ALJs and the Appeals Council have ruled in several cases that claims for these services are payable, it is possible that some beneficiaries, relying on these rulings, have proceeded to have the operation performed in expectation of Medicare payment. In fairness to those beneficiaries, we are making the ruling effective for services furnished after the date of publication.

Cross-References: Part A Intermediary Manual, Chapter II, Coverage of Services Appendix, Coverage Issues, § 35–7; *Carriers Manual,* Chapter II, Coverage Issues Appendix, § 35–7.

Appendix I—Report of Task Force on Bilateral Carotid Body Resection

March 1978

Division of Lung Diseases, National Heart, Lung, and Blood Institute

U.S. Department of Health, Education, and Welfare

Public Health Service, National Institutes of Health

Table of Contents

Foreword

The Task Force on Bilateral Carotid Body Resection was constituted to advise the Division of Lung Diseases relative to a controversial issue with a long history, many ramifications and significant medical, ethical and economic implications.

In the half-century since the chemoreceptivity of the carotid body was discovered, its role in regulating ventilation under hypoxic conditions has been extensively studied in animals and man. Removal of one carotid body for symptomatic relief of intractable bronchial asthma was first performed in 1941, by K. Nakayama in Japan. In this country R. H. Overholt performed the first unilateral resection in 1961, and B. Winter the first bilateral resection in 1962. Since then thousands of patients have undergone unilateral or bilteral carotid body resection, most often for treatment of asthma, more recently for chronic bronchitis or emphysema.

There is general agreement that, in the hands of experienced surgeons, the operation *per se* is neither difficult nor dangerous; very few deaths are directly attributable to the surgery. There also appears to be general agreement that, in most cases, unilateral resection does not provide symptomatic relief for bronchial asthma. However, the biomedical community is sharply divided over the following questions:

- Does bilateral carotid body resection provide symptomatic relief for patients with bronchial asthma, chronic bronchitis or emphysema?
- Does absence of innervatioin of both carotid bodies place the patient at risk when confronted with situations requiring rapid ventilatory responses?
- Is it ethical to continue to use an irreversible surgical procedure when its efficacy has not been critically assessed in a controlled clinical trial?

The controversy also has economic complications. Patients undergoing bilateral resection for symptomatic relief of bronchospasm or chronic obstructive lung disease are not covered by third party payments, but probably would be if the operation were demonstrated unequivocally to be therapeutic.

The Division of Lung Diseases was drawn into this controversy when, in July 1975, Dr. Benjamin Winter wrote to the Director suggesting that a clinical trial of bilateral carotid body resection be undertaken. Stimulated by this suggestion, the Division obtained informal professional opinions from 12 well-recognized chest physicians. Their letters indicated that much of the available information was anecdotal, but little was based on firm data from controlled studies. In November 1975 a conference on *The Value of Bilateral Carotid Body Resection in Management of Patients with Severe Asthma, Bronchitis or Emphysema* [1] was held in San Francisco under the chairmanship of Dr. Julius Comroe. The report of the conference included a recommendation to "appoint a panel to prepare a protocol for a controlled, objective, prospective study of the procedure." The Pulmonary Diseases Advisory Committee reviewed the conference report and, in February 1976, recommended (1) covening a panel to develop a protocol for such a clinical trial, and (2) postponing any decision about whether to initiate a trial until a satisfactory protocol had been developed.

Because of the complexity of the issues to be addressed and the need for an indepth examination of the problem, the Division constituted a task force that was charged to:

- Review and assess the reported experimental and clinical evidence that bilateral carotid body resection is therapeutically effective in management of intractable bronchial asthma, chronic bronchitis or emphysema.
- Determine, on the basis of available evidence whether there was need for a clinical trial. If a trial was recommended,
  - ✔ Develop a protocol that included defined endpoints and criteria for evaluating the therapeutic efficacy of the procedure.
  - ✔ Assess the ethical problems associated with the proposed trial.

The 12-member Task Force on Bilateral Carotid Body Resection, under the chairmanship of Dr. Alan Pierce, met on May 17, and June 13, 1977, and held its final meeting on March 10, 1978. During this ten-month period, it reviewed the literature and obtained oral and written testimony from surgeons and physicians who had direct experience with patients who had undergone the procedure. Dr. Benjamin Winter and his associate Dr. Richard Baum attended the June 1977 meeting to report data on Dr. Winter's patients and, at the same meeting, Drs. Karlman Wasserman and Brian Whipp described their studies of some of Dr. Winter's patients.

Written comments were obtained from nine experts who had either performed bilateral resections or studied patients subsequent to such surgery. Dr. Y. Honda of Chiba University attended the March 1978 meeting and summarized the extensive Japanese experience, which includes 10-year and some 25-year follow-up studies of patients.

The members of the task force are listed . . . [below]. Their report speaks for itself and will be presented to the Pulmonary Diseases Advisory Committee, the National Heart, Lung, and Blood Advisory Council, and the staff of the National Heart, Lung, and Blood Institute. It will also be available for distribution to the large segments of the medical, surgical and biomedical communities interested in the issues, and to Federal and other agencies concerned with its implications for reimbursement of the costs of patient care.

In constituting the task force, the Division of Lung Diseases clearly expressed its commitment to contribute insofar as possible to resolving the controversy surrounding the use of bilateral carotid body resection for treatment of asthma, chronic bronchitis or emphysema. If the Division's Advisory Committee and the Institute's Advisory Council concur with the recommendations of the task force, the Division will take appropriate steps toward development of a protocol for a randomized, prospective clinical study that would be a definitive trial of the efficacy of bilateral resection. However, the role of the Division of Lung Diseases in implementing such a trial will depend upon approval of the Pulmonary Diseases Advisory Committee and the National Heart, Lung, and Blood Advisory

[1] Conference Participants: Drs. Cedric R. Bainton, Julius H. Comroe, Jr., Warren M. Gold, Thomas F. Hornbein, Norman Jones, Robert A. Mitchell, John F. Murray, Jay A. Nadel, John Severinghaus, Karlman Wasserman.

Council and the availability of adequate funds.

The Report of the Task Force on Bilateral Carotid Body Resection reflects the dedication and balanced professional judgments that so many have brought to bear in arriving at the recommendations. To all those who contributed information and professional opinions to the Task Force, to the Chairman, Dr. Alan Pierce, who provided such dynamic leadership, and to all the members, whose painstaking approach, unstiniting efforts and knowledgeable deliberations brought this difficult enterprise to a successful conclusion, I gratefully acknowledge their invaluable help. In expressing sincere thanks, I also speak for the Division of Lung Diseases and the National Heart, Lung, and Blood Institute.

Dated: March 10, 1978, Bethesda, Maryland.

Claude Lenfant, M.D.,

Director, Division of Lung Diseases, National Heart, Lung, and Blood Institute.

Task Force on Bilateral Carotid Body Resection

Chairman: Alan K. Pierce, M.D., Professor of Medicine, University of Texas, Southwestern Medical School, Dallas, Texas

Harry S. Abram, M.D.,[2] Department of Psychiatry, Vanderbilt University, Nashville, Tennessee

David DeMets, Ph.D., Biometrics Research Branch, Division of Heart and Vascular Diseases, National Heart, Lung, and Blood Institute, Bethesda, Maryland

Charles Flagle, Dr. Eng., Professor and Head, Division of Operations Research, Johns Hopkins School of Hygiene and Public Health, Baltimore, Maryland

Ian Higgins, M.D., D.P.H., Professor of Epidemiology, University of Michigan, School of Public Health, Ann Arbor, Michigan

Norman L. Jones, M.D., Professor of Medicine, McMaster University, Hamilton, Ontario

Neil Krupp, M.D., Department of Psychiatry, Cleveland Clinic, Cleveland, Ohio

Jay A. Nadel, M.D., Professor of Medicine and Radiology, University of California, School of Medicine, San Francisco, California

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Michael Tarter, Ph.D., Associate Professor of Biostastics, University of California, Berkeley, School of Public Health, Berkeley, California

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[2] Deceased

Report of Task Force on Bilateral Carotid Body Resection

Charge to and Rationale for Creating the Task Force

Over 40,000 deaths in the United States are attributed each year to bronchitis, emphysema, asthma, or chronic obstructive lung disease (International Classification of Disease Codes 490 to 493 and 519.3). It is estimated that there are at least 60,000 additional deaths in which these diseases are contributory causes. Approximately 35,000 Americans become totally disabled from these diseases each year, and emphysema has been second to coronary heart disease as a cause of social security-compensated disability for at least 15 years. Data from the U.S. National Health Survey indicate that chronic respiratory diseases comprise 10 percent of all conditions causing disability of one week or more. Approximately two percent of persons aged 17 years and over interviewed in the Health Interview Survey stated that they had bronchitis and/or emphysema. But this must be a minimal figure since many surveys have reported a prevalence of 10 to 40 percent depending on age, sex, and the definition of disease that is used. The economic cost of these diseases has been estimated at $5.7 billion—direct costs for hospital treatment, physicians' services, and prescribed drugs amounting to $1.0 billion and indirect costs from lost productivity due to morbidity and mortality amounting to $4.7 billion.[3]

It is clear, therefore, that obstructive airways diseases constitute a major health problems for the citizens of this country. Any potentially beneficial therapy for these patients must be examined by as objective criteria as possible to determine if it can play a role in decreasing this awesome morbidity or mortality. Consequently in early 1977, a Task Force on Bilateral Carotid Body Resection was appointed by the Division of Lung Diseases of the National Heart, Lung, and Blood Institute. The Task Force was charged to:

- Review and assess the reported experimental and clinical evidence that bilateral carotid body resection is therapeutically effective in management of intractable bronchial asthma, chronic bronchitis or emphysema.
- Determine, on the basis of available evidence, whether there was need for a clinical trial. If a trial was recommended.

Develop a protocol that included defined endpoints and criteria for evaluating the therapeutic efficacy of the procedure.

Assess the ethical problems associated with the proposed trial.

Scientific Background

Anatomy of Carotid Bodies

The two carotid bodies are small structures dorsal to the bifurcations of the common carotid arteries. In humans they are located on the medial sides of these bifurcations (*1*). Each receives its blood supply from a branch of the carotid artery; blood flow is large relative to the mass of the tissue (*2*). Innervation is through the carotid sinus nerve, predominantly by glossopharyngeal afferent fibers with contributions of sympathetic efferents from the superior cervical ganglia and preganglionic parasympathetic efferent fibers from the vagus nerves (*3*). Utilizing the surgical technique described by Winter (*1*), it is possible to remove the carotid bodies without substantive damage to the lateral tracts of the carotid sinus nerves. Thus, chemoreceptor function may be ablated while preserving baroreceptor function (*4*).

Carotid bodies are composed of two major cell types. Type I (glomus) cells contain cytoplasmic vesicles with electron dense cores, and type II (sustentacular) cells have thin cytoplasmic extensions which ensheath the type I cells. Although the exact mechanisms are not entirely clear (*2,3*), it is believed that the chemoreceptor functions of the carotid bodies are mediated by the interaction of type I cells and the afferent fibers of the glossopharyngeal nerves.

Physiology of Carotid Bodies

The major physiological stimulus to the carotid bodies is a reduction in the arterial oxygen tension (PaO_2) which leads to an increase in ventilation. The carotid bodies are active at a PaO_2 that is normal while breathing ambient air at sea level. This activity is suppressed by the administration of high inspired oxygen concentrations. However, the carotid body effect at such PaO_2's is small and difficult to demonstrate. Conversely, the effects on ventilation at lower PaO_2's are more striking and are readily demonstrated by administering low inspired oxygen concentrations. The hypoxemia-induced hyperventilation is blunted by the effect of the resultant low arterial carbon dioxide tension ($PaCO_2$) acting on central chemoreceptors (*4*). Thus, the carotid body response to low PaO_2's may be more clearly demonstrated by maintaining a constant $PaCO_2$ by the administration of carbon dioxide in the inspired gas.

Some studies of patients who have had both carotid bodies removed (*5, 6*) or who have had carotid endarterectomies (*7*) have demonstrated that the ventilatory response to acute hypoxemia is entirely lost, while others have reported that a weak response remains (*8–11*). The mediators of the small remaining response in some patients are not known but could represent a function of the aortic body or could represent regeneration of sensory terminals at the site of glomectomy (*12*). Not only is there no, or minimal, ventilatory response to severe hypoxemia in patients following bilateral carotid body removal, but there may also be no discomfort or dyspnea when they are subjected to severe hypoxemia. An objective assessment of this latter phenomenon may be the observation that patients without carotid bodies can hold their breaths considerably longer than normal persons when each is subjected to hypoxemia (*11, 13*).

The carotid bodies are also stimulated by a decrease in arterial pH (*14*). The minimal stimulatory effect of increasing $PaCO_2$ is thought to be mainly through its influence on pH (*15*). Stimulation of ventilation by $PaCO_2$

[3] Respiratory Diseases: Task Force Report on Prevention, Control, Education, March 1977. DHEW Publication No. (NIH) 77–1248.

is predominantly through central nervous system chemoreceptors. Carotid body chemoreceptors are also responsible for the increased ventilation which accompanies the metabolic acidosis of heavy exercise, and may contribute to ventilatory drive at the outset of exercise (*16*). Although normal long-term residents of high altitude have an attenuated ventilatory response to acute hypoxemia (*17, 18*), they apparently have normal responsiveness of their carotid bodies during exercise (*18*). Such is not the case for patients who have had bilateral carotid body resections (*5*).

The carotid bodies are sensitive to other stimuli, such as a change in blood temperature and a decrease in blood flow to the chemoreceptor cells, and they initiate a variety of responses in addition to increasing ventilation (*19*). The most important additional reflex for the purpose of the Task Force is the finding of Nadel and Widdicombe that stimuli to the carotid body, such as hypoxemia, cause an increase in airway resistance in dogs (*20*). It was further demonstrated that the glossopharyngeal nerves are the afferent limbs of this reflex, and the vagi are the efferent limbs. This work has been cited (*1, 21*) as the rationale for the symptomatic improvement reported by some patients with airways obstructive disease following bilateral carotid body resection. However, the results of various studies in regard to this reflex in humans are conflicting. Butler *et al.* found no effect of breathing pure oxygen (*22*), but Saunders *et al.* found that hypoxia decreased airway conductance (*23*). Schiffman *et al.* found that oxygen caused attenuation of exercise-induced bronchospasm (*24*) and Astin and Penman presented data suggesting that breathing 30 percent oxygen decreased airway resistance in patients with chronic obstructive airway disease (*25*). Thus, the members of the Task Force are not aware of a definitive demonstration of this reflex in normal humans or patients with airways obstructive disease.

Unilateral Carotid Body Resection

Although unilateral carotid body resections for patients with airways obstructive disease had been practiced in Japan since the 1940's, the first reports in the literature of this country were in 1961 (*26, 27*). Since that time the results of this procedure have been reported both in a large number of patients purported to have asthma and in patients with chromic bronchitis and emphysema (*28–40*). These reports conflict concerning the clinical benefits of unilateral carotid body resection. In these studies neither sham-operated nor unoperated control patients were studied; patients were usually not well characterized as to type of airways disease; pulmonary function studies pre- and post-operatively were usually not reported; and the usual assessment was only the subjective impression of the patients and the surgeons who had performed the operation. Thus, the Task Force views with skepticism those reports suggesting a clinical improvement in a high fraction of patients, and questions whether the reported results were due to a change in pathophysiological mechanisms or to psychological factors.

Three double-blinded or controlled studies of unilateral carotid body resections have been reported (*41–44*). These studies have provided convincing evidence that unilateral resection of a carotid body is of no value in the treatment of airways obstructive disease. Thus, the Task Force agrees with the Committee on Therapy of the American Thoracic Society that "this procedure has no place in the treatment of patients with asthma or emphysema" (*45*)

Bilateral Carotid Body Resection

The clinical results of patients who have had bilateral carotid body resections for airways obstructive disease have not been as frequently reported (*1, 21, 26, 28–30, 33, 37, 46–49*), and these patients are not separately reported from unilaterally operated patients in some series. Nevertheless, a sufficient number of patients have been operated to have definitively determined the efficacy of this procedure had the patients been studied and reported more completely. Unfortunately, in the judgment of the Task Force, the published reports of patients who have undergone bilateral carotid body resection do not allow the conclusion that the procedure is beneficial to patients with airways obstructive disease. This decision has been reached because of a lack of sufficient information concerning:

1. sham-operated control patients; or
2. similar patients randomized to operated and non-operated groups;
3. characterization of the type of airways disease and its therapy in operated patients;
4. assessment of pulmonary functions pre- and and post-operatively;
5. characterization of results of surgery and long-term follow-up of operated patients; and
6. the potential detrimental effects of such surgery.

Conversely, this same lack of information prevents the definite conclusion that bilaterial carotid body resection does not clinically benefit patients with airways obstructive diseases. In addition to a potential decrease in airway resistance by the reflexes demonstrated in dogs, it could be that an absence of a hypoxemic ventilatory drive might decrease dyspnea and result in greater comfort in selected patients (*50*). The frequency with which a loss of hypoxemic drive during episodes of acute hypoxemia from any cause would lead to potentially fatal events or to more rapidly progressive pulmonary insufficiency also cannot be estimated, and hence the net result to the patient's overall well being cannot be accurately predicted.

Conclusions

The Task Force has carried out an extensive review of published material and solicited comments, both oral and written, from surgeons who perform bilaterial carotid resection and from physicians who follow these patients.

The Task Force is unanimous in its view that before any procedure can be recommended as a therapeutic measure there should be a clear demonstration of efficacy and documentation that risk is acceptably small. The panel believes that in the case of bilaterial carotid body resection neither criterion is met. Specifically, the benefits of bilateral carotid body resection have not been clearly shown. Even in the hands of experienced surgeons the procedure has a significant in-hospital mortality rate, and theoretical considerations suggest that the risk of hypoventilation may be increased, especially in patients with chronic obstructive pulmonary disease. This latter group appears to constitute a major source of candidates for this operation as recent progress in the pharmacological treatment of asthma has markedly reduced the number of asthmatic patients in whom glomectomy would be considered. Thus the patient with chronic obstructive pulmonary disease who is unresponsive to medical therapy is most likely to become a candidate for this operation.

While it has been concluded that bilateral carotid body resection cannot presently be recommended because of currently inadequate demonstrations of benefits and of risks, a clear documentation of the utility of bilateral carotid body resection and its risks could arise from a carefully designed study of patients currently undergoing carotid body resection.

Rationale for Recommendations

Having concluded that there is no incontrovertible evidence to support the use of bilateral carotid body resection as a therapeutic procedure and that the data do not refute the potential that the procedure is harmful, the Task Force recommends that a carefully designed clinical study be undertaken. This trial should be limited to patients with chronic bronchitis and emphysema (COLD). Recent advances such as inhaled steroid preparations, selective β-agonist agents, and cromolyn sodium have made the management of most patients with reversible airways disease, asthma, more satisfactory than in former times. The Task Force does not believe that the permanent ablation of a ventilatory response to hypoxemia can be justified in these generally younger age range patients at the present. The Task Force further recommends that no patient be recruited into such a study who would not otherwise have undergone bilateral carotid body resection.

The best study design would compare patients in whom carotid body resection had been carried out with control subjects in whom a sham operation had been performed. The two groups would be selected at random, assessed pre- and postoperatively and followed concurrently by independent observers who are unaware of the patient's operative status. The Task Force does not believe that, despite the greater scientific validity, sham operations are ethical. A prospective clinical trial of patients with COLD, who desire bilaterial carotid body resection and who have been deemed suitable for this procedure by participating surgeon(s) is therefore recommended. Such subjects will be randomized into a group that receives immediate operation and a group in which this operation is delayed for one year. Initial assessment, randomization and follow-up of both cases and controls and analysis of the resulting data will be performed by physicians and scientists who do not

themselves perform the operation. Emphasis will be placed on objective methods of evaluation (lung function tests, activity capacity, expectation of life, etc.), though subjective assessment will clearly also be involved (symptoms, medications, feelings and mood). Every effort will be made to incorporate blind assessment of the observers into these subjective evaluations.

Initial assessment should include extensive historical and physiological information to insure that a baseline for future comparisons is secure. The physiological data must be sufficiently extensive to not only determine the exent of pulmonary and cardiac derangement but also to define the type of pulmonary disease insofar as possible. Estimates of exercise capacity and hypoxemia during sleep should be determined. Following randomization and operation of some patients, all patients should have periodic reassessment which includes all of the initial studies on a recurring basis for at least two years. Additionally, patients should keep standardized diaries of symptoms, medications, activity, and feelings and moods.

Short-term physiological studies to assess ventilatory responses should be performed initially and recurrently in operated patients and controls. Such studies will not only confirm the loss of carotid body chemoreceptors in operated patients but will also help establish a basis for improvement if such occurs or of detrimental effect if such occur.

Recommendations

1. A clinical trial to determine the potential benefits and detrimental effects of bilaterial carotid body resection should be undertaken. The operation should be performed by a surgical technique which does not interfere with carotid sinus baroreceptors.

2. Potential candidates for the trial are men and women judged to have chronic obstructive lung disease between the ages of 45 and 74 years. Patients with reversible airways disease, asthma, should be excluded. Exclusion for asthma should be based on the patient's history and/or reversibility of airways obstruction demonstrated by spirometry before and after bronchodilators. Patients with other serious medical diseases such as carcinoma or diabetes should also be excluded.

3. Patients with COLD should not be specifically recruited for the trial of this surgical procedure. Candidates for this trial are patients who have applied to a surgeon to have the operation performed.

4. Patients who have sought surgical intervention should be sent by the cooperating surgeon(s) to a specified neutral observer(s) who will select the potential study patients based on the criteria in recommendation 2. These patients should be fully informed about the potential benefits and risks of bilateral carotid body resection and about the requirements, benefits, and risks of the study. Informed consent must be obtained before entering the trial.

5. Patients entering the trial should be randomly assigned by the neutral observer(s) into a group who will receive bilateral carotid body resection and a control group who will not for at least one year.

6. A two-stage study should be undertaken. In Stage 1 approximately 60 patients should be equally randomized into operated and control groups. When these patients have each been followed for at least one year, all data should be analyzed for statistical differences between the groups. If the observed differences are too small or the variability is too large such that additional observations would not be useful, the trial should be terminated. If the data reveal trends of interest that are not statistically significant, a Stage 2 with the study of additional patients should be undertaken.

7. The initial assessment of each study patient by a neutral observer(s) should include the following:

a. A standardized history such as the modified British Medical Research Council questionnaire and a complete physical examination.

b. Pulmonary functional assessment including spirometry before and after bronchodilators with calculation of FVC, FEV_1, $FEF_{25-75\%}$ lung volumes; diffusing capacity; and arterial blood gases while breathing room air.

c. Cardiac assessment including ECG and chest radiograph for heart size.

d. The blood gas, ventilation, and heart rate response to standardized exercise testing.

e. The respiratory pattern, arterial oxygenation as measured by ear oximetry, and cardiac rhythm during normal sleep.

f. The ventilatory responses outlined in recommendation 10.

g. Psychological and neuropsychological studies such as the Wechsler Adult Intelligence Scale; Wechsler Bellevue Intelligence Scale; Full Scale, Performance, and Verbal IQ's; Wechsler Memory Scale; Bender-Gestalt; Background Interference Procedure; Finger Tapping; and Facial Recognition Test.

8. At the time of the original assessment, the neutral observer(s) should instruct each patient on the maintenance of a standardized diary which includes activities, medications, symptoms, physician visits, hospitalizations, appetite, weight, sleep, and the patient's mood (on a 4-point scale).

9. The neutral observer(s) will repeat the testing indicated in recommendation 7 on the 3rd or 4th postoperative day and at 1, 3, 6, 12, 18, and 24 months. Control patients will have a day assigned that will correspond to the day of operation, and tests will be repeated accordingly. At each test interval the neutral observer(s) will validate and collect the standardized interval diary.

10. Short-term physiological studies to establish a basis for improvement or detrimental effects of bilateral carotid body resection should be performed. These studies should be directed at a potential bronchoconstrictor reflex in humans mediated by the carotid bodies and at the importance of carotid bodies in regulation of respiration.

Studies should be performed to establish whether hypoxemia narrows and hyperoxia dilates the airways of humans. The COLD patients of this trial should be compared in this regard to asthmatic patients and to normal subjects. If hypoxemia constricts the airways, studies should be designed to establish whether the carotid body is involved in the effect. Anticholinergic drugs can be used to study the role of postganglionic cholinergic pathways in the response.

For regulation of respiration studies, it is realized that the patients will have such severe pulmonary disease that rigorous determination of the responses to carbon dioxide and hypoxemia should be expected. However, efforts should be directed toward defining the resting level of blood gases, the set point of PCO_2, and the magnitude of response to carbon dioxide and hypoxemia before and after surgery. In addition, a recording of the ventilatory response to a standardized dose of Doxapram should be carried out. The recommended tests to be done on all patients include:

a. Resting blood gas determinations.

b. Repeat blood gases after 10 minutes of breathing 100 percent oxygen.

c. Doxapram response.

d. Response to elevated CO_2 at high oxygen with at least one steady state point to establish a set point of CO_2.

e. Ventilatory response to reduction of alveolar O_2 at constant, somewhat elevated CO_2 while monitoring some index of arterial oxygenation such as ear oximetry, transcutaneous PO_2 electrode, or in-dwelling arterial PO_2 or saturation indicator.

An extensive analysis and discussion of these tests has been published recently (51).

In addition, the Doxapram test would be helpful intra-operatively before and after carotid body resection under anesthesia. This test would help establish that the removal of carotid body chemoreceptors was complete.

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Appendix II

Part A Intermediary Manual, Chapter II—Coverage of Services, Appendix, Coverage Issues

The material in this appendix represents responses to questions about coverage of services under Medicare.

These responses are based on existing resource material and where there are medical implications on advice received from both Government and non-Government sources, including opinions from appropriate specialists in the medical community.

35–7 Carotid Body Resection/Carotid Body Denervation

Carotid body resection is occasionally used to relieve pulmonary symptoms, including asthma, but has been shown to lack general acceptance of the professional medical community. In addition, controlled clinical studies establishing the safety and effectiveness of this procedure are needed. Therefore, all carotid body resections to relieve pulmonary symptoms must be considered investigational and cannot be considered reasonable and necessary within the meaning of section 1862(a)(1) of the law. No program reimbursement may be made in such cases.

There is, however, one instance where carotid body resection has been accepted by the medical community as effective. That instance is when evidence of a mass in the carotid body, *with or without symptoms*, indicates the need for surgery to remove the carotid body tumor.

Denervation of a carotid sinus to treat hypersensitive carotid sinus reflex is another procedure performed in the area of the carotid body. In the case of hypersensitive carotid sinus, light pressure on the upper part of the neck (such as might be experienced when turning or raising one's head) results in symptoms such as dizziness or syncope due to hypertension and slowed heart rate. Failure of medical therapy and continued deterioration in the condition of the patient in such cases may indicate need for surgery. Denervation of the carotid sinus is rarely performed, but when elected as the therapy of choice with the above indications, this

procedure may be considered reasonable and necessary.

(Secs. 1102 and 1862(a)(1) of the Social Security Act; 42 U.S.C. 1302 and 1395y(a)(1))

(Catalog of Federal Domestic Assistance Program No. 13.773 Medicare-Hospital Insurance and No. 13.774, Medicare-Supplementary Medical Insurance)

Dated: October 16, 1980.

Howard Newman,

Administrator, Health Care Financing Administration.

[FR Doc. 80-33309 Filed 10-27-80; 8:45 am]

BILLING CODE 4110-35-M

Health Services Administration

Assistance Under the Public Health Service Act, Availability of Project Grants for General Family Planning Training

The Health Services Administration announces that competitive applications are now being accepted for grants for fiscal year 1981 for general family planning training projects (Catalog of Federal Domestic Assistance Number 13.260). These grants are authorized by section 1003(a) of the Public Health Service Act (42 U.S.C. 300a–1(a)) which authorizes the Secretary of Health and Human Services (HHS) to make grants to public or nonprofit private entities to provide training for personnel to carry out family planning service programs described in section 1001 of the Public Health Service Act (42 U.S.C. 300). The amounts available under this announcement in Region III is $204,000; Region V, $265,002; and Region VII, $116,000.

The Secretary will make grants to eligible applicants to assist in the establishment and operation of projects which will promote the purposes of section 1003 of the Act, taking into account the degree to which the project meets the requirements of the regulations (see 42 CFR § 59.205 and § 59.206).

Applications are invited for the following three grants:

One general training grant for HHS Region III (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia);

One general training grant for HHS Region V (Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin); and

One general training grant for HHS Region VII (Kansas, Missouri, Nebraska, and Iowa).

Completed applications must be submitted to the appropriate A–95 Clearinghouse Agency (see Office of Management and Budget Circular A–95, Revised) and to the appropriate Health Systems Agency(s) at least 60 days before the due date for completed applications to be received by the Bureau of Community Health Services.

Application kits, including all necessary forms, instructions, and information relating to the grant applications may be obtained upon written request from: Grants Management Branch, Bureau of Community Health Services, 5600 Fishers Lane, Room 6–49, Rockville, Maryland 20857.

Completed applications must be received by April 1, 1981. Completed applications should be submitted to the Grants Management Branch at the above address. Applications received after April 1, 1981, will not be considered.

Dated: October 16, 1980.

George I. Lythcott, M.D.,

Administrator, Health Services Administration.

[FR Doc. 80-33505 Filed 10-27-80; 8:45 am]

BILLING CODE 4110-84-M

Office of the Secretary

Maternal and Child Health and Crippled Children's Services Project Grants to Institutions of Higher Learning; Availability of Grants

The Bureau of Community Health Services, Health Services Administration, announces that competitive applications are now being accepted for grants in fiscal year 1981 for specialized training in maternal and child health of several categories of health professionals. The grants are offered under the authority of sections 503(2), 504(2), and 511 of the Social Security Act (42 U.S.C. 703(2), 704(2), and 711) which authorize the Secretary of Health and Human Services to make grants to institutions of higher learning for that purpose. Regulations for the program appear at 42 CFR Part 51a, Subpart D. *Catalog of Federal Domestic Assistance* numbers are 13.232, 13.211, and 13.233.

"Institution of higher learning" is defined as any college or university accredited by a recognized body or bodies approved for such purpose by the Secretary of Education, and any teaching hospital which has higher learning among its purposes and functions and which has a formal affiliation with an accredited school of medicine and a full-time academic medical staff holding faculty status in such school of medicine.

Grants to eligible applicants may be made by the Secretary for projects which will best promote the purposes of sections 503, 504, and 511 of the Act, taking into account:

1. The relative extent to which the project will contribute to a nationwide distribution of needed services and training with special emphasis on how the applicant will place graduates in State and local health departments and the extent to which the applicant has been successful in recruiting trainees or fellows from minority groups.

2. The capability of the applicant to provide training of high quality and effectiveness.

3. The relative extent to which the project will provide more effective utilization of personnel currently providing health services to mothers and children.

4. The extent to which the project will assist in the development of new information or innovative methods relating to the provision of maternal and child health and crippled children's services.

5. The degree to which the project would meet the requirements as set forth in the regulations (See 42 CFR Part 51a.405).

A document regarding intended disbursement of funds is available to applicants from: Research and Training Services Branch, Office for Maternal and Child Health, Bureau of Community Health Services, Health Services Administration, Parklawn Building, Room 7–44, 5600 Fishers Land, Rockville, Maryland 20857. Telephone: 301–443–2340.

Consultation and technical assistance relative to the development of an application is also available upon request to that address.

Completed applications must be received by January 16, 1981, and will be subject to competitive, objective review. They should be sent to: Grants Management Branch, Bureau of Community Health Services, Health Services Administration, Parklawn Building, Room 6–49, 5600 Fishers Lane, Rockville, Maryland 20857. Applications not received by January 16 will not be considered.

These projects are not subject to A–95 clearinghouse review.

The amount available for new and competing renewal maternal and child health training applications under this announcement is expected to be $4,750,000. Approximately 25 grants will be awarded.

Dated: October 20, 1980.

George I. Lythcott, M.D.,

Administrator, Health Services Administration.

[FR Doc. 80-33506 Filed 10-27-80; 8:45 am]

BILLING CODE 4110-84-M

Social Security Administration

Privacy Act of 1974; Report of New Routine Use

AGENCY: Social Security Administration (SSA), Department of Health and Human Services (HHS).

ACTION: Report of New Routine Use.

SUMMARY: In accordance with 5 U.S.C. 552a(e)(11), we are issuing public notice of our intent to establish a new routine use. We will use the proposed routine use to provide information to the Office of the President for the purpose of responding to correspondence it receives from members of the public. We are proposing to add the routine use to the following notices of systems of records. Excerpts from the systems notices appear with this publication.

(1) 09-60-0045—Black Lung Payment System, HHS, SSA, OURV;

(2) 09-06-0089—Claims Folders and Post-Adjudicative Records of Applicants for and Beneficiaries of Social Security Benefits, HHS, SSA, OCO;

(3) 09-60-0090—Master Beneficiary Record, HHS, SSA, OURV;

(4) 09-60-0094—Recovery Accounting for Overpayments, HHS, SSA, OURV; and

(5) 09-60-0103—Supplemental Security Income Record, HHS, SSA, OURV.

We last published systems notices 09-60-0045 and 09-60-0094 in the **Federal Register** on October 9, 1979, Vol. 44, No. 196, pp. 58431 and 58450, respectively, and excerpts from systems notices 09-60-0089, 09-60-0090, and 09-60-0103 on September 10, 1980, Vol. 45, No. 177, pp. 59636-59638.

We invite public comments on this proposal.

DATES: The proposed routine use will become effective as proposed without further notice on November 27, 1980, unless we receive comments on or before that date which would result in a contrary determination.

ADDRESSES: Individuals may comment on this proposal by writing to the SSA Privacy Officer, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235.

FOR FURTHER INFORMATION CONTACT: Mr. Bernard A. Oehlers, Chief, Privacy Branch, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 594-6978.

SUPPLEMENTARY INFORMATION: SSA receives requests from the Office of the President (White House) for information to answer inquiries the White House receives from members of the public. These inquiries may be written by an individual constituent or by a third party on his or her behalf. The inquiries generally deal with some aspect of an individual's claim for benefits under a program administered by SSA or service rendered him or her by SSA. We have recognized that it may be necessary to provide the White House with personal information about an individual so that it may be responsive to these inquiries.

Therefore, we are proposing to add a new statement of routine use to the above-mentioned systems which would permit us to disclose the information to the White House. The proposed routine use is as follows:

"Disclosure may be made to the Office of the President for the purpose of responding to an individual pursuant to an inquiry received from that individual or from a third party on his or her behalf."

Upon receipt of information under the above proposed routine use, the White House will disclose it only to the individual to whom the information pertains, not to third party inquirers. In these cases where a third party inquiries on behalf of another individual, the White House will respond directly to the subject individual and inform the inquirer of its action.

The Privacy Act allows us to disclose information under a routine use for purposes which are compatible with the purpose for which we collected the information. Our proposed regulation, "Disclosure of Official Records About Individuals," **Federal Register,** April 10, 1979, pages 21496-21502, permits us to disclose information under a routine use where necessary to carry out our programs. We view disclosure that we may make under the proposed routine use as being within the overall scope of administering programs under the Social Security Act. We feel that the routine use is appropriate and that it meets the requirements of the Privacy Act and our regulation 20 CFR Part 401 and therefore, anticipate that it will not have an unfavorable effect on the privacy rights of individuals.

Dated: October 2, 1980.

William J. Driver,

Commissioner of Social Security.

09-60-0045

SYSTEM NAME:

Black Lung Payment System HEW SSA OURV.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made:

1. To a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. In the event of litigation where one of the parties is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to effectively represent such party, provided such disclosure is compatible with the purpose for which the records were collected.

3. To the Office of the President for the purpose of responding to an individual pursuant to an inquiry received from that individual or from a third party on his or her behalf.

* * * * *

09-60-0089

SYSTEM NAME:

Claims folders and Post-Adjudicative Records of Applicants and Beneficiaries for Social Security Administration Benefits HEW SSA OCO.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. Third party contacts by the Social Security Administration (without the consent of the individual to whom the information pertains) in situations where the party to be contacted has, or is expected to have, information relating to the individual's capability to manage his affairs or his eligibility for or entitlement to benefits under the social security program when:

(1) The individual is unable to provide the information being sought (an

individual is considered to be unable to provide certain types of information when any of the following conditions exist: individual is incapable or of questionable mental capability, cannot read or write, cannot afford the cost of obtaining the information, a language barrier exists, or the custodian of the information will not, as a matter of policy, provide it to the individual), or

(2) The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual and it concerns one or more of the following: the individual's eligibility to benefits under a social security program; the amount of a benefit payment; any case in which the evidence is being reviewed as a result of suspected abuse or fraud, concern for program integrity, or for quality appraisal, or evaluation and measurement system activities.

b. Third party contacts by the Social Security Administration where necessary to establish or verify information provided by representative payees or payee applicants.

c. A person (or persons) on the rolls when a claim is filed by an individual which is adverse to the person on the rolls; that is:

(1) An award of benefits to a new claimant precludes an award to a prior claimant; or

(2) An award of benefits to a new claimant will reduce the benefit payments to the individual(s) on the rolls; but only for information concerning the facts relevant to the interests of each party in a claim.

d. Employees or former employers for correcting or reconstructing earnings records and for social security tax purposes only.

e. The Treasury Department for collecting social security taxes or as otherwise pertinent to tax and benefit payment provisions of the Social Security Act (including social security number verification services) and for investigating alleged theft, forgery, or unlawful negotiation of social security checks.

f. The United States Postal Service for investigating alleged forgery of theft of social security checks.

g. The Department of Justice for investigating and prosecuting violations of the Social Security Act to which criminal penalties attach, for representing the Secretary, and for investigating issues of fraud by agency officers or employees, or violation of civil rights.

h. The Department of Interior for administering the Social Security Act in the Trust Territory of the Pacific Islands; the Veterans Administration, Regional Office, Philippines for administering the Social Security Act in the Philippines; the American Institute on Taiwan for administering the Social Security Action Taiwan; and the Department of State for administering the Social Security Act in foreign countries; through facilities and services of these agencies.

i. The Railroad Retirement Board for administering provisions of the Railroad Retirement and Social Security Act relating to railroad employment and for administering the Railroad Unemployment Insurance Act.

j. The Veterans' Administration for the purpose of administering 38 U.S.C. 412, and, upon request, of information needed for determining eligibility for or amount of VA benefits or verifying other information with respect thereto.

k. The Department of Labor for administering provisions of Title IV of the Federal Coal Mine Health and Safety Act.

l. State social security administrators for administration of agreements pursuant to section 218 (State and local).

m. State Welfare Departments for administering Sections 205(c)(2)(B)(i)(II) and 402(a)(25) of the Social Security Act requiring information about assigned social security numbers for Aid to Families with Dependent Children program purposes only.

n. State Welfare Departments pursuant to agreements with the Social Security Administration for administration of State supplementation payments, for determinations of eligibility for Medicaid per section 1634, and for enrollment of welfare recipients for medical insurance under Section 1843 of the Social Security Act, and for conducting independent quality assurance reviews of supplemental security income recipient records, provided that the agreement for federal administration of the supplementation provides for such an independent review.

o. State Vocational Rehabilitation agency, or State crippled children's service agency (or another agency providing services to disabled children) for consideration of rehabilitation services per U.S.C. and 1382d.

p. State audit agencies for auditing State supplementation payments and Medicaid eligibility considerations, and expenditures of Federal funds by the State in support of the Disability Determination Section (DDS).

q. Private medical and vocational consultants for use in making preparation for, or evaluating the results of, consultative medical examinations or vocational assessments which they were engaged to perform by the Social Security Administrative or a State agency acting in accord with sections 221 or 1633.

r. Specified business and other community members and Federal, State, and local agencies for verification of eligibility for benefits under section 1631(e).

s. Institutions or facilities approved for treatment of drug addicts or alcoholics as a condition of the individual's eligibility for payment under section 1611e and as authorized by regulations issued by the Special Action Office for Drug Abuse Prevention.

t. To applicants, claimants, prospective applicants or claimants, other than the data subject, their authorized representatives or representative payees to the extent necessary to pursue social security claims and receive an account of benefit payments.

u. To a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

v. In the event of litigation where one of the parties is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to effectively represent such party, provided such disclosure is compatible with the purpose for which the records were collected.

w. In response to legal process or interrogatories relating to the enforcement of an individual's child support or alimony obligations, as required by sections 459 and 461 of the Social Security Act.

x. To Federal, State, or local agencies (or agents on their behalf) for administering cash or noncash income maintenance or health maintenance programs.

y. Information necessary to adjudicate claims filed under an international social security agreement that the United States has entered into pursuant to Section 233 of the Social Security Act may be disclosed to a foreign country which is a party to that agreement.

z. to the Internal Revenue Service, Treasury Department, as necessary, for the purpose of auditing the Social Security Administration's compliance

with safeguard provisons of the Internal Revenue Code of 1954, as amended.

aa. To the Office of the President for the purpose of responding to an individual pursuant to an inquiry received from that individual or from a third party on his or her behalf.

* * * * *

09-60-0090

SYSTEM NAME:

Master Beneficiary Record HEW SSA OURV.

* * * * *

ROUTINE USES OF RECORD MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Routine uses for disclosure may be to:

a. Applicants or claimants, prospective applicants or claimants, other than the data subject, their authorized representatives or representative payees to the extent necessary to pursue social security claims and receive and account for benefit payments.

b. Third party contacts by the Social Security Administration (without the consent of the individual to whom the information pertains) in situations where the party to be contacted has, or is expected to have, information relating to the individual's capability to manage his affairs or his eligibility for or entitlement to benefits under the social security programs when:

(1) The individual is unable to provide the information being sought (an individual is considered to be unable to provide certain types of information when any of the following conditions exist: individual is incapable or of questionable mental capability, cannot read or write, cannot afford the cost of obtaining the information, a language barrier exists, or the custodian of the information will not, as a matter of policy, provide it to the individual), or

(2) The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following: the individual's eligibility to benefits under a social security program; the amount of a benefit payment; any case in which the evidence is being reviewed as a result of suspected abuse or fraud, concern for program integrity, or for quality appraisal, or evaluation and measurement system activities.

c. Third party contacts by the Social Security Administration where necessary to establish or verify information provided by representative payees or payee applicants.

d. A person (or persons) on the rolls when a claim is filed by another individual which is adverse to the person on the rolls:

(1) An award of benefits to a new claimant precludes an award to a prior claimant; or

(2) An award of benefits to a new claimant will reduce the benefit payments to the individual(s) on the rolls; but only for information concerning the facts relevant to the interests of each party in a claim.

e. The Treasury Department for collecting social security taxes or as otherwise pertinent to tax and benefit payment provisions of the Social Security Act, (including social security number verification services) and for investigating alleged theft, forgery, or unlawful negotiation of social security checks.

f. The United States Postal Service for investigating alleged forgery or theft of social security checks.

g. The Department of Justice for investigating and prosecuting violations of the Social Security Act to which criminal penalties attach, for representing the Secretary, and for investigating issues of fraud by agency officers or employees, or violation of civil rights.

h. The Department of Interior for administering the Social Security Act in the Trust Territory of the Pacific Islands; the Veterans Administration, Regional Office, Philippines for administering the Social Security Act in the Philippines; the American Institute on Taiwan for administering the Social Security Act on Taiwan; and the Department of State for administering the Social Security Act in foreign countries; through facilities and services of these agencies.

i. The Railroad Retirement Board for administering provisions of the Railroad Retirement and Social Security Acts relating to railroad employment and for administering the Railroad Unemployment Insurance Act.

j. The Veterans' Administration for the purpose of administering 38 U.S.C. 412, and upon request, of information needed for determining eligibility for or amount of VA benefits or verifying other information with respect thereto.

k. The Bureau of Census when it performs as a collecting agent or data processor for research and statistical purposes directly relating to the Social Security Act.

l. The Department of the Treasury. Office of Tax Analysis, for studying the effects of income taxes and taxes on earning.

m. The *Office of Personnel Management (formerly the Civil Service Commission)* for the study of the relationship of civil service annuities to minimum social security benefits, and the effects on the trust fund.

n. State social security administrators for administration of agreements pursuant to section 218 (State and local).

o. State Welfare Departments for administering Sections 205(c)(2)(B)(i)(II) and 402(a)(25) of the Social Security Act requiring information about assigned social security numbers for Aid to Families with Dependent Children program purposes and for determining a recipient's eligibility under the AFDC and Medicaid programs *and for the complete administration of the Medicaid program.*

p. Energy Resources Development Administration for their study of the long-term effects of low-level radiation exposure.

q. A congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

r. Contractors under contract to the Social Security Administration or under contract to another agency with funds provided by the Social Security Administration for the performance of research and statistical activities directly related to the Social Security Act.

s. The Department of Labor, for statistical studies of the relationship of private pensions and social security benefits to prior earnings.

t. In the event litigation where one of the parties is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to effectively represent such party, provided such disclosure is compatible with the purpose for which the records were collected.

u. In response to legal process or interrogatories relating to the enforcement of an individual's child support or alimony obligations, as required by sections 459 and 461 of the Social Security Act.

v. A congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

w. Federal, State, or local agencies (or agents on their behalf) for administering

cash or noncash income maintenance or health maintenance programs.

x. Information necessary to adjudicate claims filed under an international social security agreement that the United States has entered into pursuant to Section 233 of the Social Security Act may be disclosed to a foreign country which is a party to that agreement.

y. The Department of Education for determining the eligibility of applicants for Basic Educational Opportunity grants.

z. The Office of the President for the purpose of responding to an individual pursuant to an inquiry received from that individual or from a third party on his or her behalf.

* * * * *

09-60-0094

SYSTEM NAME:

Recovery Accounting for Overpayments HEW SSA OURV.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made:

1. To a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. In the event of litigation where one of the parties is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to effectively represent such party, provided such disclosure is compatible with the purpose for which the records were collected.

3. To the Office of the President for the purpose of responding to an individual pursuant to an inquiry received from that individual or from a third party on his or her behalf.

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09-60-0103

SYSTEM NAME:

Supplemental Security Income Record HEW SSA OURV.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to:

1. the Treasury Department to prepare supplemental security income benefit checks *and energy assistance checks.*

2. the States to establish the minimum income level for computation of State supplement;

3. the following Federal and State agencies to prepare information for verification of benefit eligibility under section 1631(e):

a. Bureau of Indian Affairs
b. Civil Service Commission
c. Department of Agriculture
d. Department of Labor
e. Immigration and Naturalization Service
f. Internal Revenue Service
g. Railroad Retirement Board
h. State Pension Funds
i. State Welfare Offices
j. State Workmen's Compensation
k. Department of Defense
l. United States Coast Guard
m. Veterans Administration

4. a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

5. Identify title XVI eligibles under the age of 16 to State crippled children's agencies (or other agencies providing services to disabled children) for the consideration of rehabilitation services per section 1615 of the Social Security Act.

6. contractors under contract to the Social Security Administration or under contract to another agency with funds provided by SSA for the performance of research and statistical activities directly relating to Social Security Act.

7. State audit agencies for auditing State supplementation payments and Medicaid eligibility consideration;

8. Veterans Administration information requested for the purposes of determining eligibility for or amount of VA

9. the Railroad Retirement Board for administering the Railroad Unemployment Insurance Act.

10. In the event of litigation where one of the parties is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to effectively represent such party, provided such disclosure is compatible with the purpose for which the records were collected.

11. effect and report the fact of Medicaid eligibility of title XVI recipients in the jurisdiction of those States which have elected Federal determinations of Medicaid eligibility of title XVI eligibles and to assist the States in administering the Medicaid program.

12. identify title XVI eligibles in the jurisdiction of those States which have not elected Federal determinations of Medicaid eligibility in order to assist those States in establishing and maintaining Medicaid rolls and in administering the Medicaid program.

13. enable States which have elected Federal administration of their supplementation programs to monitor changes in applicant/recipient income, special needs, and circumstances.

14. enable States which have elected to administer their own supplementation programs to identify SSI eligibles in order to determine the amount of their monthly supplemental payments.

15. enable the States to locate potentially eligible individuals and to make determinations of eligibility for the food stamp program.

16. enable the States to assist in the effective and efficient administration of the supplemental security income program.

17. enable those States which have an agreement with the Secretary, to carry out their functions with respect to Interim Assistance Reimbursement per Section 1631(g) of the Social Security Act.

18. enable States to locate potentially eligible individuals and to make eligibility determinations for extensions of social services under the provisions of title XX.

19. assist the States in determining initial and continuing eligibility in their income maintenance programs and for investigation and prosecution of conduct subject to criminal sanctions under these programs.

20. enable the States to administer energy assistance to low income groups under programs for which the States are responsible.

21. the Department of Education for determining the eligibility of applicants for Basic Educational Opportunity grants.

22. Federal, State, or local agencies (or agents on their behalf) for administering cash or non-cash income maintenance or health maintenance programs.

23. the United States Postal Service for investigating the alleged theft, forgery, or unlawful negotiation of supplemental security income checks.

24. the Treasury Department for investigating the alleged theft, forgery, or unlawful negotiation of supplemental security income checks.

25. to the Internal Revenue Service, Treasury Department, as necessary, for the purpose of auditing the Social Security Administration's compliance with safeguard provisions of the Internal Revenue Code of 1954, as amended.

26. the Office of the President for the purpose of responding to an inquiry received from that individual or from a third party on his or her behalf.

* * * * *

[FR Doc. 80-33518 Filed 10-27-80; 8:45 am]

BILLING CODE 4110-07-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Carson City District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Carson City District Grazing Advisory Board.

DATE: December 3, 1980—10:00 a.m. to 3:30 p.m.

ADDRESS: Lyon County Library, 20 Nevin Way, Yerington, Nevada.

FOR FURTHER INFORMATION CONTACT: Stephen A. Weiss, Public Affairs Officer, Carson City District, Bureau of Land Management, 1050 East William Street, Suite 335, Carson City, Nevada 89701 (702/882-1631).

SUPPLEMENTARY INFORMATION: The Carson City District Grazing Advisory Board is chartered to advise the Carson City District Manager, Bureau of Land Management, regarding the development of allotment management plans and utilization of range betterment funds on public lands under the jurisdiction of the Carson City District. The agenda for this meeting will include discussion of allotment management plans, range improvement projects for fiscal years 1981 and 1982, range surveys for the Reno and Lahontan planning areas, and wild horse and burro management. The meeting is open to the public. Any person may attend, file a written statement by mail, or appear before the Board at 3:00 p.m.

Thomas J. Owen,

District Manager.

October 20, 1980.

[FR Doc. 80-33501 Filed 10-27-80; 8:45 am]

BILLING CODE 4310-84-M

Lakeview District Advisory Council; Meeting

Notice is hereby given in accordance with Pub. L. 94-579 and 43 CFR 1780 that a meeting of the Lakeview District Advisory Council will be held on December 2, 1980.

The meeting will begin at 9.a.m., Pacific Standard Time, in the Lakeview BLM District Office Conference Room at 1000 South Ninth Street, Lakeview, Oregon.

The agenda for the Advisory Council Meeting is:

1.Progress Report on the Lakeview District Grazing Environmental Impact Statement.

2. A review of the Fiscal Year 1980 and 1981 Annual Work Plans/budgets.

3. A discussion of the threatened and endangered species program.

4. A discussion of the off-road vehicle designation process.

5. A discussion of the wilderness study area designation process.

6. A review and discusssion of BLM Range Improvement Policy.

7. A discussion of Oregon Range Management flexibility needs.

The meeting is open to the public and news media. Interested persons may make oral statements to the Council between 2 and 3 p.m., or file written statements for the Council's consideration. Anyone wishing to make an oral statement should notify the District Manager, Bureau of Land Management, P.O. Box 151, Lakeview, Oregon 97630, telephone 503-947-2177, by close of business November 25, 1980. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

A report of the Council meeting will be maintained at the Lakeview District Office and be made available for public use. Copies of all or part of the report may be obtained for a fee.

Malcolm T. Shrode,

Acting District Manager.

October 10, 1980.

[FR Doc. 80-33502 filed 10-27-80; 8:45 am]

BILLING CODE 4310-84-M

Fish and Wildlife Service

Establishment of San Francisco Bay NWR as a Unit of the National Wildlife Refuge System

ACTION: Notice of Establishment of the San Francisco Bay NWR.

EFFECTIVE DATE: October 28, 1980.

FOR FURTHER INFORMATION CONTACT: R. Kahler Martinson, Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 N.E. Multnomah Street, Portland, Oregon 97232 (503) 231-6209 (commercial) or 429-6209 (FTS).

SUMMARY: The Act to authorize the San Francisco Bay NWR was enacted by Congress on June 30, 1972, (Pub. L. 92-334, as amended). This Act provided that the Secretary of the Interior establish the San Francisco Bay NWR as a unit of the National Wildlife Refuge System when the lands, waters, and interests therein became sufficient to constitute an efficiently administrable refuge.

Notice is hereby given, pursuant to the above Act, that the Secretary, through his duly authorized representative, the Regional Director, has so determined and that the San Francisco Bay NWR is so established. A map showing the refuge boundary is available from the Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 N.E. Multnomah Street, Portland, Oregon 97232.

Dated: October 20, 1980.

R. Kahler Martinson,

Regional Director, Fish and Wildlife Service.

[FR Doc. 80-33504 Filed 10-27-80; 8:45 am]

BILLING CODE 4310-84-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 17, 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 12, 1980.

Carol Shull,

Acting Chief, Registration Branch.

COLORADO

Denver County

Denver, *Paramount Theater,* 519 16th St.

MISSISSIPPI

Mississippi Post Offices 1931–1941 Thematic Resources. Reference—see individual listings under Attala, Bolivar, Chickasaw, Copiah, Forrest, Hancock, Holmes, Humphreys, Lamar, Leake, Lowndes, Marion, Monroe, Montgomery, Neshoba, Newton, Noxubee, Panola, Pearl River, Pike, Pontotoc, Prentiss, Scott, Sunflower, Tallahatchie, Tippah, Union, Walthall, Washington, Wayne, and Winston Counties.

Attala County

Kosciusko, *U.S. Post Office (Mississippi Post Offices 1931–1941 Thermatic Resources)* 222 E. Washington St.

Bolivar County

Cleveland, *U.S. Post Office (Mississippi Post Offices 1931–1941 Thermatic Resources)* 301 S. Sharpe Ave.

Chickasaw County

Houston, *U.S. Post Office (Mississippi Post Offices 1931–1941 Thermatic Resources)* Off MS 8

Okolona, *U.S. Post Office (Mississippi Post Offices 1931–1941 Thermatic Resources)* 103 Main St.

Copiah County

Crystal Springs, *U.S. Post Office (Mississippi Post Offices 1931–1941 Thermatic Resources)* 224 E. Marion St.

Hazlehurst, *U.S. Post Office (Mississippi Post Offices 1931–1941 Thermatic Resources)* 130 Caldwell Dr.

Forrest County

Hattiesburg, *U.S. Post Office (Mississippi Post Offices 1931–1941 Thermatic Resources)* 115 W. Pine St.

Hancock County

Bay St. Louis, *U.S. Post Office (Mississippi Post Offices 1931–1941 Thermatic Resources)* 137 Main St.

Holmes County

Durant, *U.S. Post Office (Mississippi Post Offices 1931–1941 Thermatic Resources)* 112 S. Jackson St.

Lexington, *U.S. Post Office (Mississippi Post Offices 1931–1941 Thermatic Resources)* 107 Tchula St.

Humphreys County

Belzoni, *U.S. Post Office (Mississippi Post Offices 1931–1941 Thermatic Resources)* 102 Church St.

Lamar County

Lumberton, *U.S. Post Office (Mississippi Post Offices 1931–1941 Thermatic Resources)* 104 Heber Ladner Dr.

Leake County

Carthage, *U.S. Post Office (Mississippi Post Offices 1931–1941 Thermatic Resources)* 201 N. Pearl St.

Lowndes County

Columbus, *U.S. Post Office (Mississippi Post Offices 1931–1941 Thermatic Resources)* 524 Main St.

Marion County

Columbia, *U.S. Post Office (Mississippi Post Offices 1931–1941 Thermatic Resources)* 815 Main St.

Monroe County

Amory, *U.S. Post Office (Mississippi Post Offices 1931–1941 Thermatic Resources)* 215 1st Ave.

Montgomery County

Winona, *U.S. Post Office (Mississippi Post Offices 1931–1941 Thermatic Resources)* 306 Summit St.

Neshoba County

Philadelphia, *U.S. Post Office (Mississippi Post Offices 1931–1941 Thermatic Resources)* 523 Main St.

Newton County

Newton, *U.S. Post Office (Mississippi Post Offices 1931–1941 Thermatic Resources)* 111 E. Church St.

Noxubee County

Macon, *U.S. Post Office (Mississippi Post Offices 1931–1941 Thermatic Resources)* 201 S. Jefferson St.

Panola County

Batesville, *U.S. Post Office (Mississippi Post Offices 1931–1941 Thermatic Resources)* 100 Public Square

Pearl River County

Picayune, *U.S. Post Office (Mississippi Post Offices 1931–1941 Thematic Resources)* U.S. 11

Poplarville, *U.S. Post Office (Mississippi Post Offices 1931–1941 Thematic Resources)* 301 Main St.

Pike County

Magnolia, *U.S. Post Office (Mississippi Post Offices 1931–1941 Thematic Resources)* 205 Magnolia St.

Pontotoc County

Pontotoc, *U.S. Post Office (Mississippi Post Offices 1931–1941 Thematic Resources)* 59 S. Main St.

Prentiss County

Booneville, *U.S. Post Office (Mississippi Post Offices 1931–1941 Thematic Resources)* 101 Main St.

Scott County

Eupora, *U.S. Post Office (Mississippi Post Offices 1931–1941 Thematic Resources)* 102 N. Dunn St.

Forest, *U.S. Post Office (Mississippi Post Offices 1931–1941 Thematic Resources)* 119 2nd St.

Sunflower County

Indianola, *U.S. Post Office (Mississippi Post Offices 1931–1941 Thematic Resources)* 100 Percy St.

Tallahatchie County

Charleston, *U.S. Post Office (Mississippi Post Offices 1931–1941 Thematic Resources)* 3 North Square

Tippah County

Ripley, *U.S. Post Office (Mississippi Post Offices 1931–1941 Thematic Resources)* 301 N. Main St.

Union County

New Albany, *U.S. Post Office (Mississippi Post Offices 1931–1941 Thematic Resources)* 135 E. Bankhead St.

Walthall County

Tylertown, *U.S. Post Office (Mississippi Post Offices 1931–1941 Thematic Resources)* 614 Beulah Ave.

Washington County

Leland, *U.S. Post Office (Mississippi Post Offices 1931–1941 Thematic Resources)* 204 N. Board St.

Wayne County

Waynesboro, *U.S. Post Office (Mississippi Post Offices 1931–1941 Thematic Resources)* 704 Azalea St.

Winston County

Louisville, *U.S. Post Office (Mississippi Post Offices 1931–1941 Thematic Resources)* 215 Main St.

NEBRASKA

Douglas County

Omaha, *St. Matthias' Episcopal Church (D009:18–10)* 1423 S. 10th St.

OHIO

EASTLAKE HOUSES OF ASHELY THEMATIC RESOURCES. Reference—see individual listings under Delaware County.

Athens County

Chauncey vicinity, *Clester, Joseph, House,* SE of Chauncey on SR 111

Coshocton County

Coshocton vicinity, *Milligan, Cuthbert, House,* N of Coshocton

Cuyahoga County

Cleveland, *St. Paul's Episcopal Church,* 4120 Euclid Ave.

Cleveland, *Warszawa Neighborhood District,* E. 65th St. and Forman Ave.

North Olmsted, *North Olmsted Town Hall,* 5186 Dover Center Rd.

Darke County

Greenville, *Carnegie Library and Henry St. Clair Memorial Hall,* 520 Sycamore St. and W. 4th St.

Delaware County

Ashley, *Building at 500 East High Street (Eastlake Houses of Ashley Thematic Resources)*

Ashley, *Building at 505 East High Street (Eastlake Houses of Ashley Thematic Resources)*
Ashley, *Building at 101 North Franklin Street (Eastlake Houses of Ashley Thematic Resources)*
Ashley, *Building at 223 West High Street (Eastlake Houses of Ashley Thematic Resources)*

Fairfield County

Amanda, *Barr House,* 350 W. Main St.

Franklin County

CENTRAL COLLEGE MULTIPLE RESOURCE AREA. This area includes: Westerville vicinity, *Central College Presbyterian Church,* Sunbury Rd.; *Fairchild Building,* Sunbury Rd.; *Presbyterian Parsonage,* 6972 Sunbury Rd.; *Washburn, Rev. Ebenezer, House,* 7121 Sunbury Rd.
Columbus, *Broad Street United Methodist Church,* 501 E. Broad St.
Columbus, *German Village,* Roughly bounded by Livingston Ave., Pearl Alley, Nursery Lane, Blackberry Alley and 9th St. (boundary increase)
Columbus, *Ohio National Bank,* 167 S. High St.
Columbus, *Rankin Building,* 22 W. Gay St.
Lockbourne vicinity, *Herr, Christian S., House,* N of Lockbourne at 1451 Rathmell Rd.

Hamilton County

Cincinnati, *Alkemeyer Commercial Buildings,* 19–23 W. Court St.
Cincinnati, *Ida Street Viaduct,* Ida St.
Cincinnati, *Ninth Street Historic District,* 9th St. between Vine and Plum Sts.

Jackson County

Wellston, *Clutts House,* 16 E. Broadway St.

Jefferson County

Adena vicinity, *Hamilton-Ickes House,* N of Adena on SR 10

Knox County

Mount Vernon vicinity, *Thompson, Enoch, House,* SW of Mount Vernon on OH 661

Licking County

Newark, *Rhoads, Peter F., House,* 74 Granville St.

Lucas County

Toledo, *Ashland Avenue Baptist Church,* Ashland Ave.

Medina County

Medina, *Munson, Judge Albert, House,* 231 E. Washington St.

Mercer County

Celina, *Godfrey, Sen. Thomas J., House,* 602 W. Market St.

Monroe County

Graysville vicinity, *Ring, Walter, House and Mill Site,* SE of Graysville on SR 575.

Montgomery County

Dayton, *Dayton Stove and Cornice Works,* 24—28 N. Patterson Blvd.
Dayton, *Lafee Building,* 22 E. 3rd St.

Muskingum County

Zanesville, *Brendel, Charles, House,* 427 Wayne Ave.
Zanesville, *Clossman Hardware Store,* 621—623 Main St.
Zanesville, *Grant School,* Off U.S. 22
Zanesville, *Ohio Power Company,* 604 Main St.
Zanesville, *Wiles, Perry, Grocery Company,* 32 N. 3rd St.

Perry County

Somerset, *Sheridan House,* S. Columbus St.

Seneca County

New Riegel, *St. Boniface Roman Catholic Church, School and Rectory and Convent of the Sisters of the Precious Blood,* N. Perry St.

Stark County

Alliance vicinity, *Maudru House,* SW of Alliance

Trumbull County

Lordstown, *McCorkle, Almon G., House,* 1180 Saltsprings Rd.

Tuscarawas County

Strasburg, *Garver Brothers Store,* 134 N. Wooster Ave.

Van Wert County

Willshire, *Willshire School,* Green St.

Wood County

Bowling Green, *Main Street Historic District,* Main and Wooster Sts.

TENNESSEE

Blount County

Louisville vicinity, *George, Samuel, House, NE of Louisville on Topside Rd.*

Bradley County

Cleveland, *Craigmiles Hall,* 170 Ocoee St., NE.

Davidson County

Nashville, *Ewing, Alexander, House,* 5101 Buena Vista Pike.
Nashville, *Turner-Cole House,* 2122 W. End Ave.

Franklin County

Winchester, *Trinity Episcopal Church,* 213 1st Ave., NW.

Hamilton County

Chattanooga, *Thomas, Benjamin F., House, 938 McCallie Ave.*

Shelby County

Memphis, *Annesdale,* 1325 Lamar Ave.
Memphis, *Tennessee Brewery,* 477 Tennessee St.
Memphis, *Tennessee Club-Court Square Building,* 128—130 Court Ave.

[FR Doc. 80-33198 Filed 10-27-80; 8:45 am]

BILLING CODE 4310-03-M

INTERSTATE COMMERCE COMMISSION

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 an 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 within 45 days of publication of this decision-notice (or, if the application later becomes unopposed) appropriate authority will be issued to each applicant (except those with duly noted problems) upon eompliance 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–056

By the Commission, Review Board Number 2, Members Chandler, Eaton, and Liberman. Member Chandler not participating.

MC 11220 (Sub-222F), filed October 14, 1980. Applicant: GORDONS TRANSPORTS, INC., 185 West McLemore Ave., Memphis, TN 38101. Representative: James J. Emigh, P.O. Box 59, Memphis, TN 38101. Transporting (1) *pipe and pipe fittings,* and (2) *materials, equipment, and supplies* used in the manufacture, distribution, and installation of the commodities in (1) above, between points in Crawford County, AR, and Posey County, IN, on the one hand, and, on the other, points in the U.S.

MC 29910 (Sub-291F) (Republication), filed September 19, 1980. Applicant: ABF FREIGHT SYSTEM, INC., 301 South Eleventh St., Fort Smith, AR 72901. 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 points in St. Charles County, MO, on the one hand, and, on the other, points in the U.S.

Note.—The purpose of this republication is to correct the base territory description.

MC 47171 (Sub-187F), filed October 10, 1980. Applicant: COOPER MOTOR LINES, INC., P.O. Box 2820, Greenville, SC 29602. Representative: Harris G. Andrews (same address as applicant). Transporting *such commodities* as are dealt in or used by a manufacturer of paper and paper products, between those points in the U.S. in and east of MN, IA, NE, KS, OK, and TX, restricted to traffic originating at or destined to the facilities used by Stone Container Corporation and its subsidiaries.

MC 60271 (Sub–16), filed October 15, 1980. Applicant: HARPER TRUCK LINE, INC., P.O. Box 288, Monroe, LA 71201. Representative: Sherri L. Roberts (same address as applicant). Transporting *lumber and particleboard,* from the facilities of Manville Forest Products Corporation, at Winnfield and Lillie, LA, to points in AR, LA, and MS.

MC 67450 (Sub-105F), filed October 9, 1980. Applicant: PETERLIN CARTAGE CO., a corporation, 9651 S. Ewing Ave., Chicago, IL 60617. Representative: Joseph Winter, 29 South LaSalle St., Chicago, IL. 60603. Transporting *such commodities* as are dealt in or used by manufacturers of material handling equipment, between points in Hamilton County, TN, on the one hand, and, on the other, those points in the U.S. in and east of WI, IL, KY, TN, MS, and LA.

MC 75840 (Sub-138F), filed October 2, 1980. Applicant: MALONE FREIGHT LINES, INC., P.O. Box 11103, 3400 Third Ave., South, Birmingham, AL 35202. Representative: Raymond Hamilton (same address as applicant). Transporting (1) *pulp, paper, or allied products,* (2) *chemicals or allied products,* (3) *rubber or miscellaneous plastic products,* (4) *primary metal products;* inc. galvanized; except coating or other allied processing, and (5) *instruments, photographic goods or optical goods, watches or clocks,* as described respectively, in Items 26, 28, 30, 33, and 38 of the Standard Transportation Commodity Code Tariff, between points in Harris County, TX, and St. Charles Parrish, LA, on the one hand, and, on the other, those points in the United States in and east of WI, IL, KY, TN, MS, and LA. Condition: Issuance of a certificate in this proceeding is subject to the coincidental cancellation, at applicant's written request, of its certificates in MC 75840 Sub-122F, 123F, 124F, 126F, 128F, and 131F, and any certificate issued in MC 75840 Sub-136F, and (2) the withdrawal, at applicant's written request, of any proceeding still pending in MC 75840 Sub-136F.

MC 104430 (Sub-41F), filed October 9, 1980. Applicant: CAPITAL TRANSPORT COMPANY, INC., P.O. Box 408, McComb, MS 39648. Representative: Robert L. McArty, P.O. Box 22628, Jackson, MS 39205. Transporting *chemicals,* in bulk, in tank vehicles, (1) between Baton Rouge, LA, on the one hand, and, on the other, points in AL, AR, FL, GA, IL, KS, KY, MO, NJ, NC, SC, TN, and TX, and (2) between points in Ascension Parrish, LA, and Pike County, MS.

MC 111611 (Sub-50F), filed October 9, 1980. Applicant: NOERR MOTOR FREIGHT, INC., 205 Washington Avenue, Lewistown, PA 17044. Representative: William D. Taylor, 100 Pine Street, Suite 2550, San Francisco, CA 94111. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in IN, PA, TX, and CA, on the one hand, and, on the other, points in the U.S. Condition: Issuance of a certificate in this proceeding is subject to the coincidental cancellation, at applicant's written request, of certificates No. MC–111611, and Subs 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 46, and 47.

MC 113751 (Sub-38F), filed October 16, 1980. Applicant: HAROLD F. DUSHEK, INC., 10th and Columbia St., Waupaca, WI 54660. Representative: James A. Spiegel, Olde Towne Office Park, 6425 Odana Rd., Madison, WI 53719. Transporting (1) *foodstuffs,* and (2) *materials, equipment, and supplies* used in the manufacture of foodstuffs, from the facilities of Ore-Ida Foods, Inc., at or near (a) Wethersfield, CT, (b) Greenville, MI, (c) Massillon, OH, (d) Westchester, PA, and (e) Plover, WI, to those points in the U.S. in and east of ND, SD, NE, CO, OK, and TX.

MC 114211 (Sub-477F), filed October 8, 1980. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, IA 50704. Representative: Kurt E. Vragel, Jr. (same address as applicant). Transporting *such commodities* as are dealt in or used by manufacturers and dealers of agricultural, industrial, and construction machinery, between points in the U.S. Condition: Issuance of a certificate in this proceeding is subject to prior or coincidental cancellation, at applicants written request, of its certificates in MC 114211 and Subs 2, 4, 5, 10, 11, 12, 17, 22, 23, 26, 27, 28, 32, 34, 39, 40, 41, 44, 45, 47, 49, 50, 52, 54, 55, 56, 61, 64, 65, 66, 67, 69, 70, 71, 74, 75, 77, 80, 81, 82, 84, 85, 89, 91, 92, 94, 95, 98, 99, 104, 108, 110, 111, 113, 114, 115, 121, 123, 124, 125, 127, 128, 129, 130, 134, 137, 139, 140, 142, 144, 145, 148, 152, 153, 154, 155, 156, 157, 158, 165, 169, 171, 175, 176, 179, 181, 182, 183, 184, 185, 188, 189, 193, 195, 196, 198, 200, 203, 207, 209, 211, 214, 215, 217, 218, 224, 229, 232G, 239, 241, 243, 244, 248, 249, 254, 256, 257, 258, 259, 261, 263, 264, 268, 279, 286, 287, 294, 297, 304, 318, 319, 320, 325, 332, 333, 336, 341, 343, 346, 350, 353, 363, 364, 365, 367, 373, 377, 379, 380, 391, 394, 400, 404, 405, 406, 407, 409, 411, 416, and 453.

MC 115730 (Sub-85F), filed October 6, 1980. Applicant: THE MICKOW CORPORATION, 531 S.W. Sixth St., P.O. Box 1774, Des Moines, IA 50307. Representative: Cecil L. Goettsch, 1100 Des Moines Bldg., Des Moines, IA 50307. Transporting *primary metal products;* inc. galvanized; except coating or other allied processing, as set forth in Item 33 of the Standard Transportation Commodity Code Tariff, between points in CO, ID, IL, IN, IA, KS, MI, MN, MO, NE, ND, OH, OK, SD, TX, UT, WI and WY.

MC 119741 (Sub-280F), filed October 10, 1980. Applicant: GREEN FIELD TRANSPORT COMPANY, INC., 1515 Third Ave., NW., P.O. Box 1235, Fort

Dodge, IA 50501. Representative: D. L. Robson (same address as applicant). Transporting *general commodities* (except classes A and B explosives), from points in the U.S., to points in Webster County, IA.

MC 120761 (Sub-66F), filed October 15, 1980. Applicant: NEWMAN BROS. TRUCKING COMPANY, a corporation, 6559 Midway Rd., P.O. Box 18728, Fort Worth, TX 76118. Representative: Clint Oldham, 1108 Continental Life Bldg., Fort Worth, TX 76102. Transporting *metal articles* between Points in AR, OK, and TX, on the one hand, and, on the other, points in the U.S.

MC 129790 (Sub-15F), filed October 15, 1980. Applicant: JOSEPH A. BECKER, d.b.a. BECKER HI-WAY FRATE, Route 5, Box 10B, Albert Lea, MN 56007. Representative: Andrew R. Clark, 1000 First National Bank Bldg., Minneapolis, MN 55402. Transporting *plastic articles,* between points in the U.S., under continuing contract(s) with Genpak Corporation, of Glens Falls, NY. Condition: Applicant must submit a statement demonstrating that the proposed service is that of a contract carrier under the criteria of 49 U.S.C. § 10102(12) (B), i.e., by either proposing to dedicate equipment to the supporting shipper's exclusive use or by proposing to furnish transportation services designed to meet the distinct needs of the shipper to be served. If the latter, a complete explanation is necessary. This statement will be examined by a review board prior to issuance of a permit.

MC 131060F, filed October 6, 1980. Applicant: A NICER TOUR SERVICE, INC. P.O. Box 826, Vineland, NJ 08360. Representative: Raymond A. Thistle, Jr., Five Cottman Court, Homestead Road & Cottman St., Jenkintown, PA 19046. As a *broker,* at Vineland, NJ, in arranging for the transportation, by motor vehicle, of *passengers and their baggage,* in the same vehicle with passengers, in special and charter operations, beginning and ending at points in Atlantic (except Atlantic City), Cape May, Cumberland, Gloucester, and Salem Counties, NJ, and extending to points in the U.S.

MC 131061F, filed October 6, 1980. Applicant: UNIVERSAL TOURS CORP. 2742 Biscayne Blvd., Miami, FL 33137. Representative: Morris J. Levin, 1050 Seventeenth St., NW., Washington, DC 20036. As a *broker,* at Miami, FL, in arranging for the transportation, by motor vehicle, of *passengers and their baggage,* in the same vehicle with passengers, in special and charter operations, between points in the U.S.

MC 135760 (Sub-20F), filed October 15, 1980. Applicant: COAST REFRIGERATED TRUCKING CO., INC., P.O. Box 188, Holly Ridge, NC 28445. Representative: Herbert Alan Dubin, 818 Connecticut Ave., NW., Washington, DC 20006. Transporting *meats, meat products and meat byproducts, articles distributed by meat-packing houses, and such commodities as are used by meat packers in the conduct of their business when destined to and for use by meat packers,* as described in Sections A, C, and D of Appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766, between points in the U.S., under continuing contract(s) with Frederick & Herrud, Inc., of Southfield, MI.

MC 138000 (Sub-77F), filed October 8, 1980. Applicant: ARTHUR H. FULTON, INC., P.O. Box 86, Stephens City, VA 22655. Representative: Dixie C. Newhouse, P.O. Box 1417, Hagerstown, MD 21740. Transporting *tread rubber,* from Athens, GA, to points in VA.

MC 138000 (Sub-78F), filed October 8, 1980. Applicant: ARTHUR H. FULTON, INC., P.O. Box 86, Stephens City, VA 22655. Representative: Dixie C. Newhouse, P.O. Box 1417, Hagerstown, MD 21740. Transporting *canned goods,* from Haddock, GA, to those points in the U.S. in and east of WI, IL, TN, KY, and MS.

MC 142080 (Sub-16F), filed October 9, 1980. Applicant: LITE TRANSPORT, INC., 480 Neponset St., Canton, MA 02021. Representative: Frederick T. O'Sullivan, P.O. Box 2184, Peabody, MA 01960. Transporting *such commodities* as are dealt in or used by grocery and food business houses (except commodities in bulk, in tank vehicles), between points in the U.S., under continuing contract(s) with Hannaford Brothers, of South Portland, ME.

MC 145441 (Sub-123F), filed October 15, 1980. Applicant: A.C.B. TRUCKING, INC., P.O. Box 5130, North Little Rock, AR 72119. Representative: Ralph E. Bradbury (same address as applicant). Transporting *such commodites* as are dealt in or used by discount stores (except commodities in bulk), between points in Ouachita Parish, LA, on the one hand, and, on the other, points in the U.S.

MC 146041 (Sub-6F), filed October 14, 1980. Applicant: CAL-TEX, INC., P.O. Box 1678, Costa Mesa, CA 92626. Representative: Eric Meierhoefer, Suite 423, 1511 K St., NW., Washington, DC 20005. Transporting (1) *ceramic tile,* and (2) *materials, equipment, and supplies* used in the manufacture, distribution, installation, and maintenance of ceramic tile, between points in Montgomery and Bucks Counties, PA, Cattaraugus County, NY, Breckinridge and Hancock Counties, KY, Madison County, TN, Fayette County, AL, and Placer County, CA, on the one hand, and, on the other, points in the U.S.

MC 146290 (Sub-8F), filed October 9, 1980. Applicant: DON THREDE, d.b.a. DON THREDE TRUCKING COMPANY, 1777 Arnold Industrial Highway, Concord, CA 94520.Representative: Eldon M. Johnson, 650 California St., Suite 2808, San Francisco, CA 94108. Transporting *such commodities* as are dealt in or used by a manufacturer of fabricated pipe and fittings, between points in the U.S., under continuing contract(s) with Jay Forni, Inc., of Concord, CA.

MC 149440 (Sub-1F), filed October 14, 1980. Applicant: JOHN CHEESEMAN TRUCKING, INC., 501 North First Street, Fort Recovery, OH 45846. Representative: Earl N. Merwin, 85 East Gay Street, Columbus, OH 43215. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in Mercer County, OH, on the one hand, and, on the other, points in the U.S.

MC 149561F, filed October 6, 1980. Applicant: EDWARD P. CASTERLINE, d.b.a. CASTERLINE TRUCKING, 444 Roosevelt St., Exeter, PA 18643. Representative: Joseph A. Keating, Jr., 121 S. Main St., Taylor, PA 18517. Transporting (1) *Perforated metal articles,* from points in Luzerne County, PA, to Russellville, AR, Alvin, TX, and Cleveland, OH, and (2) *materials, equipment, and supplies* used in the manufacture of perforated metal articles, from Russellville, AR, Alvin, TX, Cleveland, OH, and Wierton, VA, to points in Luzerne County, PA.

MC 15111 (Sub-1F), filed September 30, 1980. Applicant: CUSTOMER SEVICE, INC., P.O. Box 489, Red Cloud, NE 68970. Representative: D. R. Beeler, RT. 3, Carters Creek Pike, Franklin, TN 37064. Transporting *chemical, toilet preparations, personal care products, buffing and polishing compounds, and foodstuffs* (except commodities in bulk), between Chicago, IL, and Sparks, NV, on the one hand, and, on the other, points in IL, TX, FL, NJ, CA, NV, WA, and OR.

MC 152061F, filed October 1, 1980. Applicant: SMITH TRUCKING COMPANY, a partnership, P.O. Box 626, Seminole, OK 74868. Representative: Rob L. Pyron, P.O. Box 1663, Seminole, OK 74868. Transporting (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 (2) *machniery, 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, between points in KS, OK, and TX.

MC 152180F, filed October 10, 1980. Applicant: INTERSTATE CARTAGE, INC., 2700 Palmyra Rd., Albany, GA 31702. Representative: Norman L. Underwood, Suite 1525, 3400 Peachtree Rd., Atlanta, GA 30326. Transporting (1) *alcoholic beverages,* and (2) *materials, equipment, and supplies* used in the manufacture and distribution of alcoholic beverages, between points in Dougherty County, GA, on the one hand, and, on the other, points in AL and FL.

MC 152181F, filed October 9, 1980. Applicant: GOODRICH TRUCKING COMPANY, a corporation, Lehigh, IA 50557. Representative: Patrick B. Northup, 1100 Des Moines Bldg., Des Moines, IA 50307. Transporting (1) *clay products,* and (2) *materials, equipment, and supplies* used in the manufacture and installation of clay products, between points in the U.S., under continuing contract(s) with W. S. Dickey Clay Manufacturing of Pittsburgh, KS.

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Decided: October 21, 1980.

By the Commission, Review Board Number 3, Members Parker, Fortier, and Hill. Member Hill not participating.

MC 1743 (Sub-2F), filed October 8, 1980. Applicant: WICKER TRUCKING, INC., 311 Porter Ave., Scottdale, PA 15683. Representative: Arthur J. Diskin, 806 Frick Bldg., Pittsburgh, PA 15219. Transporting *electric power transformers, machinery, foundry supplies, iron and steel articles, and materials and supplies* used in the manufacture and distribution of iron and steel articles, from Scottdale and Mt. Pleasant, PA, to points in OH and WV.

Note.—The person or persons who appear to be engaged in common control with another carrier must either file an application under 49 U.S.C. § 11343(a) (1978) (formerly section 5(2) of the Interstate Commerce Act), or submit an affidavit indicating why such approval is unnecessary.

MC 43593 (Sub-11F), filed October 6, 1980. Applicant: FUNK'S HAULING SERVICE, INC., 2750 Grant Ave., Philadelphia, PA 19114. Representative: Alan Kahn, 1430 Land Title Bldg., Philadelphia, PA 19110. Transporting *general commodities* (except classes A and B explosives and household goods as defined by the Commission), between Philadelphia, PA, on the one hand, and, on the other, points in IL, IN, MD, MI, MO, OH, NC, PA, VA, WV, and WI.

MC 47583 (Sub-133F), filed October 7, 1980. Applicant: TOLLIE FREIGHTWAYS, INC., 1020 Sunshine Rd., Kansas City, KS 66115. Representative: D. S. Hults, P.O. Box 225, Lawrence, KS 66044. Transporting *such commodities* as are dealt in or used by automotive supply and household appliance stores, between points in (a) Delaware County, OH, Baltimore County, MD, Gaston County, NC, Hinds County, MS, Bell County, TX, Saline County, KS, and Shelby County, TN, and (b) Jacksonville, FL, Kansas City, MO, Los Angeles, CA, Chicago, IL, and Jersey City, NJ, on the one hand, and, on the other, points in the U.S.

MC 75192 (Sub-8F), filed October 9, 1980. Applicant: CHARLES T. BROWN TRUCK LINES, INC., 1208 Buff St., Greensboro, NC 27406. Representative: Terrell C. Clark, P.O. Box 25, Stanleytown, VA 24168. Transporting (1) *iron and steel articles and aluminum articles,* (a) between points in NC, on the one hand, and, on the other, points in GA, DE, MD, NC, TN, WV, and DC, (b) between points in SC, on the one hand, and, on the other, points in GA, DE, MD, TN, SC, WV, and DC, and (c) between points in VA, on the one hand, and, on the other, points in GA, DE, MD, SC, TN, VA, WV, and DC; and (2) *aluminum articles,* between points in NC, on the one hand, and, on the other, points in SC and VA.

MC 107012 (Sub-588F), 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 address as applicant). Transporting *soap and shampoo,* from San Rafeal and Redding, CA to Dover, DE.

MC 107012 (Sub-589F), 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 address as applicant). Transporting (1) *cabinets,* and (2) *parts and accessories* for cabinets, (a) from Moorefield, WV and Berryville, Edinburg, Strasburg, and Winchester, VA, to points in CT, DE, MA, MD, ME, NH, NJ, NY, PA, RI, and VT, (b) from Moorefield, WV, to points in NC and SC, and (c) from Phoenix, AZ, to points in CA, CO, NM, and NV, restricted in (a), (b), and (c) above to traffic originating at the facilities used by American Woodmark Corporation.

MC 107012 (Sub-590F), 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 address as applicant). Transporting (1) *vending machines,* and (2) *parts and accessories* for vending machines, from points in CA, to points in AR, CO, IA, MN, ND, OK, SD, and TX.

MC 110012 (Sub-77F), filed October 9, 1980. Applicant: ROY WIDENER MOTOR LINES, INC., 707 North Liberty Hill Rd., Morristown, TN 37814. Representative: John R. Sims, Jr., 915 Pennsylvania Bldg., 425 13th St. NW., Washington, DC 20004. Transporting (1) *new furniture,* and (2) *materials, equipment, and supplies* used in the manufacture and distribution of new furniture, between Houston, TX, Chicago, IL, Clifton, NJ, and Atlanta, GA, on the one hand, and, on the other, those points in the U.S., in and east of MN, IA, KS, OK, and TX.

MC 112263 (Sub-10F), filed October 7, 1980. Applicant: IMPERIAL VAN LINES, INC., West, 2805 Columbia St., Torrance, CA 90503. Representative: Alan F. Wohlstetter, 1700 K St. NW., Washington, DC 20006. Transporting *used household goods,* in containers, between points in CA, on the one hand, and, on the other, points in AZ and NM, restricted to traffic having a prior or subsequent movement by water.

MC 115353 (Sub-48F), filed October 8, 1980. Applicant: LOUIS J. KENNEDY TRUCKING COMPANY, a corporation, 342 Schuyler Avenue, Kearny, NJ 07032. Representative: Morton E. Kiel, Suite 1832, Two World Trade Center, New York, NY 10048. Transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission, and commodities in bulk), between points in the U.S., under a continuing contract(s) with THYSSEN, INC., of New York, NY.

MC 115353 (Sub-49F), filed October 8, 1980. Applicant: LOUIS J. KENNEDY TRUCKING COMPANY, a corporation, 342 Schuyler Avenue, Kearny, NJ 07032. Representative: Morton E. Kiel, Suite 1832, Two World Trade Center, New York, NY 10048. Transporting *general commodities* (except commodities in bulk, classes A and B explosives, and household goods as defined by the Commission), between points in the U.S., under a continuing contract(s) with Mitsui & Co. (U.S.A.), Inc., of New York, NY.

MC 121372 (Sub-10F), filed October 9, 1980. Applicant: EXPRESS TRANSPORT CO., a corporation, 1217 Dalton St., Cincinnati, OH 45203. Representative: Norbert B. Flick, 715 Executive Bldg., Cincinnati, OH 45202. Transporting *iron and steel articles,* between Nitro and

Buckannon, WV and Indiana, PA, on the one hand, and, on the other, points in KY, OH, NY, and PA.

MC 123272 (Sub-50F), filed October 10, 1980. Applicant: FAST FREIGHT, INC., 9651 S. Ewin Ave., Chicago, IL 60617. Representative: James C. Hardman, 33 N. LaSalle St., Chicago, IL 60602. Transporting (1) *clay and clay products,* (except commodities in bulk), and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, (except commodities in bulk), between Lowell, FL, on the one hand, and, on the other, those points in the U.S. in and east of ND, SD, NE, KS, OK, and TX.

MC 123383 (Sub-95F), filed October 6, 1980. Applicant: BOYLE BROTHERS, INC. R.D. 2, Box 329C, Medford, NJ 08055. Representative: Morton E. Kiel, Suite 1832, Two World Trade Center, New York, NY 10048. 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 Lancaster County, PA, on the one hand, and, on the other, points in CT, DE, PA, MD, MA, NJ, NY, RI, VA, NH, VT, ME, and DC.

MC 123993 (Sub-82F), filed October 8, 1980. Applicant: FOGLEMAN TRUCK LINE, INC., P.O. Box 1504, Crowley, LA 70526. Representative: Austin L. Hatchell, P.O. Box 2165, Austin, TX 78768. Transporting (1) *malt beverages,* and (2) *materials and supplies* (except in bulk) used in the manufacture, sale and distribution of the commodities in (1) above, from New Orleans, LA, to Dermott, AR.

MC 133523 (Sub-7F), filed October 7, 1980. Applicant: EUGENE STONE TRUCKING, INC., 11449 Valleyview Rd., Northfield, OH 44067. Representative: Richard H. Brandon, P.O. Box 97, 220 W. Bridge St., Dublin, OH 43017. 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 The Standard Oil Company of Ohio, of Cleveland, OH, and its wholly-owned subsidiaries.

MC 134323 (Sub-109F), filed Octoer 8, 1980. Applicant: JAY LINES, INC., Box 61467, DFW Airport, TX 75261. Representative: Gailyn L. Larsen, P.O. Box 82816, Lincoln, NE 68501. Transporting (1) *foodstuffs and meats, meat products and meat byproducts, and articles* distributed by meat packing houses, 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., under continuing contract(s) with Swift & Company.

MC 138272 (Sub-3F), filed October 10, 1980. Applicant: ALBERT ANDERSON AND ALBERT B. ANDERSON, d.b.a. ANDERSON TRUCKING, 310 South Grove, Lexington, IL 61753. Representative: Michael W. O'Hara, 300 Reisch Bldg., Springfield, IL 62701. 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 Ralston Purina Company, Checkerboard Square, of St. Louis, MO.

MC 141532 (Sub-102F), filed October 8, 1980. Applicant: PACIFIC STATES TRANSPORT, INC., 10244 Arrow Hwy, Rancho Cucamonga, CA 91730. Representative: Michael J. Norton, 1905 South Redwood Rd., Salt Lake City, UT 84104. Transporting (1) *primary metal products; including galvanized;* (except coating or other allied processing), and (2) *fabricated metal products;* (except ordnance), as described in Items 33 and 34, respectively, of the Standard Transportation Code Tariff, between points in San Joaquin County, CA, on the one hand, and, on the other, points in the U.S.

MC 142672 (Sub-156F), filed October 8, 1980. Applicant: DAVID BENEUX PRODUCE & TRUCKING, INC., P.O. Drawer F, Mulberry, AR 72947. Representative: Don Garrison, P.O. Box 1065, Fayetteville, AR 72701. Transporting *ice cream freezers,* from the facilities of Richmond Cedar Works Manufacturing Corporation, at or near Danville, VA, to points in AR, AZ, CA, IL, IN, LA, MI, MO, MS, OK, and TX.

MC 145042 (Sub-7F), filed October 8, 1980. Applicant: ZEELAND FARM SERVICES, INC., 2468–84th St., Zeeland, MI 49464. Representative: James R. Neal, 1200 Bank of Lansing Bldg., Lansing, MI 48933. Transporting *fertilizer and fertilizer ingredients* in bulk, from Portage, IN and Maumee and Cairo, OH, to points in MI.

MC 146293 (Sub-67F), filed October 7, 1980. Applicant: REGAL TRUCKING CO., INC., P.O. Box 829, Lawrenceville, GA 30245. Representative: Richard M. Tettelbaum, Fifth Floor, Lenox Towers S, 3390 Peachtree Rd. NE., Atlanta, GA 30326. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of mineral water, between points in CA and those points in the U.S., in and east of MT, WY, CO, and NM.

MC 146703 (Sub-16F), filed October 6, 1980. Applicant: ROBERTS & OAKE, INC., 4240 Blue Ridge Blvd., Kansas City, MO 64133. Representative: Terrence D. Jones, 2033 K St. NW., Washington, DC 20006. Transporting *general commodities* (except household goods as defined by the Commission and classes A & B explosives), between points in Jackson County, MO, on the one hand, and, on the other, points in AL, AR, GA, IL, IN, IA, KS, KY, LA, MN, MS, NE, ND, OH, OK, SD, TN, and TX.

MC 147193 (Sub-3F), filed October 7, 1980. Applicant: MARTIN RUITER, d.b.a. MARTIN'S FEED CO., P.O. Box 152, Custer, WA 98240. Representative: James T. Johnson 1610 IBM Bldg., Seattle, WA 98101. Transporting *paper products, lignin pitch, wood pulp and pulp board, from Bellingham, WA, to points in AZ and CA.*

MC 148183 (Sub-32F), filed October 3, 1980. Applicant: ARROW TRUCK LINES, INC., P.O. Box 432, Gainesville, GA 30503. Representative: Pauline E. Myers, Suite 348 Pennsylvania Bldg., 425-13th St, NW, Washington, DC 20004. 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 the facilities of The Pillsbury Company, in Fulton, Dekalb, and Cobb Counties, GA and points in AL, FL, GA, LA, MS, NC, SC, and TN.

MC 148742 (Sub-2F), filed October 10, 1980. Applicant: JUNE THORNHILL, d.b.a. CENTURION TRUCK LINE, 5425 Illinois Ave., Fair Oaks, CA 95628. Representative: Earl N. Miles, 3704 Candlewood Dr., Bakersfield, CA 93306. Transporting *well drilling compounds,* in bulk, between points in Churchill, Elko, Eureka, and Lander Counties, NV, on the one hand, and, on the other, points in CA.

MC 152153, filed October 8, 1980. Applicant: MOREAUX BROTHERS TRUCKING, INC., P.O. Box 362, China, TX 77613. Representative: E. Stephen Heisley, 805 McLachlen Bank Building, 666 Eleventh Street, NW, Washington, DC 20001. Transporting *chemicals and plastics,* between points in Montgomery and Jefferson County, TX, on the one hand, and, on the other, points in Harris and Galveston Counties, TX, and Calcasieu Parish, LA, restricted to traffic having a prior or subsequent movement by water.

By the Commission, Review Board Number 2; Members Chandler, Eaton and Liberman.

MC 106119 (Sub-27F), filed October 10, 1980. Applicant: ASSOCIATED PETROLEUM CARRIERS, INC., P.O. Box 2808, Union Road, Spartanburg, SC 29302. Representative: Kim D. Mann, Suite 1010, 7101 Wisconsin Avenue, Washington, DC 20014. Transporting *liquid commodities,* in bulk, in tank vehicles, between points in FL, AL, TN, NC, SC, and GA.

MC 108649 (Sub-19F), filed October 6, 1980. Applicant: STURM FREIGHTWAYS, INC., 8919 North University, Peoria, IL 61614. Representative: Leonard R. Kofkin, 39 South La Salle St., Chicago, IL 60603.Over regular routes, transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission, and commodities in bulk), (1) between Chicago, IL and Indianapolis, IN, from Chicago over U.S. Hwy 41 to junction U.S. Hwy 52, then over U.S. Hwy 52 to Indianapolis, and return over the same route, serving the off-route points of Crown Point, Cedar Lake, Lowell, Frankfort, Remington, and Rensselaer, IN; (2) between Danville, IL and Indianapolis, IN, over U.S. Hwy 136, serving the off-route points of Attica, Danville, and Williamsport, IN; (3) between Greenup, IL and Indianapolis, IN, over U.S. Hwy 40, serving the off-route points of Clinton, Danville, and Greencastle, IN; (4) between Des Moines, IA and Chicago, IL (a) from Des Moines over U.S. Hwy 6 to junction U.S. Hwy 34, then over U.S. Hwy 34 to Chicago, and return over the same route, and (b) from Des Moines over U.S. Hwy 6 to junction U.S. Hwy 45, then over U.S. Hwy 45 to Chicago, and return over the same route, serving the off-route points of Brooklyn, Coralville, and Mitchellville, IA, and Aurora, Geneseo, Kewanee, and Naperville, IL; (5) between Des Moines, IA and Chicago, IL, from Des Moines over U.S. Hwy 65 to junction U.S. Hwy 30, then over U.S. Hwy 30 to junction U.S. Hwy 34, then over U.S. Hwy 34 to Chicago, and return over the same route, serving the off-route points of Ames, Anamosa, Belle Plaine, DeWitt, Nevad, and Tipton, IA; (6) between Burlington, IA and junction U.S. Hwy 61 and U.S. Hwy 52, over U.S. Hwy 61, serving the off-route points of Clinton and Washington, IA; (7) between Des Moines, IA and Burlington, IA, from Des Moines over IA Hwy 163 to junction U.S. Hwy 63, then over U.S. Hwy 63 to junction U.S. Hwy 34, then over U.S. Hwy 34 to Burlington, and return over the same route, serving the off-route points of Knoxville and Newton, IA; (8) between Peoria, IL and Minneapolis, MN, from Peoria over U.S. Hwy 150 to junction U.S. Hwy 6, then over U.S. Hwy 6 to junction U.S. Hwy 218, then over U.S. Hwy 218 to junction U.S. Hwy 63, then over U.S. Hwy 63 to junction U.S. Hwy 52, then over U.S. Hwy 52 to Minneapolis, and return over the same route, serving the off-route points of Cedar Falls, Charles City, Marion, and Oelwein, IA and Austin, Burnsville, Hastings, Red Wing, and Winona, MN; (9) between Peoria, IL and Minneapolis, MN, from Peoria over IL Hwy 29 to junction U.S. Hwy 51, then over U.S. Hwy 51 to junction U.S. Hwy 16, then over U.S. Hwy 16 to junction U.S. Hwy 12, then over U.S. Hwy 12 to Minneapolis, and return over the same route, serving the off-route points of Belvidere, DeKalb, and Princeton, IL, Hastings, Stillwater, and White Bear Lake, MN, and Chippewa Falls and LaCrosse, WI; (10) between Omaha, NE and Des Moines, IA over U.S. Hwy 6, serving the off-route points of Ankeny, Avoca, Earlham, Johnston, and Underwood, IA; (11) between Omaha, NE and Minneapolis, MN, from Omaha over U.S. Hwy 73 to junction U.S. Hwy 30, then over U.S. Hwy 30 to junction U.S. Hwy 169, then over U.S. Hwy 169 to Minneapolis, and return over the same route, serving the off-route points of Webster City, IA, Chaska and New Ulm, MN, and Blair, NE; (12) between Des Moines, IA and Minneapolis, MN over U.S. Hwy 65, serving the off-route points of Ames, Ankeny, Clear Lake, Marshalltown, and Osage, IA and Albert Lea, Austin, Farmington, Lakeville, Northlake, and Owattona, MN; (13) between Chicago, IL and Minneapolis, MN, from Chicago over U.S. Hwy 20 to junction U.S. Hwy 51, then over U.S. Hwy 51 to junction U.S. Hwy 16, then over U.S. Hwy 16 to junction U.S. Hwy 12, then over U.S. Hwy 12 to Minneapolis, and return over the same route, serving the off-route points of Chippewa Falls and LaCrosse, WI and Anoka, Blaine, Stillwater, and White Bear Lake, MN; (14) between Chicago, IL and Minneapolis, MN, from Chicago over U.S. Hwy 20 to junction U.S. Hwy 52, then over U.S. Hwy 52 to Minneapolis, and return over the same route, serving the off-route points of Aurora, IL, Burnsville, Hastings, Red Wing, and Winona, MN, and LaCrosse and Prairie Du Chein, WI; and (15) serving all intermediate points on routes (1) through (14) above.

MC 124078 (Sub-1031F), filed August 25, 1980, previously noticed in the **Federal Register** issue of September 23, 1980. Applicant: SCHWERMAN TRUCKING CO., a Corporation, 611 South 28th St., Milwaukee, WI 53215. Representative: Richard H. Prevette, P.O. Box 1601, Milwaukee, WI 53201. Transporting *cement,* from points in Mayes, Woodward, and Oklahoma Counties, OK, to points in AR, KS, and MO. NOTE: This republication adds Oklahoma County, OK to the origin territory which was inadvertently omitted from the previous publication.

MC 128798 (Sub-6F), filed October 10, 1980. Applicant: GALASSO TRUCKING, INC., 8 Kilmer Rd., Larchmont, NY 10538. Representative: Larsh B. Mewhinney, 555 Madison Ave., New York, NY 10022. Transporting *electrical household appliances,* between points in the U.S., under continuing contract(s) with General Electric Company, of Columbia, MD.

MC 136818 (Sub-115F), filed October 8, 1980. Applicant: SWIFT TRANSPORTATION COMPANY, INC., 335 West Elwood Rd., P.O. Box 3902, Phoenix, AZ 85030. Representative: Donald E. Fernaays, 4040 East McDowell Rd., Suite 320, Phoenix, AZ 85008. Transporting *meats, meat products, 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, from Phoenix and Tolleson, AZ, to points in the U.S. (except AK and HI).

MC 138438 (Sub-93F), filed October 10, 1980. Applicant: D. M. BOWMAN, INC., Route 2, Box 43A1, Williamsport, MD 21795. Representative: Edward N. Button, 580 Northern Ave., Hagerstown, MD 21740. Transporting *marine systems* and *accessories* for marine systems, between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities of Teleflex, Inc.

MC 141799 (Sub-1F), filed October 8, 1980. Applicant: BILL'S REFRIGERATED DELIVERY SERVICE, INC., P.O. Box 14464, Memphis, TN 38114. Representative: John Philyaw (same address as applicant). Transporting (1) *such commodities* as are dealt in by (a) retail stores, (b) pharmacies (except prescription drugs), and (c) wholesale grocery and food business houses, and (2) *equipment, materials, and supplies* used in the manufacture and distribution of the commodities described in (1) and (2), between points in Clay, Craighead, Crittenden, Cross, Greene, Lawrence, Lee, Mississippi, Phillips, Poinsett, Randolph, and St. Francis Counties, AR, Alcorn, Benton, Bolivar, Calhoun, Carroll, Chickasaw, Coahoma, Clay, DeSoto, Grenada, Itawamba, Lafayette, Lee, Leflore, Lowndes, Marshall,

Monroe, Montgomery, Oktibbeha, Panola, Pontotoc, Prentiss, Quitman, Sunflower, Tallahatchie, Tate, Tippah, Tishomingo, Tunica, Union, Washington, Webster, and Yalobusha Counties, MS, and Benton, Crockett, Chester, Carroll, Dyer, Decatur, Fayette, Gibson, Hardeman, Hardin, Haywood, Henderson, Henry, Lake, Lauderdale, Madison, McNairy, Obion, Shelby, Tipton, and Weakley Counties, TN.

MC 143739 (Sub-44F), filed October 8, 1980. Applicant: SHURSON TRUCKING CO., INC., P.O. Box 147, New Richland, MN 56072. Representative: Gary W. Shurson (same address as applicant). Transporting *foodstuffs,* between points in Freeborn County, MN, on the one hand, and, on the other, points in AR, KS, LA, MO, OK, and TX.

MC 148518 (Sub-3F), filed September 24, 1980. Applicant: JUR CORPORATION, d.b.a. RAJOR, INC., P.O. Box 756, 830 Columbia Pike, Franklin, TN 37064. Representative: William J. Monheim, P.O. Box 1756, Whittier, CA 90609. Transporting (1) *furniture and fixtures,* and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1), between points in the U.S., under continuing contract(s) with Jamison Bedding, Inc., of Franklin, TN.

MC 150609 (Sub-1F), filed October 8, 1980. Applicant: RONALD R. McINTYRE, d.b.a. D & R TRANSPORT LEASING, 36077 Road 160, Visalia, CA 93277. Representative: Ronald R. McIntyre (same address as applicant). Transporting (1) *paper and paper products,* and (2) *materials 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 Sassoon-Scherman Fibers Co., of Los Angeles, CA.

Volume No. OP5–039

Decided: October 17, 1980.

By the Commission, Review Board Number 2, Members Chandler, Eaton and Liberman.

MC 17829 (Sub-19F), filed October 8, 1980. Applicant: DiSILVA TRANSPORTATION INC., 50 Middlesex Avenue, Somerville, MA 02145. Representative: James F. Martin, Jr., 8 W. Morse Rd., Bellingham, MA 02019. Transporting *such commodities* as are dealt in or used by (a) chain grocery and food business houses, and (b) department stores (except commodities in bulk), between points in MA, on the one hand, and, on the other, points in ME, NH, VT, RI, CT, NY, NJ, PA, DE, VA, and DC.

MC 113678 (Sub-896F), filed September 20, 1980, previously noticed in **Federal Register** issue of October 8, 1980. Applicant: CURTIS, INC., 4810 Pontiac St., Commerce City, CO 80022. Representative: Roger M. Shaner (same address as applicant). Transporting *such commodities* as are dealt in or used by a manufacturer of printed banking materials, between Phoenix and Tucson, AZ, Concord, CA, Colorado Springs, Denver, Fort Collins, Pueblo, and Wheatridge, CO, Boise, ID, Lawrence, KS, Las Vegas, NV, Albuquerque, NM, Salt Lake City, UT, and Arlington and El Paso, TX.

Note.—This republication is to more accurately describe the sought commodities and territory.

MC 115838 (Sub-9F), filed October 8, 1980. Applicant: COMMODITY HAULAGE CORPORATION, 146–92 New York Blvd., Jamaica, NY 11434. Representative: Morton E. Kiel, Suite 1832, 2 World Trade Center, New York, NY 10048. 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 Suffolk and Nassau Counties, NY, on the one hand, and, on the other, New York, NY, Philadelphia, PA, and points in NJ.

MC 117878 (Sub-19F), filed October 10, 1980. Applicant: DWIGHT CHEEK d.b.a. DWIGHT CHEEK TRUCKING, P.O. Box 31538, Amarillo, TX 79120. Representative: Thomas F. Sedberry, P.O. Box 2165, Austin, TX 78768. Transporting *bananas,* from points in Los Angeles County, CA, and Galveston County, TX, to points in NM.

MC 124109 (Sub-19F), filed October 8, 1980. Applicant: B. F. C. TRANSPORTATION, INC., P.O. Box 985, Cedar Rapids, IA 52406. Representative: William L. Fairbank, 1980 Financial Center, Des Moines, IA 50309. Transporting (1) *containers and container closures,* and (2) *materials, equipment, and supplies* used in the manufacture, and distribution of the commodities in (1) above (except commodities in bulk), between points in the U.S., under continuing contract(s) with The Continental Group, Inc. of Stamford, CT.

MC 136818 (Sub-114F), filed October 8, 1980. Applicant: SWIFT TRANSPORTATION COMPANY, INC., 335 West Elwood Rd., P.O. Box 3902, Phoenix, AZ 85030. Representative: Donald E. Fernaays, 4040 East McDowell Rd., Suite 320, Phoenix, AZ 85008. Transporting *iron and steel articles,* between points in AZ, CA, CO, ID, KS, MO, MT, NE, NM, NV, OK, OR, TX, UT, WA, and WY.

MC 138279 (Sub-20F), filed October 8, 1980. Applicant: CONALCO CONTRACT CARRIER, INC., P.O. Box 968, Jackson, TN 38301. Representative: Charles W. Teske (same as applicant). Transporting *general commodities* (except those of unusual value, classes A and B explosives, and household goods as defined by the Commission), between points in the U.S., under continuing contract(s) with Dayco Corporation of Dayton, OH.

MC 139349 (Sub-28F), filed October 7, 1980. Applicant: E Z FREIGHT LINES, a Corporation, 70 Gould St., Bayonne, NJ 07002. Representative: Robert B. Pepper, 168 Woodbridge Ave., Highland Park, NJ 08904. Transporting *such commodities* as are dealt in by department stores, between points in the U.S., under continuing contract(s) with Howard Bros. Discount Stores, Inc., of Monroe, LA.

MC 142059 (Sub-144F), filed October 9, 1980. Applicant: CARDINAL TRANSPORT, INC., 1830 Mound Rd., Joliet, IL 60436. Representative: Jack Riley (same address as applicant). Transporting (1) *iron and steel articles,* and (2) *materials, equipment and supplies* used in the manufacture and distribution of the commodities in (1) above, between points in Alleghany, Washington and Westmoreland Counties, PA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 147488 (Sub-8F), filed October 8, 1980. Applicant: BURT CLIFFORD TRANSPORT, INC., Box 400, Ruthven, Ontario, Canada N0P 2G0. Representative: Wilhelmina Boersma, 1600 First Federal Bldg., Detroit, MI 48226. In foreign commerce only, transporting *glass products,* between ports of entry on the international boundary line between the U.S. and Canada in MI and NY, on the one hand, and, on the other, points in PA, WV, NY, MD, MI, NJ, and OH.

MC 150339 (Sub-8F), filed October 6, 1980. Applicant: PIONEER TRANSPORTATION SYSTEMS, INC., 151 Easton Blvd., Preston, MD 21655. Representative: J. Cody Quinton, Jr. (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. under continuing contract(s) with Ralston Purina Company of Fairburn, GA. Condition: The person or persons who appear to be 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 152099 (Sub-1F), filed October 6, 1980. Applicant: SNAKE RIVER TRUCKING, INC., Route 2, Box 390, Rigby, ID 83442. Representative: Irene Warr, 430 Judge Bldg., Salt Lake City, UT 84111. Transporting *iron and steel articles,* between points in the U.S., under continuing contract(s) with Brown Strauss, a division of Azcon Corporation, of Pleasant Grove, UT.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-33491 Filed 10-27-80; 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 12, 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. On or before December 29, 1980 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. OP1-057

Decided: October 17, 1980.

By the Commission, Review Board Number 2, Members Chandler, Eaton, and Liberman. Member Chandler not participating.

MC 124141 (Sub-47F), filed October 15, 1980. Applicant: JULIAN MARTIN, INC., P.O. Box 3348, Batesville, AR 72501. Representative: Theodore Polydoroff, Suite 301, 1307 Dolley Madison Blvd., McLean, VA 22101. 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 149581F, filed October 8, 1980. Applicant: LUJO TRUCKING CO., INC., 121 Braley Rd., East Freetown, MA 02717. Representative: Frank J. Weiner, 15 Court Square, Boston, MA 02108. 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. OP5-037

Decided: October 17, 1980.

By the Commission, Review Board Number 2, Members Chandler, Eaton, and Liberman.

MC 38799 (Sub-5F), filed October 8, 1980. Applicant: THE EDWARDS TRANSFER AND STORAGE COMPANY, a corporation, P.O. Box 7795, Columbus, OH 43207. Representative: Edward P. Bocko, P.O. Box 322, Cuyahoga Falls, OH 44222. 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 113908 (Sub-511F), filed October 8, 1980. Applicant: ERICKSON TRANSPORT CORP., 2255 North Packer Road, P.O. Box 10068 G. S., Springfield, MO 65804. Representative: Jim G. Erickson (same as applicant). 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 128958 (Sub-3F), filed October 10, 1980. Applicant: CENTRAL PENN AIR SERVICE, INC., P.O. Box 192, Middletown, PA 17057. Representative: J. Bruce Walter, 410 North Third St., P.O. Box 1146, Harrisburg, PA 17108. 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 145409 (Sub-5F), filed October 8, 1980. Applicant: STA-GREEN TRANSPORTATION COMPANY, INC., P.O. Box 540, Sylacauga, AL 35150. Representative: Robert E. Tate, P.O. Box 517, Evergreen, AL 36401. 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.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-33492 Filed 10-27-80; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 334 (Sub-4)]

Order Granting Railroads Flexibility in Setting Per Diem Levels

AGENCY: Interstate Commerce Commission.

ACTION: Notice of adoption of order granting railroads flexibility in setting per diem rates.

SUMMARY: On June 9, 1980 the Commission ordered interested parties to show cause why railroads should not be permitted to reduce per diem rates set by the Commission. In a decision served August 18, 1980, 45 FR 58259 (Sept. 2, 1980) the Commission announced its intent to permit this flexibility based on the rationale that flexible per diem levels would significantly improve car utilization during the present period of car surplus.

The terms of the order are discussed in the August 18 decision and in the supplementary information section of this notice.

DATE: The order will become effective November 11, 1980.

FOR FURTHER INFORMATION CONTACT: Richard Felder or Jane Mackall (202) 275–7656.

SUPPLEMENTARY INFORMATION: On June 9, 1980 the Commission ordered interested parties to show cause why railroads should not be permitted to reduce per diem on their freight cars below applicable basic per diem or incentive per diem rates [1] set by the Commission. Subsequently, in a decision issued August 18, 1980, 45 FR 58259 (Sept. 2, 1980), we announced our intention to permit any carrier that owns, leases, or otherwise controls a freight car used in transportation by any other rail carrier subject to jurisdiction of the Commission to reduce charges for use of that car below the basic per diem level established by the Commission, or raise the charges to a rate not exceeding the applicable basic per diem rate following a previous reduction, provided: (a) that the changes, if made unilaterally by the owning or controlling carrier, be applicable uniformly to all other carriers, and that such changes be effective only on the first day of any month, with not less than ten days notice to be given through the Railway Equipment Register, the UMLER file, the AAR Car Service Division, and/or other such means as will provide the most rapid and accessible notification possible; (b) that changes in car hire rates not meeting the requirements of paragraph (a) above be made only with the express agreement of those carriers to which they are extended; and (c) that all changes in car hire rates under this order be made only by independent action as provided by Article XIV of Section 5(b) Agreement No. 7.

Further comments were invited and have been received from a number of interested parties. After consideration of the comments we conclude that the present emergency situation created by the current substantial freight car surplus necessitates flexibility in reducing per diem rates.

A number of parties, including Southern Pacific Transportation Company, National Railway Utilization Corporation, Itel Rail, Pittsburgh and Lake Erie Railroad Company, and Consolidated Rail Corporation,[2] suggested that downward flexibility in setting per diem rates must be accompanied by a commensurate upward flexibility in order to allow the recovery of carriers' capital costs during periods of car shortages. However, our order was issued under the emergency car order provisions of section 11122 and 11123 in response to the emergency situation created by a rapidly growing freight car surplus. To discourage cross-hauling of empty cars during periods of car surplus, we found it important for carriers to have flexibility to reduce per diem rates. Nevertheless, the order is designed to be operative only so long as a surplus in equipment exists. The subject of upward flexible per diem will be fully addressed in a notice of proposed rulemaking to be issued shortly. See: Ex Parte No. 334 (Sub-5), *Zone of Reasonableness for Car Hire Charges.*

The Chicago and North Western (CNW) recommends that bilateral agreements be defined as only those in which all carriers in an actual movement have agreed on the same terms and conditions to the reduced per diem rate. To do otherwise, they contend, may impair a carrier's ability to perform common carrier services, by exposing them to potential discriminatory or predatory practices. This issue was fully discussed in our prior order in which we emphasized that the Commission will retain its power to investigate complaints of discrimination and predatory practices and to curb abuses if they occur. It is clear that the agreements envisioned will extend to bridge carriers involved in a particular movement.

Similarly, for reasons stated in our prior order, questions raised by The Railway Association of Canada concerning the effectiveness of permiting flexible reductions in per diem rates do not constitute a show of good cause not to issue the present order. We will, however, monitor the impact of this order. In this regard, we ask that the AAR report to the Commission, within one year, on the effect of this downward flexibility on actual car utilization and acquisition.

Itel suggests that in the case of cars subject to a nonequity lease or similar arrangement the lessee railroad must have approval of the leasing company lessor of such cars prior to changing its per diem rates. They argue this is necessary to protect the lessor who bears the cost of ownership and maintainance and to whose interests the lessee may not be entirely sensitive. This is a subject which should be privately negotiated between the parties and not an issue in which the Commission will interfere.

In response to Itel's request for clarification, we note that concurrance with rate changes by a leasing company lessor involving cars bearing marks of more that one railroad lessee would not constitute or raise an inference of prohibited collective action. Correspondingly, in response to a related question raised by AAR, a single UMLER submission containing statistical data of identical rate charges for several railroads on cars bearing their respective reporting marks would be permissible under the Commission's order.

Conrail seeks clarification that it was not the Commission's intent to prevent multilateral car management agreements that would promote efficient car utilization in the public interest. Indeed, we did not intend to preclude such agreements since our order was directed only at collective rate setting. Additionally, Conrail requests that the Commission restrict the public dissemination of rates set by bilateral and multilateral agreement to avoid the encouragement of price uniformity. However, at least until the Commission has had the opportunity to observe the system in practice we are not prepared to issue orders regarding the dissemination of information.

AAR has raised a number of technical and procedural questions. In answering these questions we want to emphasize that every effort is being made to design a program which is simple and efficient.

Any uncertainty regarding the appropriate terminology for describing change rates, as evidenced by the AAR's comments, should be resolved by compliance with current industry practices. The decision permits changes in car hire rates for an individual freight car, a class of cars, or the carrier's entire fleet. The basic hourly rate and/or the supplemental OT–37—C rate may be changed.

The AAR recommends that the Secretary of the AAR Operating-Transportation Division be named as the party to receive and handle the notices of changed car hire rates. Since the Secretary is responsible for administering the UMLER file, handling car hire rate proposals, and independent actions under section 5(b) Agreement No. 7, we accept the AAR's recommendation.

In response to the AAR's concerns about co-ordinating our decision with its existing procedures we are changing the

[1] Incentive per diem rules and charges were eliminated Ex Parte No. 252 (Sub-5), Elimination of Incentive Per Diem Charges, *364* I.C.C. *116* (1980), 45 FR 59168 (August 14, 1980).

[2] The late-filed comments of the American Iron and Steel Institute which raise the same issue are accepted and have been considered.

notice period from 10 days to 15 days. The deadline for notifying the AAR of changes in car hire charges will be 5:00 p.m. of the 15th day of the month, or 5:00 p.m. of the last working day when the 15th falls on a Saturday, Sunday or holiday.

The Commission's August 18, 1980 decision is amended to name the Secretary of the AAR Operating-Transportation Division as the party to receive and handle the notices of changed car hire rates.

The decision is further amended to require unilateral rate changes to be made on 15 days notice. Notice must be given to the Secretary of the AAR Operating-Transportation Division by 5:00 p.m. on the 15th day of the month or 5:00 p.m. of the last working day when the 15th falls on a Saturday, Sunday or holiday.

The August 18 decision, as amended, will be effective two weeks after publication in the **Federal Register.**

This action does not significantly affect either the quality of the human environment or conservation of energy resources. Authority: 49 U.S.C. Sec. 10321, 11122, and Sec.11123, and 5 U.S.C. Sec. 553.

Dated: October 15, 1980.

By the Commission, Chairman Gaskins, Vice-Chairman Gresham, Commissioners Clapp, Trantum, Alexis, and Gilliam. Commissioner Trantum absent and not participating.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-33493 Filed 10-27-80; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

David Frank Micci, M.D.; Denial of Application

On June 19, 1980, the Administrator of the Drug Enforcement Administration (DEA) directed to David Frank Micci, M.D. (Respondent) an Order to Show Cause seeking to deny the application for a DEA Certificate of Registration which Dr. Micci executed on January 27, 1980. The Order to Show Cause was predicated on the March 9, 1978 conviction of the Respondent in the United States District Court for the District of New Mexico, on one (1) count of unlawful distribution of controlled substances in violation of 21 U.S.C. 841(a)(1). This conviction is a controlled substance-related felony. Through counsel, Respondent waived his right to a hearing in a letter, dated August 16, 1980, and submitted affidavits, exhibits and letters. Pursuant to 21 CFR 1301.54(e), the Administrator has considered the investigative file and Respondent's submissions in this matter, and publishes this Final Order pursuant to 21 CFR 1316.66.

The Administrator finds that Dr. Micci pled nolo contendere to one (1) count of a 132 count indictment. He was sentenced by The Honorable E. L. Mechem to a term of five (5) years plus a special parole term of three (3) years. Respondent served approximately seventeen (17) months at Allenwood Prison Camp, being released on August 23, 1979.

The Administrator further finds that at the time of his arrest and plea, Dr. Micci was engaged in the private practice of medicine in Albuquerque, New Mexico. The Administrator finds that Respondent practiced medicine in New Mexico for less than one (1) year. Between July and October, 1977, one individual obtained prescriptions for 23 different people from Respondent. These prescriptions were for over 13,000 dosage units of controlled substances, including 10,550 dosage units of hydromorphone (Dilaudid 4 mg.), a Schedule II controlled substance.

The Administrator finds further that Dr. Micci settled in the Buffalo, New York area upon his release from incarceration. The Administrator finds that Respondent is employed by Cooper Emergency Services of New York, P.C., as an emergency room physician at Our Lady of Victory Hospital in Lackawanna, New York.

The Administrator has considered a letter to DEA from the probation officer handling Respondent's parole. In this letter, the probation officer first sets out what is Respondent's version of the events leading to his arrest and plea, namely that Respondent naively began writing prescriptions for controlled substances for an individual who came to Respondent verbalizing complaints which would normally require such medication. This individual brought friends and family members to Dr. Micci, who prescribed controlled substances for them, too. According to this version, Respondent continued to write prescriptions for controlled substances when these individuals threatened to inform the New Mexico authorities. The Administrator rejects this version of the events and finds, based upon the investigative file in this case, that Respondent was fully aware of his actions in prescribing controlled substances at the time of his arrest and plea, and that he wrote such prescriptions as a profit-making venture. The Administrator finds further that Respondent wrote prescriptions for controlled substances for patients who did not require them for treatment, and he charged a fee to do so.

The Administrator finds, upon a thorough review of the investigative file and Respondent's submission, that private medical practice is clearly not a viable alternative for Dr. Micci. The Administrator finds further that the public interest will be served if Respondent is permitted to administer or order the administration of controlled substances in the course of his professional practice as an emergency room physician at Our Lady of Victory Hospital. The Administrator further finds that there is no legal or regulatory impediment to his doing so, so long as Respondent remains licensed to practice medicine in the State of New York and confines his practice as an emergency room physician to a hospital properly registered under the Controlled Substances Act. However, 21 CFR 1301.76(a) provides that "a registrant shall not employ as an agent or employee who has access to controlled substances any person who has had . . . his registration revoked, at any time." In order that Dr. Micci may be employed at Our Lady of Victory Hospital or another registered hospital, the Administrator hereby waives the prohibition of 21 CFR 1301.76(a) with respect to the employment of David Frank Micci, M.D., as an emergency room physician.

Having reviewed the investigative file and Respondent's submissions, the Administrator concludes that there are lawful grounds for the denial of Respondent's application for a DEA Certificate of Registration pursuant to 21 U.S.C. 824(a)(2). It is the decision of the Administrator to deny Respondent's application for DEA registration since Respondent David Frank Micci was convicted of a felony relating to controlled substances. Accordingly, pursuant to the authority vested in the Attorney General in 21 U.S.C. 824, and redelegated to the Administrator of the Drug Enforcement Administration, the Administrator hereby denies the application for registration executed by David Frank Micci, M.D., on January 27, 1980, be, and is hereby, revoked, effective November 28, 1980.

Peter B. Bensinger,

Administrator.

October 22, 1980.

[FR Doc. 80-33490 Filed 10-27-80; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

Federal Committee on Apprenticeship; Public Meetings

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 1) of October 6, 1972, notice is hereby given that the Federal Committee on Apprenticeship will conduct the following open meetings as shown below:

(a) *FCA Subcommittee on Research*

Date: November 5, 1980; *Time:* 9 a.m.–11 a.m.

Place: Conference Room N–4437 C, 200 Constitution Avenue N.W., Washington, D.C.

Agenda: Review, discussion and consensus of DARD Provided Work Statements for FY 81 Research Projects.

(b) *FCA Subcommittee on Fed-State Relations*

Date: November 5, 1980; *Time:* 1:30 p.m. to 3:30 p.m.

Place: Conference Room N–4437 C, 200 Constitution Avenue N.W., Washington, D.C.

Agenda: State-Federal Issues.

(c) *FCA Subcommittee on Relationship of Apprenticeship to Other Training Systems*

Date: Nobember 5, 1980 *Time:* 9 a.m.–12 noon

Place: Multi-purpose Room—PH Building, 601 D St. NW., Washington, D.C.

Agenda:

(1) CETA: The View from Apprenticeship—Discussion of Key Issues

(2) Future Directions of the Subcommittee

(d) *FCA Subcommittee on Equal Apprenticeship Opportunity*

Date: November 5, 1980; *Time:* 1:30 p.m. to 3:30 p.m.

Place: Multi-Purpose Room—PH Building, 601 D St. NW., Washington, D.C.

Agenda:

(1) Intent of Title VII in the Spirit of Equal Employment Opportunity.

(2) Status Report on SAC States complying with the provisions of 29 CFR 30—Equal Employment Opportunity in Apprenticeship and Training.

(3) Walker-Levitas Amendment: What it means? Its implication on equal opportunity in apprenticeship.

(4) Women in Apprenticeship: Prospects for a National Outreach effort.

The FCA will hold a full open meeting on Thursday, November 6 from 9 a.m. to 4:30 p.m.; Friday, November 7, 1980, from 9 a.m. to 12 noon, at the National Association of Home Builders, 15th and M Street, N.W., Washington, D.C.

The agenda for the meeting on November 6 will include:

(1) Opening of Meeting

(2) Swearing in of New Members

(3) Apprenticeship Innovations in Practice Associated General Contractors Staff

(4) Status Report on Certificates of Merit Recommendation

(5) VA Certification of Apprenticeship Training and on-the-Job Training Programs

(6) Apprenticeship Data Services.

The agenda for the meeting on November 7 will include:

(7) *FCA Subcommittee Reports*

—Research

—Equal Apprenticeship Opportunity

—Fed-State Relations

—Relationship of Apprenticeship to Other Training Systems

(8) *Discussion of Future Plans*

The agendas are subject to change due to time constraints and priority items which may come before the Committee between the time of this publication and the scheduled date of the FCA meeting.

Members of the public are invited to attend the proceedings. Any member of the public who wishes to file written data, views or arguments pertaining to the agendas may do so by furnishing it to the Executive Secretary at any time prior to the meeting. Thirty copies are needed for the members and for the inclusion in the minutes of the meeting.

Any member of the public who wishes to speak at this meeting should so indicate in a written statement, also the nature of the intended presentation and amount of time needed. The Chairperson will announce at the beginning of the meeting the extent to which time will permit the granting of such requests.

Communications to the Executive Secretary shall be addressed as follows:

Mrs. M. M. Winters, Bureau of Apprenticeship and Training, ETA, U.S. Department of Labor, 601 D. Street N.W., (Room 5434), Washington, D.C. 20213.

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

Charles B. Knapp,

Acting Assistant Secretary for Employment and Training Administration.

[FR Doc. 80–33515 filed 10–27–80; 8:45 am]

BILLING CODE 4510–30–M

Mine Safety and Health Administration

[Docket No. M–80–140–C]

Eastern Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Eastern Coal Corporation, Lebanon, Virginia 24266 has filed a petition to modify the application of 30 CFR 75.1104 (underground storage, lubricating oil and grease) to its Stone No. 4, Pegs Branch, No. A–4 and No. A–5 Mines located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the use of five-gallon plastic containers as opposed to 30-gallon metal containers.

2. Petitioner states that the 30-gallon metal containers presently being used in the mine cause or contribute to a diminution of safety for the miners because:

a. The can will conduct electricity;

b. The can, when filled with oil, weighs 220 pounds, which in handling causes numerous back strains, hand and foot injuries;

c. Due to the weight and bulk of the container, an excessive amount of oil is spilled and wasted; and

d. These cans are easily ruptured when loading and unloading them from supply cars.

3. As an alternative method, petitioner proposes to use smaller, five-gallon, approved plastic containers. The petitioner states that these containers eliminate the disadvantages listed above for the 30-gallon ones.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments on or before November 28, 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: October 20, 1980.

Frank A. White,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 80–33516 Filed 10–27–80; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M-80-99-M]

Texasgulf Chemicals Co.; Petition for Modification of Application of Mandatory Safety Standard

Texasgulf Chemicals Co., P.O. Box 100, Granger, Wyoming 82934, has filed a petition to modify the application of 30 CFR 57.21-97 (blasts in gassy mines) to its Wyoming Soda Ash Operation located in Sweetwater County, Wyoming. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a blast must be initiated by electrical current.

2. As an alternate method, petitioner proposes to initiate blasts using caps and fuse in an electrical substation. The area to be shot is above and on the ribs of the electrical substation.

3. Petitioner states that in order to avoid pre-ignition of shots by stray or static currents. Another method of detonating the round must be used. Using caps and fuse eliminates the possibility of any stray or static current detonating the round prematurely.

4. In support of this alternate method, petitioner states the following:

a. The length of the safety fuse would be six feet at a burning rate of forty seconds per foot. No more than fifteen holes will be shot at one time. Two feet in depth will be shot on the arch and on the ribs. Each hole will be cleared with compressed air and loaded with a maximum of 0.50 pounds of explosives.

b. A minimum of 10,000 cubic feet per minute of air will be coursed through the electrical substation when blasting and will be coursed directly to the return.

c. In addition to the required methane examinations as defined in 30 CFR 57.21-99, additional examinations will be made in the adjacent main return airways prior to and after each shot with an approved MSHA "spotter" and a flame safety lamp.

d. The switch gear in the electrical substation is protected from damage while excavation is in progress by steel sets and lagging.

e. A qualified electrician will inspect the switch gear in the electrical substation prior to and after each round is detonated.

f. Barricades will be placed in accordance with 30 CFR 57.6-103.

g. Persons using and handling explosives will be experienced and certified or under the direct supervision of a certified shot firer.

5. Petitioner states that the proposed alternate method above will at all times provide the same degree of safety to the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments on or before November 28, 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: October 20, 1980.

Frank A. White,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 80-33514 Filed 10-27-80; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Council on the Humanities Advisory Committee; Meeting

October 22, 1980.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463) notice is hereby given that a meeting of the National Council on the Humanities will be conducted in Washington, D.C. on November 13-14, 1980.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out his functions, and to review applications for financial support and gifts offered to the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Washington Hotel, 15th and Pennsylvania Avenue NW and the Shoreham Building, 806 15th Street NW., Washington D.C. A portion of the morning and afternoon sessions on November 13 and the last part of the afternoon session on November 14, 1980 will not be open to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code because the Council will consider information that may disclose: trade secrets and commercial or financial information obtained from a person and privileged or confidential; information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and information the disclosure of which would significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the Chairman's Delegation of Authority dated January 15, 1978.

The agenda for the sessions on November 13, 1980 follows:

(Open to the public)

8:30-9:00 Coffee for Council Members in Chairman's Office.

9:00-10:30 Committee Meetings—Policy Discussion (Shoreham Building).

Education Programs—Room 807.

Fellowship Programs—Room 314.

Planning and Special Programs—Room 1025.

Public Programs and State Programs—1st Floor.

Research Programs—Room 1134.

10:30 to Adjourn—Consideration of specific applications (closed to the public for the reasons stated above).

7:00 p.m.—Dutch Treat Dinner for Council Members and guests International Club, 1800 K Street NW. (open to the public).

Note.—Members of the public cannot be accommodated for dinner, but may observe.

The morning session on November 14, 1980 will convene at 8:30 a.m. in the Washington Hotel and will be open to the public. This session will consist of the following discussions: (Coffee for Staff and Council Attending Meeting will be served from 8:30 a.m.-9:00 a.m.)

(1) Report of the Commission on the Humanities

(2) Jefferson Lecture

The afternoon session will convene at 1:00 p.m. in the Shoreham Building on the first floor and will be open to the public for approximately one hour. The agenda for the afternoon session will be as follows:

Minutes of the Previous Meeting

Reports

A. Introductory Remarks & Introduction of New Council Members

B. Program Review and Introduction of New Staff

C. Chairman's Grants & Grants Departing from Council Recommendation

D. Conflicts of Interest Resolution

E. Application Report

F. Gifts and Matching Report

G. FY 1980 Program Funding

H. FY 1981 Appropriation

I. FY 1982 Budget Request to OMB

J. Reauthorization

K. Selected Project Evaluations

L. Committee Reports on Policy and General Matters

a. Public Programs

b. State Programs

c. Fellowship Programs

d. Planning and Assessment Studies

e. Special Programs

f. Research Programs

g. Education Programs

The remainder of the proposed meeting will be given to the consideration of specific applications, (closed to the public for the reasons stated above).

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Mr. Stephen J. McCleary, 806 15th Street NW., Washington, D.C. 20506, or call area code 202–724–0367.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 80–33475 Filed 10–27–80; 8:45 am]

BILLING CODE 7536–01–M

OFFICE OF MANAGEMENT AND BUDGET

President's Commission for a National Agenda for the Eighties; Meeting

October 22, 1980

AGENCY: Office of Management and Budget.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Pub. L. 92–463, notice is hereby given that a meeting of Panel 1 (Energy, Natural Resources and the Environment) of the President's Commission for a National Agenda for the Eighties, is scheduled for November 6, 1980 from 2:00 p.m. to 5:00 p.m. The meeting will be held in the New Executive Office Building, Room 5104, 17th Street and Pennsylvania Avenue, N.W., Washington, D.C.

The purpose of the meeting is to discuss elements of the Panel's draft report.

Available seats will be assigned on a first-come basis.

The meeting will be open to the public.

FOR FURTHER INFORMATION CONTACT: President's Commission for a National Agenda for the Eighties, Office of Administration, 744 Jackson Place, Northwest, Washington, D.C. 20006, (202) 275–0616.

Brenda Mayberry,

Acting Budget and Management Officer.

[FR Doc. 80–33461 Filed 10–27–80; 8:45 am]

BILLING CODE 3110–01–M

President's Commission for a National Agenda for the Eighties; Meeting

October 22, 1980

AGENCY: Office of Management and Budget.

ACTION: Notice of meeting (held October 17, 1980).

SUMMARY: Pursuant to Pub. L. 92–463, notice is hereby given that Panel IX (U.S. and World Community) of the President's Commission for a National Agenda for the Eighties held an impromptu meeting on October 17, 1980, from 12:15 p.m. to 1:15 p.m., in Washington, D.C.

The purpose of the meeting was to discuss elements of the Panel's draft report.

Minutes of the meeting are available upon request.

FOR FURTHER INFORMATION CONTACT: President's Commission for a National Agenda for the Eighties, Office of Administration, 744 Jackson Place, Northwest, Washington, D.C. 20006.

Brenda Mayberry,

Acting Budget and Management Officer.

[FR Doc. 80–33462 Filed 10–27–80; 8:45 am]

BILLING CODE 3110–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 21755; 70–6512]

Central Power & Light Co., 120 North Chaparral Street, Corpus Christi, Tex. 78401, Proposed Issuance and Sale of First Mortgage Bonds at Competitive Bidding

October 22, 1980.

Notice is hereby given that Central Power & Light Company ("CP&L"), an electric utility subsidiary company of Central and South West Corporation, 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(b) and 7 of the Act and Rule 50 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transaction.

CP&L proposes to issue and sell at competitive bidding up to $100,000,000 principal amount of its First Mortgage Bonds, Series R, Due December 1, 2010. The interest rate of the bonds and the price to be paid to CP&L (which will not be less than 99% nor more than 102.75% of the principal amount thereof) will be determined by competitive bidding. The bonds will have refunding protection until December 1, 1985, and will be subject to a 1% sinking fund beginning in 1982. The bonds will be issued under and secured by CP&L's Indenture, dated November 1, 1943, between it and The First National Bank of Chicago, Trustee, as previously amended and as to be further amended by a Supplemental Indenture to be dated December 1, 1980.

The net proceeds from the issuance and sale of the bonds will be used to repay short-term borrowings which were incurred or expected to be incurred to finance construction expenditures and to finance future construction expenditures. Approximately $75,000,000 of short-term borrowings are expected to be outstanding as of December 23, 1980, the planned date of issuance of the bonds. No funds generated from the bonds nor any of the borrowings retired thereby have been or will be utilized to pay the cost of facilities which would not be needed to provide service to customers of CP&L if it were not part of the Central and South West System. No expenditures will be made by the company for the construction or acquisition of any facility not so needed prior to the time all funds covered by the declaration have been expended. For the purposes of the foregoing representation, it is assumed that none of the facilities, construction or acquisition of which would be part of any proposal forming the subject of the proceedings in *Central and South West Corporation, et al.* (Admin. Proc. File No. 3–4951), would be needed to provide service to customers of CP&L if it were not part of the *Central and South West System.*

CP&L's estimated construction and fuel exploration and development expenditures for the years 1980 through 1981 are estimated at $198,000,000, and $278,000,000, respectively. Approximately $168,000,000 of the 1980 estimated total had been expended as of August 31, 1980.

The fees and expenses to be incurred in connection with the proposed transaction are estimated at $120,000, including accountants' fees of $7,500 and legal fees of $18,500. The fee of counsel for the purchasers of the bonds is estimated at $19,500 and is to 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 18, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request

should be served personally or by mail upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-33455 Filed 10-27-80; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 21756; 70-6451]

Columbus & Southern Ohio Electric Co.; Proposed Revisions in Arrangements for Short-Term Borrowings

October 22, 1980.

Notice is hereby given that Columbus and Southern Ohio Electric Co. ("CSOE"), 215 North Front Street, Columbus, Ohio 43215, an electric utility subsidiary of American Electric Power Company, Inc., a registered holding company, has filed and amended pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designated Section 6(b) of the Act and Rules 50(a)(2) and 50(a)(5) promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the application, as amended by said post-effective amendment, which is summarized below, for a complete statement of the proposed transactions.

By orders dated May 28, 1980, and September 23, 1980 (HCAR Nos. 21594 and 21723), CSOE was granted a short-term borrowing authorization through July 1, 1981, in an aggregate principal amount not to exceed $200,000,000. CSOE's credit arrangements for such borrowings consisted of (1) lines of credit aggregating $113,066,000 with 38 banks; (2) a loan agreement with certain banks for up to $80,000,000 of loans for used in retiring certain of its preferred shares; (3) a credit agreement for up to $30,000,000 of fuel inventory financing; and (4) arrangements for borrowing up to $23,000,000 from funds managed by certain banks' trust departments.

By post-effective amendment CSOE requests authorization to change its borrowing arrangements under (1) above, and to issue and sell commercial paper, all as further described below. No changes are sought concerning its borrowing arrangements under (2)–(4) above, or in the total amount of short-term debt authorized.

With respect to CSOE's lines of credit, it is stated that CSOE has arrangements for lines of credit totaling $385,926,000 with 46 banks of three classes. Each note to be issued to a Class I and Class II bank will mature not more than 270 days after the date of issuance or renewal thereof, and will be prepayabale at any time without premium or penalty. CSOE's credit arrangements with the Class I banks generally require it to maintain compensating balances equal to a percentage of the line of credit made available by the banks plus a percentage of any amount actually borrowed (not in excess of 10 percent of the line of credit and 10 percent of the amount borrowed). CSOE's credit arrangements with the Class II banks require it to maintain a compensating balance of 5 percent of the line of credit made available and to pay a fee equal to 4 percent of the bank's prime rate then in effect times the size of the line. The combination of a compensating balance of 5 percent and such fee is generally equivalent to a compensating balance not in excess of 10 percent of the line of credit made available. In addition to the compensating balance and feed, CSOE must pay interest on the borrowings at the rate of up to 108.5 percent of the bank's prime rate. Borrowings from one of the Class II banks, Credit Lyonnais, may be made in domestic U.S. dollars and/or in eurodollars, and on any borrowings in eurodollars the interest thereon will be a designated percent of the London Interbank Offering Rate ("LIBOR"). It is stated that the total cost of borrowings from Class II banks would not be greater than the effective rate for borrowings bearing interest at the prime rate with compensating balances equal to 10 percent of the line of credit and 10 percent of the amount borrowed. The effective interest cost of borrowings from either Class I or Class II banks would not exceed 125 percent of the prime rate, or not more than 17.5 percent on the basis of a prime rate of 14 percent.

Concerning its credit arrangements with the Class III banks, CSOE has money market facilities with two banks in an aggregate amount of $20,000,000. These facilities do not represent a formal commitment by the banks to CSOE, but merely represent the ability of CSOE to request unsecured borrowings, in the form of promissory notes, on a case-by-case basis. The facility at one of the Class III banks, the bank of Nova Scotia, is available for unsecured borrowings in domestic U.S. dollars and/or in eurodollars. Borrowings from either Class III bank may be made for up to 180 days and will be prepayable at any time without premium or penalty. No compensating balances are required. The interest rate, which is presently to be neogtiated on a case-by-case basis (using a 360-day year), will be designated percent of the bank's prime rate, except on borrowings made in eurodollars from the Bank of Nova Scotia, upon which the interest rate will be a designated percent of LIBOR. It is stated that the effective interest cost of borrowings from a Class III bank will be lower than the effective interest cost of borrowings from a Class I or Class II bank.

In addition to its borrowing arrangements with banks, CSOE also proposes to issue and sell commercial paper to a dealer in commercial paper, Lehman Commercial Paper Incorporated ("Lehman"), through July 1, 1981, provided that none of such commercial paper shall mature later than March 31, 1982. The commercial paper will be in the form of promissory notes in denominations of not less than $50,000, nor more than $5,000,000, of varying maturities, with no maturity more than 270 days after date of issuance. Such notes will not be prepayable prior to maturity and will be sold at a discount rate not in excess of the discount rate prevailing at the time of issuance for commercial paper of comparable quality and maturity. Lehman will reoffer the commercial paper, at a discount rate of 1/8 of 1 percent less than the discount rate at which such paper was purchased from CSOE, to not more than 200 of Lehman's customers identified and designated in a non-public list prepared by Lehman. It is expected that such customers will hold the commercial paper until maturity, but if any such customer desires to resell prior thereto, Lehman will, pursuant to a verbal repurchase agreement, repurchase such commercial paper and reoffer it to other customers on its non-public list.

CSOE claims exemption from the competitive bidding requirements of Rule 50 for its issuance of short-term notes to banks pursuant to Rule 50(a)(2), and requests an exemption for its sale of

commercial paper pursuant to Rule 50(a)(5).

The fees and expenses to be incurred in connection with the proposed transactions are estimated at $500. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may not later than 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 said application, as amended by said post-effective amendment, 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 applicant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date the application, as amended or as it may be further amended, may be granted as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-33458 Filed 10-27-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 17238; File Nos. SR-Amex-80-24, SR-CBOE-80-23, SR-PSE-80-16, SR-Phlx-80-23]

American Stock Exchange, Inc., et al.; Order Approving Proposed Rule Change

October 22, 1980.

In the matter of American Stock Exchange, Inc., 86 Trinity Place, New York, New York 10006; Chicago Board Options Exchange, Incorporated, LaSalle at Jackson, Chicago, Illinois 60604; Pacific Stock Exchange Incorporated, 301 Pine Street, San Francisco, California 94104; and Philadelphia Stock Exchange, Inc., 17th and Stock Exchange Place, Philadelphia, Pennsylvania 19103.

I. Introduction

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), (the "Act") and Rule 19b-4 thereunder, the above-mentioned options exchanges filed with the Commission copies of proposed rule changes to modify their policies concerning the intervals at which options exercise prices are fixed and the introduction of new options series.[1] Specifically, the policies as modified, would provide that for securities trading below $100 per share exercise prices generally would be fixed at 5 point intervals and for securities trading above $100 per share exercise prices would be fixed at 10 point intervals. The policies, as modified, also would provide that a new options series could be added when the price of the underlying security equaled the highest or lowest exercise price in a particular options class.[2]

Notice of the proposed rule changes together with the terms of substance of the proposed rule changes was given by publication of a Commission Release[3] and by publication in the **Federal Register.**[4] All written statements with respect to the proposed rule changes which were filed with the Commission and all written communications relating to the proposed rule changes between the Commission and any person were considered and (with the exception of those statements or communications which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552) were made available to the public at the Commission's Public Reference Room.

[1] The proposed rule changes were filed with the Commission on the following dates: American Stock Exchange, Inc. ("Amex"), August 29, 1980, amended September 29, 1980; Chicago Board Options Exchange, Incorporated ("CBOE"), September 8, 1980, amended September 15 and 24, 1980; Pacific Stock Exchange Incorporated ("PSE"), September 15, 1980, amended September 30, 1980; Philadelphia Stock Exchange, Inc. ("Phlx"), September 16, 1980.

[2] The proposed policy modifications relate to the following options exchanges rules: Amex Rule 903(a); CBOE Rule 5.6, PSE Rule VI, Sec. 4; and Phlx Rule 1012(a).

[3] Notice by publication of a Commission Release was given as follows: Amex, Securities Exchange Act Release No. 17122, September 5, 1980, CBOE, Securities Exchange Act Release No. 17145, September 12, 1980; PSE, Securities Exchange Act Release No. 17155, September 18, 1980; Phlx, Securities Exchange Act Release No. 17156, September 19, 1980.

[4] Notice by publication in the **Federal Register** was given as follows: Amex, 45 FR 60524, September 12, 1980; CBOE, 45 FR 62243, September 18, 1980; PSE, 45 FR 63986, September 26, 1980; Phlx, 45 FR 63596, September 25, 1980.

II. Discussion

The options exchanges state that the proposed reduction of exercise price intervals would enable the exchanges to open options series at exercise prices closer to the market price per share of the underlying stock than is possible under current exchange policies. This, the options exchanges contend, would produce two principal enhancements in the options market. First, the ability to open options series at prices which more closely approximate the market price of the underlying securities would afford public investors enhanced opportunities to engage in hedging and other purchase and writing strategies. Second, by providing greater assurance that, at all times, there will be a liquid "at-the-money" options series, spread transactions by marketmakers would be facilitated, thus reducing the risk inherent in marketmaking and enhancing the ability of marketmakers to fulfull their obligations to maintain fair, orderly and liquid markets.

As the options exchanges suggest, the narrower the intervals between open options series, the greater the flexibility accorded to market participants and the more finely options positions can be tailored to achieve intended objectives. It must be recognized, however, that limitation of the number of exercise prices for a particular options class is an essential element of options contract standardization. Moreover, in order to enable market participants to achieve their investment objectives and to diminish the potential for manipulation, the options series which are traded must have sufficient depth and liquidity. Accordingly, the balance sought by the options exchanges in opening new options series within a particular options class is to accommodate market participants by providing an array of exercise prices while concomitantly ensuring that the number of options series does not produce an excessive dispersion of interest and, as a consequence, excessive dilution of liquidity in open options series.

The Commission is unable to conclude that the introduction of 5 point intervals with respect to securities trading between $50 and $100 per share, and 10 point intervals with respect to securities trading above $200 per share, constitutes an inappropriate resolution of these interrelated concerns. The options exchanges have represented, as stated in the CBOE filing, that the proposed modification would "not result in an undue proliferation in options series." This conclusion is based on the assumption that series opened at the new reduced intervals "would

frequently be replacements for, rather than additions to," series that otherwise would have been opened "further out of the money." Although the Commission cannot concur fully with this conclusion, it has no basis for believing that the increase in the number of options series that would result from approval of the proposed modification would adversely affect the options markets. To the contrary, while the Commission did not receive any comments in response to publication of notice of the rule proposals, letters supporting reduced exercise price intervals were received shortly after the moratorium was lifted in which it was contended that such a measure would improve market liquidity for both options and their underlying securities.[5] In addition, it has been represented that the addition of the new exercise price intervals would not adversely affect exchange operational capabilities. The Commission expects that the options exchanges will take steps to assure that new exercise price intervals will be added in a deliberate and prudent manner consistent with exchange and member firm operational capacities. In this regard, the options exchanges each have indicated that they intend to delay implementing the proposed rule changes until early 1981.[6]

The second aspect of the rule proposals would allow the addition of new options series as soon as the market price of the underlying security equalled the highest or lowest existing exercise price for a particular options class. The options exchanges contend that this proposed policy modification would ensure the existence at all times of exercise prices both in and out of the money. This, in turn, it is contended, would offer public investors greater opportunities to limit their risk through increased hedging and other purchasing and writing strategies, and would better enable marketmakers to make fair and orderly markets. As with the first aspect of the rule proposals, the Commission is inclined to defer to the business judgment of the options exchanges that, as a general matter, the overall quality of the options markets would not be adversely affected by this proposed modification.

[5] *See* letter from Eugene D. Brody, President, New York Institutional Option Society, to Douglas Scarff dated May 7, 1980. *See also* letter from Abraham J. Bronchtein, Vice President, Chemical Bank, to Douglas Scarff dated May 14, 1980.

[6] *See* letter to Gene Carasick, Assistant Director, Division of Market Regulation, from Anne Taylor, Associate General Counsel, CBOE, dated October 3, 1980.

III. Conclusion

In view of the foregoing, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and in particular, the requirements of Section 6, and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule changes of CBOE, PSE and Phlx prior to the thirtieth day after the date of publication of notice of filing thereof, in that the terms of those changes are identical to the rule change proposed by Amex. Notice of the Amex proposal was outstanding for the full statutory period and no comments were received.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule changes be, and they hereby are, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-33453 Filed 10-27-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 17237; File Nos. SR-Amex-80-23, SR-CBOE-80-22, SR-PSE-80-15, SR-Phlx-80-21]

American Stock Exchange, Inc., et al.; Order Approving Proposed Rule Changes

October 22, 1980.

In the matter of American Stock Exchange, Inc., 86 Trinity Place, New York, New York 10006; Chicago Board Options Exchange, Incorporated, LaSalle at Jackson, Chicago, Illinois 60604; Pacific Stock Exchange Incorporated, 301 Pine Street, San Francisco, California 94104; Philadelphia Stock Exchange, Inc., 17th and Stock Exchange Place, Philadelphia, Pennsylvania 19103.

I. Introduction

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), (the "Act") and Rule 19b-4 thereunder, the above-mentioned options exchanges filed with the Commission copies of proposed rule changes [1] to amend their position limit rules to increase from 1,000 to 2,000 contracts the aggregate position that can be maintained in put and call options on the same side of the market on the same underlying security [2] and to amend their exercise limit rules to increase from 1,000 to 2,000 the number of contracts of a given class of options that can be exercised within any period of five consecutive business days.[3]

Notice of each of the proposed rule changes together with the terms of substance of the proposed rule changes was given by publication of a Commission release [4] and by publication in the **Federal Register.**[5] All written statements with respect to the proposed rule changes which were filed with the Commission and all written communications relating to the proposed rule changes between the Commission and any person were considered and (with the exception of those statements or communications which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552) were made available to the public at the Commission's Public Reference Room.

II. Discussion

The position limit rules, in combination with the exercise limit rules, are designed principally to minimize the manipulative potential inherent in large options positions and to prevent the accumulation of large options positions that, if exercised against uncovered writers, could affect the price of the underlying security by necessitating purchases in the underlying market to satisfy delivery requirements. In addition, position limit rules limit the financial exposure of market participants.

The Special Study of the Options Market ("Options Study") [6] made several observations concerning the effects of the position limit rules on the options market. In particular, the

[1] The proposed rule changes were filed with the Commission on the following dates: American Stock Exchange, Inc. ("Amex"), August 28, 1980, amended September 29, 1980; Chicago Board Options Exchange, Incorporated ("CBOE"), September 8, 1980, amended September 15, 1980; Pacific Stock Exchange Incorporated ("PSE"), September 2, 1980, amended September 30, 1980; Philadelphia Stock Exchange, Inc. ("Phlx"), September 2, 1980, amended September 16, 1980.

[2] Position limits are set forth in the following options exchange rules: Amex Rule 904; CBOE Rule 4.11; PSE Rule VI, Sec. 5; Phlx Rule 1001.

[3] Exercise limits are set forth in the following options exchange rules: Amex Rule 905; CBOE Rule 4.12; PSE Rule VI, Sec. 6, Phlx Rule 1002.

[4] Notice by publication of a Commission Release was given as follows: Amex, Securities Exchange Act Release No. 17121, September 5, 1980; CBOE, Securities Exchange Act Release No. 17148, September 12, 1980; PSE, Securities Exchange Act Release No. 17147, September 12, 1980; Phlx, Securities Exchange Act Release No. 17146, September 12, 1980.

[5] Notice by publication in the **Federal Register** was given as follows: Amex, 45 FR 60523, September 12, 1980; CBOE, 45 FR 62597, September 19, 1980; PSE, 45 FR 62241, September 18, 1980; Phlx, 45 FR 62245, September 18, 1980.

[6] 96th Cong., 1st Sess., H.R. No. 96-IFC3 (Comm. Print 1978) at 190.

Options Study noted that current position limits have restriced the use of options by institutional investors because they are prevented from writing calls or buying puts on more than 100,000 shares of a particular stock.[7] In this regard, the Options Study suggested that existing position limits do not provide sufficient risk limiting potential for institutional investors. The Options Study also indicated that the impact of position limits on proprietary trading by member firms may impair market liquidity. Member firm proprietary options activities, such as hedging block positioning activities and various forms of arbitrage, may easily involve 1,000 contracts, thereby precluding further proprietary participation in options that may be beneficial to market liquidity. Accordingly, the Options Study recommended that:

> The Division of Market Regulation should undertake a complete review of the position limit rules of the options exchanges. This review should include: (1) the possibility of eliminating position limit rules, (2) the feasibility of relaxing position limit rules for (a) all market participants, (b) for accounts which hold fully paid, freely transferable securities or (c) for "hedged" positions, and (3) whether exemptions from the rules should be granted to options specialists and, if so, under what circumstances.[8]

In lieu of the comprehensive study of position limits suggested by the Options Study, the Commission believes it would be more appropriate for the options exchanges to experiment with position limits by increasing the ceiling from 1,000 to 2,000 options contracts.[9] On balance, the Commission believes that such an increase at this time is not an unacceptable first step in the reconsideration and modification of the current rules. As noted above, there is substantial reason to believe that the current ceiling serves to constrict significantly the options activities of certain market professionals and institutions, possibly to the detriment of market depth and liquidity. In addition, the Commission believes that the surveillance capabilities of the options exchanges with respect to large options positions should minimize the possibility of manipulation. Finally, the Commission believes that the information and experience gained from approval of the proposed modification will enhance the ability of the options exchanges and the Commission to responsibly propose and effectively evaluate possible further modifications, to increase, eliminate, or possibly decrease, position limits in the future.

Nevertheless, the Commission remains concerned that any increase in position limits can create additional incentives to manipulate. Given this fact, the Commission expects the options exchanges to carefully evaluate possible enhancements to their surveillance programs and report to the Commission concerning the enhancements they have made at the end of eight months.[10] In addition, the options exchanges each have undertaken to monitor closely and collect data regarding the effect of the proposed modifications on options and underlying stock trading activity and on market participants. The options exchanges have indicated that at the end of eight months each will submit to the Commission a report, based on the information obtained, analyzing the impact of the increased ceiling on the options and the underlying stock markets.

With respect to the proposed increase in exercise limits, the Commission similarly believes that the modest proposed increase is not an inappropriate first step in experimenting with modification of these rules. The options exchanges appear to have assumed that their proposed increase in position limits should be accompanied by a similar increase of exercise limits. The only rationale proffered for the proposed increase is to permit exercise of any options positions that can be acquired under the proposed new position limits. Given the existence of a liquid secondary options market that allows market participants efficiently to close out options positions without exercise, it is not apparent that any increase or removal of position limits must necessarily be accompanied by a similar change in exercise limits.[11]

III. Conclusion

In view of the foregoing, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and in particular, the requirements of Section 6, and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule changes of CBOE, PSE and Phlx prior to the thirtieth day after the date of publication of notice of filing thereof, in that the terms of those change are identical to the rule change proposed by Amex. Notice of the Amex proposal was outstanding for the full statutory period and no comments were received.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule changes be, and they hereby are, approved.[12]

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretay.

[FR Doc. 80-33454 Filed 10-27-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-17232; File No. SR-CBOE-80-25]

Chicago Board Options Exchange, Inc.; Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L.

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[7] The Options Study further noted that one rationale for the imposition of position limits, the concern that exercise of a large long call postion may affect the price of the underlying stock, is not applicable to the writers of covered calls. Because covered writers by definition own the underlying stock, there generally is no need to acquire the stock in the market when they receive an exercise notice, thereby possibly affecting stock prices.

[8] Options Study at 192.

[9] In this regard, the options exchanges have indicated that, if warranted by trading experience, further modifications may be proposed in the future. In particular, the CBOE expressed a desire in the statement of purpose for its proposed rule change to conduct experiments, including the removal of position limits for particular options classes or series for specified periods of time, to determine whether further modification of its position and exercise limits may be appropriate. The CBOE has indicated to the Commission staff, however, that the CBOE did not intend these statements of its future intentions to be a subject of the Commission's deliberations on the current CBOE position and exercise limit proposal.

[10] For example, the Commission views with some concern the current inability of the options exchanges to detect intra-day position limit violations. The Commission understands that currently the exchanges routinely capture position data with respect to market participants only as of the close of the trading day and currently the exchanges do not determine whether during the course of a given day position limits are temporarily exceeded. In preliminary discussions, exchange officials have indicated that the creation of such a routine intra-day detection program currently is not feasible. Similarly, the Commission is concerned about the ability of the exchanges to detect manipulative activities of non-marketmaker broker-dealers and public customers under the increased position limits, particularly since the exchanges currently do not receive reports concerning the underlying securities activities of such market participants.

[11] In this regard, the Commission intends to review any future proposed modifications of exercise limits separately from proposed position limit changes, and expects the options exchanges to justify such modifications independently. Nevertheless, for the reasons articulated with respect to position limits, the Commission also believes that this relatively modest increase in exercise limits will not have any significant negative risks.

[12] To coincide with the effective date of the 1980 prospectus of the Options Clearing Corporation, which will reflect the increased position and exercise limits, the SROs each have indicated that they intend to use their authority to fix limits at other than 2,000 contracts to continue in effect the 1,000 contract limits until October 31, 1980.

No. 94–29, 16 (June 4, 1975), notice is hereby given that on October 14, 1980, the above-mentioned self-regulatory organization ("SRO") filed with the Securities and Exchange Commission a proposed rule change as follows:

Text of Substance of the Proposed Rule Change

The text of the proposed rule change is as follows with italics indicating additions.

Market-Maker Defined

Rule 8.1. No change.

. . . Interpretations and Policies:

.01 Options transactions effected on the Exchange which result from orders transmitted from off the floor of the Exchange by a Market-Maker shall be deemed to be initiated on the floor of the Exchange and shall count as Market-Maker transactions for the purposes of this Chapter and Rule 3.1 provided that (a) such orders result in closing transactions or (b) at the time such orders are transmitted to the floor of the Exchange the Market-Maker is temporarily absent from the Exchange floor and such orders result in options transactions which provide a bona fide hedge of open options positions then carried by the Market-Maker in a Market-Maker account.

.02 For the purposes of Interpretation .01, a bona fide hedge shall occur when an adverse change in the market price of the initial options position would be reasonably anticipated to be offset by a countervailing change in the market price of the subsequent options position, provided that such subsequent position is in respect of the same underlying security as the initial options position.

03. For the purposes of Interpretation .01, a Market-Maker may effect bona fide hedge transactions using off-floor orders on no more than 30 business days per calendar year while temporarily absent from the Exchange floor. Each Market-Maker shall be responsible for determining the number of days on which off-floor bona fide hedge transactions have been executed by him during a calendar year.

Orders Required to Be in Written Form

Rule 6.24. (a) Transmitted to the floor. Each order transmitted to the floor must be recorded legibly in a written form that has been approved by the Exchange, and the member receiving such order must record the time of its receipt on the floor *and, with respect to an order transmitted to the floor for the account of a Market-Maker, the receiving member shall identify the order as being initiated from off the floor and, based upon information obtained from the entering member, mark an opening hedge order as such.* Each such order must be in legible written form when taken to the post for attempted execution.

SRO's Statement of Basis and Purpose

The basis and purpose of the foregoing proposed rule change is as follows:

The purpose of the propose change in Rule 8.1 is to allow Market-Makers to effect options transactions which hedge previously established options positions when such Market-Makers are absent from the Exchange floor. Since Rule 8.1 requires that Market-Makers be individuals who are either individual members or nominees of member organizations, such persons must necessarily be absent from the Exchange floor from time to time for brief periods. The proposed rule change would provide Market-Makers with the capability of reducing the market risk inherent in holding options positions previously established pursuant to their obligations under Chapter VIII of the Exchange Rules at times when they are absent from the trading floor.

This proposed rule change should result in greater on-floor adherence to Market-Maker obligations, for Market-Makers able to anticipate a temporary absence will not feel compelled to limit the size of their options positions during the time prior to the commencement of such absence. Presently, many Market-Makers who know they will be away from the Exchange for a short time often perform in a way that leaves them with no open positions during their absence. Consequently, Market-Makers, under this proposal, can more vigorously respond to their continuous obligation to provide liquid markets during the time preceding planned absences, since they will have the ability to protect their options positions during such absences, if necessary. The proposed rule change should thus lead to greater competition among Market-Makers because the enhancement of their ability to protect their open positions will increase their willingness to assume larger positions and to leave such positions open during periods of temporary absence from the Exchange floor.

Moreover, this proposal will also give Market-Makers the capability to compete more effectively with the specialist units on other exchanges which trade the same options as those traded on CBOE. Specialist units with their interchangeable personnel, unlike CBOE Market-Makers, are able to maintain a constant presence on the floors of the exchanges of which they are members. By enabling Market-Makers to offset, to a certain extent, previously established options positions with options orders directed from off the Exchange floor, Market-Makers should be more willing to engage in greater on-floor competition with the specialists of such other exchanges by establishing larger positions and by making tighter markets in size.

Proposed Interpretation .02 would define bona fide hedge as an option transaction which would be reasonably anticipated to offset, by a countervailing change in market price, an open option position in the account of a Market-Makers in respect of the same underlying security. The Exchange recognizes that this definition is, to some extent, a subjective one. Since hedging is by its very nature partly subjective—what is a sufficient hedge for one may be inadequate for another—the Exchange believes it to be desirable to leave sufficient breathing space to permit Market-Makers to make independent, good faith judgments as to what constitutes an appropriate hedge.

The Exchange also believes that the fact that the proposed definition would require hedges to be "bona fide" provides a considerable amount of regulatory protection. The term "bona fide" is used a number of times in the Securities Exchange Act of 1934 and the rules and regulations thereunder to distinguish conduct which is prohibited from that which is exempt, and there has been no indication that these provisions have proved to be unenforceable. For example, Congress in 1975 exempted any "bona fide hedge transaction involving a long or short position in an equity security and a long or short position in a security entitling the holder to acquire or sell such equity security" from the prohibitions of Section 11(a)(1) of the Act. Similarly, the Federal Reserve Board has used the term "bona fide" frequently in Regulation T to distinguish the exempt from the prohibited; see Sections 220.4(c) (bona fide cash transactions), 220.4(d) (bona fide arbitrage transactions), 220.6(d) (bona fide incident to a transaction), 220.6(h) (bona fide deposit of cash) and 220.8(h) (bona fide bids and offers).

The importance of hedging as a risk-limiting trading strategy for Market-Makers has been recognized by the Federal Reserve Board. The Board, in several announcements relating to amendments of Section 220.4(g) of Regulation T, expressly recognized that options Market-Makers are required to assume positions in options in furtherance of their market making

obligations and may need to purchase offsetting holdings in underlying stocks in order to reduce risk. The Board's final rule, which became effective on August 11, 1980, was designed to facilitate the making of markets in options by allowing preferential credit treatment to underlying security positions which hedged option positions established in market making transactions. Thus, the Board recognized that such hedging stock transactions, even though not executed on the floor of the options exchange, improved the quality of options market making by reducing the risk of options positions assumed by a Market-Maker in furtherance of his obligations. The same reasoning supports the proposed CBOE rule change.

Proposed Interpretation .03 would set a maximum number of days (30 days per calendar year) during which a Market-Maker may effect bona fide hedge transactions using off-floor orders while temporarily absent from the Exhange floor and still have such transactions treated as Market-Maker transactions under Rule 8.1. The Exchange believes that when a Market-Maker is temporarily absent from the exchange floor due to such things as illnesses, vacations, public transportation strikes, operational failures or severe weather conditions, he should be permitted to hedge his open positions in his Market-Maker's account. The proposed interpretation, by limiting the number of days during which a Market-Maker may effect such transactions, would prevent Market-Makers from making a regular practice of opening new positions through hedging transactions from off the Exchange floor.

The purpose of the proposed change to Rule 6.24 is to require Exchange members to identify off-floor initiated orders for a Market-Maker account and to mark off-floor opening hedge orders as such. This rule change in conjunction with previously filed changes to Exchange Rules 6.24 and 6.51, File No. SR–CBOE–1980–16, will require a member receiving an order from a Market-Maker who is not present on the Exchange floor to mark the order ticket as an off-floor order and to code the transaction as either opening, opening hedge or closing. Exchange regulatory personnel can compare off-floor opening transactions to Market-Maker positions for the purpose of insuring that the provisions of Rule 8.1 are being adhered to.

With this information on the order ticket, clearing members will be able to place each such transaction in the proper account, either a Market-Maker/specialist or a customer account. In addition, Exchange regulatory personnel will be able to review all off-floor orders of a Market-Maker on a periodic basis to ensure that the tickets are properly coded.

The basis under the Act for the proposed rule change is Sections 6(b)(5) and 11A(a)(i)(C)(ii). The proposed rule change will promote just and equitable principles of trade and protect investors and the public interest, for it will encourage greater competition among Market-Makers and facilitate the performance of Market-Maker obligations. Such circumstances will enable Market-Makers to make tighter markets in greater size and thereby enhance the liquidity of options markets on the Exchange. In addition, enabling Exchange Market-Makers to compete more effectively with specialists on other exchanges is consistent with, and in furtherance of, the objectives stated by Congress in Section 11A(a)(i)(C)(ii).

Comments from members were solicited but were not received regarding this proposed rule change.

The Exchange, as stated more fully above, believes this proposed rule change will enhance competition between the Exchange and other exchange markets and among Market-Makers on the Exchange floor.

On or before December 2, 1980, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, Securities and Exchange Commission, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted by November 17, 1980.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

October 21, 1980.

[FR Doc. 80–33456 Filed 10–27–80; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 17236, SR–CBOE–80–5, SR–Amex–80–8, SR–PSE–80–5, SR–Phlx–80–9, SR–NASD–80–13]

Chicago Board Options Exchange, Inc., et al.; Order Approving Proposed Rule Changes

October 22, 1980.

In the matter of Chicago Board Options Exchange, Incorporated, LaSalle at Jackson, Chicago, Illinois 60604; American Stock Exchange, Inc., 86 Trinity Place, New York, New York 10006; Pacific Stock Exchange Incorporated, 301 Pine Street, San Francisco, California 94104; Philadelphia Stock Exchange, Inc., 17th and Stock Exchange Place, Philadelphia, Pennsylvania 19103; and National Association of Securities Dealers, Inc., 1735 K Street, N.W., Washington, D.C. 20006.

I. Introduction

The self-regulatory organizations ("SROs") listed above each have filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), (the "Act") and Rule 19b–4 thereunder, copies of proposed rule changes to rescind their respective "restricted" options rules.[1] In general, subject to certain exceptions for covered writing transactions, spread transactions and the purchase of puts offset by long positions in the underlying security, the restricted options rules prohibit customers and non-

[1] The SROs filed their proposed rule changes with the Commission on the following dates: (1) Chicago Board Options Exchange, Incorporated ("CBOE") (SR–CBOE–80–5), filed April 4, 1980; (2) American Stock Exchange, Inc. ("Amex") (SR–Amex–80–8), filed April 23, 1980; (3) Pacific Stock Exchange Incorporated ("PSE") (SR–PSE–80–5), filed May 13, 1980, amended September 2, 1980; (4) Philadelphia Stock Exchange, Inc. ("Phlx") (SR–Phlx–80–9), filed April 23, 1980; (5) National Association of Securities Dealers, Inc. ("NASD") (SR–NASD–80–13), filed July 18, 1980. Notice of the exchanges' proposed rule changes was given by a single Commission release, Securities Exchange Act Release No. 16809, May 15, 1980, and by publication in the **Federal Register**, 45 FR 34093, May 21, 1980. Notice of the proposed rule change by the NASD was given by Commission release, Securities Exchange Act Release No. 17027, July 30, 1980, and by publication in the **Federal Register**, 45 FR 51972, August 26, 1980. No comments were received with respect to the rule filings.

marketmaker members from entering opening transactions in any series of options as to which, as of the close of trading on the previous day, (1) the exercise price of the option was more than $5 out-of-the-money and (2) the closing price of the option was less than $.50 per share.[2] Adoption of the restricted options rules was premised on concerns as to whether trading in deep-out-of-the-money options served a legitimate economic purpose and, more importantly, whether it was suitable for most public customers, in view of the high probability that such options would expire worthless.

II. Discussion

The Commission's Special Study of the Options Markets reviewed the impact of the restricted options rules on the options trading markets and addressed the desirability of eliminating the rules.[3] The Options Study found that as the options trading markets have expanded new uses for restricted options have developed. Numerous market professionals indicated that such options could be utilized effectively in various ways as a part of prudent and viable investment strategies—for example, the purchase of deep-out-of-the-money calls with a small percentage of an investor's funds while placing the remainder in money market instruments, or the utilization of spreads involving the purchase of several restricted options for each lower strike price option held.

The Options Study also found that the restricted options rules result in pricing inefficiencies and a loss of market liquidity for some options series. When previously unrestricted options become restricted, individuals with positions in such options are left with a limited market since a large number of potential buyers and sellers are barred from the marketplace.

The Options Study balanced these factors against the primary objective of the rules; *i.e.*, the protection of investors who may not fully appreciate the risks involved in such options. The Options Study concluded that its recommendations to enhance customer suitability rules and the internal procedures of broker-dealers may ameliorate these concerns and, at a future date, permit elimination of the restricted options rules. Accordingly, the Options Study recommended that "the Division of Market Regulation * * * consider the elimination of the restricted options rules as soon as the overall effectiveness of the Options Study's suitability recommendations can be evaluated."[4]

III. Conclusion

Although the Options Study found that deep-out-of-the-money options can be utilized as part of conservative and prudent investment strategies, the Commission continues to believe that certain more common uses of deep-out-of-the-money options (*e.g.*, the simple purchase or sale of such options) can be among the most risky and speculative of all trading strategies and, thus, are not suitable for most public customers, either because customers do not fully understand the risks of positions in deep-out-of-the-money options or cannot financially bear those risks. In response to the Options Study's recommendations, the SROs have adopted new options suitability rules and broker-dealer supervisory procedures, and have enhanced their broker-dealer examinations. While sufficient time has not passed yet to permit a complete evaluation of the overall effectiveness of these rules and procedures, the Commission and the SROs have taken additional measures to assure the effectiveness of these new rules as they relate to deep-out-of-the-money options. At the Commission's request, the SROs have undertaken measures designed to assure that their member firms understand the application of and comply with the new suitability rules with respect to transactions in deep-out-of-the-money options. The SROs have prepared a joint educational circular which sets forth member firm obligations with respect to recommending transactions in deep-out-of-the-money options. In addition, each SRO has undertaken to focus specifically during its broker-dealer examinations on trading in such options as part of its exam module for suitability.

Moreover, the Commission will enhance oversight of trading in deep-out-of-the-money options by (1) monitoring SRO broker-dealer examinations in connection with the Commission's Office of Inspections compliance program and (2) giving transactions in deep-out-of-the-money options special scrutiny during the Commission's broker-dealer examinations. Of course, should the Commission find that the measures that have been taken are inadequate to prevent abuses in the selling of deep-out-of-the-money options, the Commission would take appropriate remedial action.

Given this regulatory environment, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges and a registered securities association, and in particular, the requirements of Sections 6 and 15A, and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule changes be, and they hereby are, approved.[5]

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-33457 Filed 10-27-80; 8:45 am]

BILLING CODE 8010-01-M

[2] CBOE Rule 4.17; Amex Rule 910; Rule VI, Section 11; Phlx Rule 1046; NASD Section 8 of Appendix E to Article III, Section 33 of the Rules of Fair Practice.

[3] *See* Report of the Special Study of the Options Markets to the Securities and Exchange Commission, 96th Cong., 1st Sess. at 193–195 (Comm. Print 1978) ("Options Study").

[4] *Id.* at 195.

[5] To coincide with the effective date of the 1980 prospectus of the Options Clearing Corporation, which will reflect the rescission of the SROs' restricted options rules, the SROs each have indicated that they intend to continue in effect the prohibitions contained in the restricted options rules until October 31, 1980 by using their general authority to restrict options transactions. *See, e.g.*, CBOE Rule 4.16 and Amex Rule 909.

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 1944]

Georgia; Declaration of Disaster Loan Area

The State of Georgia constitutes a disaster area as a result of physical damage caused by drought and high temperature beginning on or about June 1–October 16, 1980. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on April 21, 1981, and for economic injury until June 8, 1981, at:

Small Business Administration, District Office, 1720 Peachtree Street, NW., 6th Floor, Atlanta, Georgia 30309

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 21, 1980.

William H. Mauk, Jr.,

Acting Administrator.

[FR Doc. 80-33534 Filed 10-27-80; 4:20 pm]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1937]

Iowa; Declaration of Disaster Loan Area

Henry County and adjacent counties within the State of Iowa, constitute a disaster area as a result of damage to homes and non-farm businesses affected by the tornado and high winds that occurred on July 20, 1980.

Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on December 12, 1980, and for economic injury until July 10, 1981, at:

Small Business Administration, District Office, 210 Walnut Street, Room 749, Des Moines, Iowa 50309

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 10, 1980.

William H. Mauk, Jr.,

Acting Administrator.

[FR Doc. 80-33535 Filed 10-27-80; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1936]

Louisiana; Declaration of Disaster Loan Area

The following 55 Parishes and adjacent parishes within the State of Louisiana constitute a disaster area as a result of natural disasters as indicated:

Parish	*Natural Disaster(s)*	*Date(s)*
Acadia	Drought-extreme high temperatures	June 1, 1980 to Aug. 27, 1980
Allen	Drought-extreme high temperatures	May 15, 1980 to Aug. 27, 1980
Assumption	Drought-extreme high temperatures	Mar. 23, 1980 to Sept. 2, 1980
Ascension	Drought-extreme high temperatures	Apr. 25, 1980 to May 14, 1980, May 21, 1980 to June 18, 1980, and
		June 20, 1980 to Aug. 25, 1980
Avoyelles	Drought-extreme high temperatures	June 1, 1980 to Aug. 12, 1980
Beauregard	Drought-extreme high temperatures	May 17, 1980 to Aug. 25, 1980
Bienville	Drought-extreme high temperatures	June 1, 1980 to July 29, 1980
Bossier	Drought-extreme high temperatures	June 1, 1980 to Aug. 26, 1980
Caddo	Drought-extreme high temperatures	June 1, 1980 to Aug. 27, 1980
Calcasieu	Drought-extreme high temperatures	May 17, 1980 to Aug. 25, 1980
Caldwell	Drought-extreme high temperatures	June 15, 1980 to Aug. 27, 1980
Cameron	Drought-extreme high temperatures	May 17, 1980 to Aug. 25, 1980
Catahoula	Drought-extreme high temperatures	June 25, 1980 to Aug. 26, 1980
Claiborne	Drought-extreme high temperatures	June 22, 1980 to July 26, 1980
Concordia	Drought-extreme high temperatures	June 23, 1980 to Aug. 26, 1980
DeSoto	Drought-extreme high temperatures	May 20, 1980 to Aug. 28, 1980
East Baton Rouge	Drought-extreme high temperatures	May 22, 1980 to Aug. 27, 1980
East Carroll	Drought-extreme high temperatures	June 1, 1980 to Aug. 28, 1980
Evangeline	Drought-extreme high temperatures	May 26, 1980 to Aug. 27, 1980
Franklin	Drought-extreme high temperatures	June 10, 1980 to Aug. 27, 1980, and
	Hail	July 31, 1980
Grant	Drought-extreme high temperatures	June 8, 1980 to July 30, 1980
Iberia	Drought-extreme high temperatures	May 15, 1980 to Aug. 27, 1980
Iberville	Drought-extreme high temperatures	May 27, 1980 to June 16, 1980, and June 21, 1980 to Aug. 25, 1980
Jackson	Drought-extreme high temperatures	June 2, 1980 to July 27, 1980
Jefferson Davis	Drought-extreme high temperatures	June 1, 1980 to Aug. 5, 1980
Lafayette	Drought-extreme high temperatures	May 16, 1980 to Aug. 27, 1980
Lafourche	Drought-extreme high temperatures	May 23, 1980 to Aug. 26, 1980
LaSalle	Drought-extreme high temperatures	June 25, 1980 to Aug. 28, 1980
Lincoln	Drought-extreme high temperatures	June 1, 1980 to July 29, 1980
Morehouse	Drought-extreme high temperatures	May 23, 1980 to Aug. 28, 1980
Natchitoches	Drought-extreme high temperatures	May 20, 1980 to July 31, 1980
Quachita	Drought-extreme high temperatures	May 23, 1980 to Aug. 26, 1980
Pointe Coupee	Drought-extreme high temperatures	June 1, 1980 to Aug. 31, 1980
Rapides	Drought-extreme high temperatures	May 20, 1980 to Aug. 27, 1980
Red River	Drought-extreme high temperatures	May 20, 1980 to Aug. 27, 1980

Parish	Natural Disaster(s)	Date(s)
Richland	Drought-extreme high temperatures	June 1, 1980 to Aug. 28, 1980
Sabine	Drought-extreme high temperatures	May 20, 1980 to July 31, 1980
St. Charles	Drought-extreme high temperatures	May 23, 1980 to Aug. 27, 1980
St. Helena	Drought-extreme high temperatures	June 1, 1980 to Aug. 27, 1980
St. James	Drought-extreme high temperatures	May 23, 1980 to Aug. 27, 1980
St. John	Drought-extreme high temperatures	May 23, 1980 to Aug. 27, 1980
St. Landry	Drought-extreme high temperatures	June 20, 1980 to Aug. 27, 1980
St. Martin	Drought-extreme high temperatures	May 19, 1980 to Aug. 27, 1980
St. Mary	Drought-extreme high temperatures	May 15, 1980 to Aug. 27, 1980
Tangipahoa	Drought-extreme high temperatures	July 1, 1980 to Aug. 12, 1980
Tensas	Drought-extreme high temperatures	June 1, 1980 to Aug. 28, 1980
Terrebonne	Drought-extreme high temperatures	May 22, 1980 to Aug. 29, 1980
Union	Drought-extreme high temperatures	June 20, 1980 to July 30, 1980
Vermilion	Drought-extreme high temperatures	May 16, 1980 to Aug. 27, 1980
Vernon	Drought-extreme high temperatures	June 1, 1980 to July 23, 1980
Washington	Drought-extreme high temperatures	June 1, 1980 to Aug. 31, 1980
Webster	Drought-extreme high temperatures	July 1, 1980 to Aug. 27, 1980
West Baton Rouge	Drought-extreme high temperatures	May 22, 1980 to Aug 27, 1980
West Carroll	Drought-extreme high temperatures	June 1, 1980 to July 20, 1980, and
		July 28, 1980 to Aug. 28, 1980
	Excessive rain	July 21, 1980
Winn	Drought-extreme high temperatures	June 1, 1980 to July 30, 1980

Eligible persons, firms, and organizations may file applications for loans for physicial damage until the close of business on Arpil 6, 1980, and for economic injury until the close of business on July 6, 1981, at: Small Business Administration, District Office, Plaza Tower, 17th floor, 1001 Howard Avenue, New Orleans, Louisiana 70113, or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: October 6, 1980.

A. Vernon Weaver,

Administrator.

[FR Doc. 80-33536 Filed 10-27-80; 8:45 pm]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1940]

Michigan; Declaration of Disaster Loan Area

The following 13 counties and adjacent counties within the State of Michigan constitute a disaster area as a result of natural disasters as indicated:

Country	Natural disaster	Date
Allegan	Severe thunderstorms, wind, hail, and continuous rains	May 29 to Aug. 3, 1980
Barry	Excessive rainfall, hail, frost, and cold weather	May 29 to Aug. 3, 1980
Berrien	Excessive rainfall, hail, wind	May 29 to Aug. 3, 1980
Calhoun	Excessive rain	May 29 to Aug. 3, 1980
Cass	High wind, excessive rainfall and freezing temperatures	May 29 to Aug. 3, 1980
Clinton	Hail, wind, and heavy rain	May 29 to Aug. 3, 1980
Jackson	Severe windstorm, heavy rains	May 29 to Aug. 3, 1980
Kalamazoo	Excessive rain, hail, high winds	May 29 to Aug. 3, 1980
Lapeer	Excessive rain, hail, high winds	May 29 to Aug. 3, 1980
Ottawa	Excessive rain, and windstorms	May 29 to Aug. 3, 1980
St. Joseph	Excessive rain, wind, frost, flooding	May 29 to Aug. 3, 1980
Van Buren	Hurricaine type storms, high winds, heavy rains, and damaging lightining.	May 29 to Aug. 3, 1980
Wayne	Windstorm	May 29 to Aug. 3, 1980

Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on April 9, 1981 and for economic injury until the close of business on July 9, 1981, at: Small Business Administration, District Office 477 Michigan Avenue, Detroit, Michigan 48226 or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated; October 9, 1980.

William H. Mauk,

Acting Administrator.

[FD Doc. 80-33537 Filed 10-27-80; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1926]

Nebraska; Declaration of Disaster Loan Area

The following counties and adjacent counties within the State of Nebraska constitute a disaster area as a result of physical damage caused by natural disasters as indicated:

County	Natural Disaster	Date
(1) Boyd	Hail	May 29 and June 6, 1980.
	Drought and grasshoppers.	May 10 to August 5, 1980.
(2) Deuel	Hailstorms	May 29 to May 31, 1980.
		June 15 to 16 1980.
	Hot winds	June 22 to July 6, 1980.
(3) Hitchcock	Hail and wind	June 15, 1980.
(4) Knox	Drought	May 10 to July 25, 1980.
(5) Morrill	Hail	June 26, 1980.
(6) Custer	Drought	May 10 to August 18, 1980.
(7) Dodge	Drought	May 10 to September 9, 1980.
(8) Greeley	Drought	May 10 to August 5, 1980.
(9) Howard	Drought and high temperature.	May 10 to August 18, 1980.
(10) Sherman	Drought	May 10 to September 11, 1980.
(11) Saline	Drought	June 6 to September 4, 1980.

Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on April 9, 1981, and for economic injury until the close of business on July 9, 1981, at:

Small Business Administration, District Office, 19th and Farnum Streets, 2nd Floor, Omaha, Nebraska 68102

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Date: October 9, 1980.

William H. Mauk, Jr.,

Acting Administrator.

[FR Doc. 80-33538 Filed 10-27-80; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1943]

Ohio, Declaration of Disaster Loan Area

Harrison County and adjacent counties within the State of Ohio constitute a disaster area as a result of damage caused by excessive rain and flooding which occurred on July 27, 1980. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on December 22, 1980, and for economic injury until the close of business on July 21, 1981, at: Small Business Administration, District Office, AJC Federal Building—Room 317, 1240 East Ninth Street, Cleveland, Ohio 44199, or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 21, 1980.

William H. Mauk, Jr.,

Acting Administrator.

[FR Doc. 80-33539 Filed 10-27-80; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1865, Amdt. No. 2]

South Dakota; Declaration of Disaster Loan Area

The above numbered declaration and amendment thereto (See FR 46264 and 59675) are amended further by adding the following county and adjacent counties within South Dakota:

County, natural disaster, and date

Faulk, Late frost, 5/6/80; Drought, 4/1-7/25/80.

All other information remains the same; i.e., the termination date for filing applications for physical damage is close of business on January 2, 1981 and for economic injury until the close of business on April 1, 1981.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Date October 21, 1980.

William H. Mauk, Jr.,

Acting Administrator.

[FR Doc. 80-33540 Filed 10-27-80; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area § 1939]

Texas; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration of September 26, 1980, I find that the First Precinct of Nolan County within the State of Texas, constitutes a disaster area because of damage resulting from intermittent rains and flooding beginning on or about September 5, 1980, as a result of Tropical Storm Danielle.

Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on November 26, 1980 for economic injury until the close of business on June 26, 1981: Small Business Administration, District Office, 1205 Texas Avenue, Room 712, Lubbock, Texas 79401, or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 2, 1980.

A. Vernon Weaver,

Administrator.

[FR Doc. 80-33541 Filed 10-27-80; 8:45 am]

BILLING 8025-01-M

[Proposed License No. 09/09-0276]

Novus Capital Corp.; Application for a License as a Small Business Investment Company

Notice is hereby given of the filing of an application with the Small Business Administration pursuant to § 107.102 of the SBA Regulations (13 CFR 107.12 (1980), by Novus Capital Corportation, 5670 Wilshire Boulevard, Los Angeles, California 90036, 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.*).

The proposed Officers, directors and stockholders are:

Name and Address, title, and percent of ownership

Walter A. Obers, 5110 Valjean Avenue, Encino, CA 91436, Chairman of the Board.
Errol M. Gerson, 2510 Almaden Court, Los Angeles, CA 91316, President and General Manager.
William L. Callender, 4640 Louise Avenue, Encino, CA 91316, Secretary.
James R. Wegge, Jr., 8324 Zitola Terrace, Playa Del Rey, CA 90291, Treasurer.
B. Laurence Rogers, 2030 Fox Hills Drive, Los Angeles, CA 90025, Vice President.
Jerry E. Pohlman, 1665 North Sycamore, Hollwood, CA 90028, Vice President.
P. Edward Kent, 106 Paseo De Suenos, Redondo Beach, CA 90277, Vice President
Helen M. Rockman, 1710 Malcolm Avenue, Los Angeles, CA 90024, Assistant Secretary.
California Federal Savings & Loan Association (CF), 5670 Wilshire Blvd., Los Angeles, CA 90036, 100 percent.

CF is America's largest federally chartered Savings and Loan Association and all of its savers and borrowers totaling approximately 500,000 are

entitled to vote on questions requiring action by members of the Association.

The Applicant proposes to begin operations with a capitalization of $605,000 and will be equity rather than collateral oriented in its investments. Applicant intends to render management consulting services to clients and other small business concerns. Such services will be performed by the officers and directors of the Applicant, all of whom are affiliated with CF.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owner and management, and the probability of successful operations of the new company under this management, including adequate profitability and financial soundness, 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 written comments on the proposed SBIC to the Acting Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, N.W., Washington, D.C. 20416.

A copy of this Notice will be published in a newspaper of general circulation in Los Angeles, California.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 22, 1980.

Peter F. McNeish,

Acting Associate Administrator for Investment.

[FR Doc. 80-33542 Filed 10-27-80; 8:45 am]

BILLING CODE 8025-01-M

[License No. 06/06-0237]

Zenith Capital Corp.; Issuance of License To Operate as a Small Business Investment Company

On August 12, 1980, a notice was published in the **Federal Register** (45 FR 53629) stating that an application had been filed by Zenith Capital Corp., Suite 218, 5150 North Shepherd, Houston, Texas 77018, with the Small Business Administration (SBA) pursuant to Section 107.102 of the Regulations governing small business investment companies (13 CFR 107.102)), for a license to operate as a small business investment company (SBIC).

Interested parties were given until the close of business August 27, 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. 06/06-0237, on October 10, 1980, to Zenith Capital Corp. to operate as an SBIC.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 22, 1980.

Peter F. McNeish,

Acting Associate Administrator for Investment.

[FR Doc. 80-33543 Filed 10-27-80; 8:45 am]

BILLING CODE 8025-01-M

Small Business Continuity; Meeting

Pursuant to statutory authority set forth in Section 634d of Title 15, United States Code, the Chief Counsel for Advocacy of the Small Business Administration, Milton D. Stewart, Esquire, with the approval of the Administrator, A. Vernon Weaver, and the assistance of a Special Task Group of small business people, will conduct a public meeting in Washington, D.C. on November 18, 1980 on the subject of "Small Business Continuity." The meeting will convene in the "California Room" of the Capital Hilton Hotel, 16th & "K" Streets, N.W., at 9:00 AM (EDT).

The Office of the Chief Counsel for Advocacy will continue its study of the question of what changes are needed in laws, regulations or institutions in order to enhance the financing of a change of ownership on the exit or retirement of owners, or the death or disability of founders or family members.

The meeting is open to the public. Any member of the public may participate as an "Observer" and may submit written comments to the Office of the Chief Counsel for Advocacy before, during or after the meeting. All communications or inquiries regarding the meeting should be addressed to: Tim C. Ford, Office of the Chief Counsel for Advocacy, U.S. Small Business Administration, 1441 L Street, N.W., Room 219, Washington, D.C. 20416, (202) 653-6076.

Dated: October 23, 1980.

Milton D. Stewart,

Chief Counsel for Advocacy.

[FR Doc. 80-33544 Filed 10-27-80; 8:45 am]

BILLING CODE 8025-01-M

NATIONAL COMMISSION ON SOCIAL SECURITY

Notice of Meeting

October 20, 1980.

The National Commission on Social Security has changed the dates and location of its Friday, October 31 and Saturday, November 1, meetings in Washington, D.C.

The meeting will now be held on Friday, November 7 and Saturday, November 8, at the Hyatt Regency Hotel, 400 New Jersey Avenue, N.W., Washington, D.C. The meeting on November 7 will be in the Concord Room and the Meeting on November 8 will be in the Columbia III Room. The purpose of the meetings to discuss drafts of the final report of the Commission, is unchanged.

As previously announced, the meeting will begin each day at 9:00 a.m. and continue until Commission business is completed, but no later than 5:00 p.m. The meeting will be open to the public, in accordance with the Federal Advisory Committee Act.

Additional information about the meeting may be obtained from the Commission office: Room 126-Pension Building, 440 G Street, N.W., Washington, D.C. 20218, Phone: (202) 376-2622.

Francis J. Crowley,

Executive Director.

[FR Doc.80-33495 Filed 10-27-80; 8:45 am]

BILLING CODE 6820-AC-M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice CM-8/336]

Advisory Committee on International Investment, Technology, and Development; Meeting

The Department of State Advisory Committee on International Investment, Technology, and Development will hold its thirteenth meeting on November 13 from 9:00 a.m. until 4:00 p.m. The meeting will be held in the Loy Henderson Conference Room of the State Department, 2201 C Street, N.W., Washington, D.C. 20520. The meeting will be open to the public. Please use the "C" street entrance to the State Department building.

The purpose of the meeting will be to discuss: (a) recent significant developments in technology and international investment related work in international fora; (b) foreign investment in the U.S.; (c) bilateral investment treaties; and (d) the activities of advisory Committee working groups during the past year and possible areas for future work.

Requests for further information on the meeting should be directed to Philip T. Lincoln, Jr., Department of State, Office of Investment Affairs, Bureau of Economic and Business Affairs,

Washington, D.C. 20520. He may be reached by telephone on (area code 202) 632–2728.

Members of the public wishing to attend the meeting must contact Mr. Lincoln's office in order to arrange entrance to the State Department building.

The Chairman of the Advisory Committee, will as time permits, entertain oral comments from members of the public attending the meeting.

Dated: October 21, 1980

Philip T. Lincoln, Jr.,

Executive Secretary.

[FR Doc. 80-33521 filed 10-27-80; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/335]

Advisory Committee on the Law of the Sea; Partially Closed Meeting

In accordance with Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) as amdended by Pub. L. 94–409 Section 5(c), notice is hereby given that the Advisory Committee on the Law of the Sea will meet in closed session on Thursday, November 13 and in open session on Friday, November 14, 1980. The open session of the meeting will convene November 14 at 10:00 a.m. in Room 1205, U.S. Department of State, 21st and C Streets, N.W., Washington, D.C.

The purpose of the closed meeting is to consider specific conference issues and planning and policy preparations for the U.S. Delegation to the Tenth Session of the Third United Nations Conference on the Law of the Sea to be held in either New York or Geneva beginning March, 1981. During these closed sessions, documents classified under the provisions fo Executive Order 12065 will be discussed.

These documents relate to the issues which the United States has negotiated or will negotiate at the Conference. The documents are exempt under 5 USC 552 b(c)(1) and 5 USC 552 b(c)(9), and may be withheld from disclosure in the public interest.

The issues cover such subjects as freedom of navigation on the high seas and in straits used for international navigation and related national security interests, the nature of a deep seabeds mining regime and deep seabed mining legislation, the continental margin, the economic zone, fisheries, marine polution, scientific research, dispute settlement, and other topics involving U.S. national security and foreign relations matters. Premature disclosure of the contents of these documents could adversely affect our foreign relations intrests and jeopardize the chances of obtaining a timely and satisfactory Law of the Sea Treaty.

The open session of the Advisory Committee meeting will discuss all principal agenda issues which have been considered during the Third United Nations Conference on the Law of the Sea, including those issues stated above, but will not examine the classified items discussed during the closed session.

The Advisory Committee on the Law of the Sea represents a broad cross-section of industries, professions, academic disciplines, and other public groups. As such, it will comprehensively review the proposals which have come and will come before the Conference.

At the open session, beginning at 10:00 a.m., November 14, the general public attending may participate in the discussion subject to instructions of the Chairman.

As entrance to the State Department is controlled, members of the public who wish to attend the open session should contact Marsha Bellavance and provide their name and affiliation to facilitate their attendance. Her telephone number is (202) 632–0041.

George Taft,

Director, Office of the Law of the Sea Negotiations.

October 8, 1980.

[FR Doc. 80-33520 Filed 10-27-80; 8:45 am]

BILLING CODE 4710-10-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Additional Hearings on Articles Being Considered for Duty Modification and Correction in List of Such Articles

1. Notice of Public Hearings. Pursuant to section 133 of the Trade Act of 1974 (19 U.S.C. 2153), the Trade Policy Staff Committee, chaired by the Office of the United States Trade Representative, has scheduled public hearings for November 18, 19, and 20, 1980, concerning articles being considered for possible duty modification, notice of which was published in the **Federal Register** of October 15, 1980 (45 FR 68497). Due to the large number of requests received to present testimony at the public hearings scheduled for November 5–7, 1980, some individuals originally scheduled to appear at that time will present their views at the November 18, 19, and 20 hearings instead.

2. Time and Place of Hearings. The Committee's hearings will open at 10:00 a.m., EST, on November 18, 1980, and will continue on November 19, and 20, 1980, if required. They will be held in Washington, DC, Office of the United States Trade Representative, 1800 G Street, NW, Room 730.

3. Requests to Present Oral Testimony. All requests to present oral testimony must be received by the Secretary of the Trade Policy Staff Committee, Room 735, 1800 G Street, NW, Washington, DC 20506 not later than close of business Friday, November 7, 1980. Written briefs in support of the oral testimony are due close of business Friday, November 14, 1980. Procedures for the submission of written briefs and rebuttal briefs, and other relevant information concerning the hearing process is contained in the **Federal Register** of August 28, 1980 (45 FR 57636).

4. All communications with regard to these hearings should be addressed to: Secretary, Trade Policy Staff Committee, Office of the U.S. Trade Representative, 1800 G Street, NW, Room 735, Washington, DC 20506. The telephone number of the Secretary of the Committee is (202) 395–3487.

5. Change in Place of Hearings (November 7). The location of Committee's hearings scheduled for November 7 has been changed to the New Executive Office Building, entrance on 17th Street between Pennsylvania Avenue and H Street, NW, Room 10103.

6. Correction. In the **Federal Register** of August 8, 1980, appearing on Page 52978, Annex I should be corrected by deleting TSUS items 161.71 and 700.58.

Ann H. Hughes,

Chairman, Trade Policy Staff Committee.

[FR Doc. 33464 Filed 10-27-80; 8:45 am]

BILLING CODE 3190-01-M

Trade Policy Staff Committee; Public Consultations on the President's North American Trade Agreement Report to the Congress

The Trade Policy Staff Committee (TPSC), in accordance with section 1104 of the Trade Agreements Act of 1979 (Pub. L. 96–39 S1104), is engaged in the preparation of a Presidential report to the Congress on the desirability of trade agreements with other North American countries.

The report will cover the countries in the northern portion of the western hemisphere (Canada, Mexico, and those of Central America and the Caribbean). It will address all aspects of U.S. economic relationships with those countries that bear upon U.S. trade including agricultural, industrial and trade policies, and energy, transportation, services and investment issues. The report will represent a comprehensive examination and

analysis of North American trade policy issues, and will provide valuable information for the development of U.S. policies concerning North American trade.

Trade is becoming an increasingly important component of the relationship between the United States and other countries of North America. Canada is our single most important trade partner, and Mexico has moved from being our fifth largest trading partner to a position of third in 1980.

In order to obtain the maximum amount of information regarding the issues of concern to the public for inclusion in the report, the TPSC is seeking the public's views on North American trade issues through two mechanisms. First, a series of public consultation sessions are tentatively planned by the TPSC in order to allow TPSC members to hear the views of the public on wide-ranging issues relating to U.S. trade with other North American countries. Second, written submissions (12 typed copies) on these matters are invited from the public to be received on or before January 16, 1981.

The public sessions are being planned to ensure that the report receives the benefit of an exchange of views between the U.S. Government and parties having an interest in the detailed and general aspects of U.S. trade and economic relationships with other North American countries. Presentations from the public providing information, problems, analyses, or proposals concerning any aspect of North American trade issues are invited at these sessions. The conferences will be held in the cities and on the dates noted below, if sufficient interest is demonstrated.

City and Date

Minneapolis—December 16
Seattle—December 18
New York—January 8
Dallas—January 13
Los Angeles—January 15

Parties wishing to make a presentation must notify, by November 14, 1980 for Minneapolis or Seattle, and by December 1, 1980 for New York, Dallas or Los Angeles, to Carolyn Frank, TPSC Secretary (Office of the U.S. Trade Representative, Executive Office of the President, Washington, D.C. 20506) of their intention, giving:

1. Their names, addresses, and telephone number
2. The city in which they will attend the hearing
3. A brief summary of their presentation.

Remarks should be limited to no more than 15 minutes, to allow time for possible questions from the TPSC members and adequate discussion. Participants should provide 10 typed copies of their presentation at the time of the hearings.

The TPSC will notify those wishing to participate in the consultations concerning a confirmation of the hearings and details of the time and place in the cities noted above.

Persons who cannot attend one of the consultations are invited to submit a statement (12 typed copies) to Carolyn Frank, TPSC Secretary (Office of the U.S. Trade Representative, Executive Office of the President, Washington, D.C. 20506) by January 16, 1981.

For further information, please contact Harvey E. Bale, Jr., (202) 395–3510.

Ann H. Hughes,

Chairman, Trade Policy Staff Committee.

[FR Doc. 80–33463 Filed 10–27–80; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF THE TREASURY

Treasury Notes of October 15, 1980, Series X–1982

[Public Debt Series—No. 31–80]

October 23, 1980.

The Secretary announced on October 22, 1980, that the interest rate on the notes designated Series X–1982, described in Department Circular—Public Debt Series—No. 31–80, dated October 15, 1980, will be 12⅛ percent. Interest on the notes will be payable at the rate of 12⅛ percent per annum.

Supplementary Statement: The announcement set forth above does not meet the Department's criteria for significant regulations and, accordingly, may be published without compliance with the Departmental procedures applicable to such regulations.

Paul H. Taylor,

Fiscal Assistant Secretary.

[FR Doc. 80–33527 Filed 10–27–80; 8:45 am]

BILLING CODE 4810–40–M

UPPER MISSISSIPPI RIVER BASIN COMMISSION

Notice of Meeting

The 36th Quarterly Commission Meeting of the Upper Mississippi River Basin Commission will be held on Wednesday and Thursday, November 12–13, 1980 at the Landmark Center, 75 West Fifth Street, St. Paul, Minnesota. The Commission meeting will convene in Courtroom 317 on Wednesday, November 12th, at 1:30 P.M. and adjourn at 4:30 P.M. and reconvene on Thursday, November 13th, at 9:30 A.M. The meeting is expected to include regular Commission business and reports on the status of the Master Plan Study.

Neil S. Haugerud,

Chairman.

[FR Doc. 80–33494 Filed 10–27–80; 8:45 am]

BILLING CODE 8410–02–M

Sunshine Act Meetings

Federal Register
Vol. 45, No. 210
Tuesday, October 28, 1980

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94–409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

FEDERAL COMMUNICATIONS COMMISSION.

The following item has been passed at the request of Commissioner Anne P. Jones from the October 28, 1980 Open Meeting to the November 6, 1980 Open Meeting. This item was previously listed in the Commission's Public Notice (#00617) of October 21, 1980.

Agenda, Item Number, and Subject

Broadcast—1—*Title:* Petition to reassign VHF–TV Channel 9 from New York City to a northern New Jersey community. *Subject:* The Commission will consider a petition from Senators Bradley and Williams of New Jersey to reassign VHF–TV Channel 9 from New York to a northern New Jersey community. Channel 9 is currently subject to an outstanding license (Station WOR–TV, RKO General, Inc.) which has not been renewed (appeal pending) and an application for a new station from Multi-State Communications.

Additional information concerning this meeting may be obtained from Edward Dooley, FCC Public Affairs Office, telephone number (202) 254–7674

Issued: October 24, 1980.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[S–1971–80 Filed 10–24–80; 2:58 pm]

BILLING CODE 8712–01–M

2

FEDERAL ENERGY REGULATORY COMMISSION.

October 22, 1980.

TIME AND DATE: 11:45 a.m., October 22, 1980.

PLACE: Room 9306, 825 North Capitol Street, Washington, D.C. 20426.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Agency's participation in a Civil action.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary; telephone (202) 357–8400.

Kenneth F. Plumb,

Secretary.

[S–1974–80 Filed 10–24–80; 3:14 pm]

BILLING CODE 6450–85–M

3

FEDERAL ENERGY REGULATORY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: To be published October 27, 1980.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., October 29, 1980.

CHANGE IN MEETING: The following item has been added:

Item Number, Docket Number, and Company

RP–2. RP79–64, Florida Gas Transmission Company.

[S–1975–80 Filed 10–24–80; 3:14 pm]

BILLING CODE 6450–85–M

4

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION. .

October 22, 1980.

TIME AND DATE: 10 a.m., Wednesday, October 29, 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. Cleveland Cliffs Iron Company, Docket No. VINC 79–68–PM, etc. (Issues include interpretation and application of the berm standard at 30 CFR § 55.9–22).

2. Burgess Mining and Construction Co., Docket No. SE 79–42–R (Issues include interpretation and application of the berm standard at 30 CFR § 77.1605(k)).

3. El Paso Rock Quarries, Docket No. DENV 79–139–PM (Issues are same as in Cleveland Cliffs Iron Co.).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, 202–653–5632.

[S–1969–80 Filed 10–24–80; 10:06 am]

BILLING CODE 6820–12–M

5

NUCLEAR REGULATORY COMMISSION.

DATE: Thursday, October 30 and Friday, October 31, 1980.

PLACE: Commissioners Conference Room, 1717 H Street NW., Washington, D.C.

STATUS: Open/closed.

MATTERS TO BE CONSIDERED: Thursday, October 30:

10 a.m.

Discussion of Management-Organization and Internal Personnel Matters closed—Exemptions 2 and 6.

Friday, October 31:

2 p.m.

1. Meeting with Industry Groups (AIF) Working on Control Room Design Questions (Approx 2 hours, public meeting).
2. Affirmation Session (public meeting).
   a. Order in Tyrone.
   b. Free Transcripts in LaCrosse Proceeding.
   c. Request by UCS for Stay of Policy Statement.
   d. Notice on Transportation of Waste.
   e. EDO Delegation of Authority.
   f. Indian Point (Cooling Towers).
   g. Order on Instructions to Board on Indian Point Proceeding.

CONTACT PERSON FOR MORE INFORMATION: Walter Magee (202) 634–1410.

AUTOMATIC TELEPHONE ANSWERING SERVICE FOR SCHEDULE UPDATE: (202) 634–1498.

Those planning to attend a meeting should reverify the status on the day of the meeting.

Dated: October 23, 1980.

Walter Magee,

Office of the Secretary.

[S–1973–80 Filed 10–24–80; 3:06 pm]

BILLING CODE 7590–01–M

6

NUCLEAR REGULATORY COMMISSION.

DATE: October 27 and 28, 1980.

PLACE: Commissioners conference room, 1717 H Street NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: Monday, October 27:

2 p.m.

Continuation of Discussion of Fire Protection Program (approximately 2 hours, public meeting).

Tuesday, October 28:

10 a.m.

Briefing on Clarification of TMI Action

Plan Requirements (approximately 1½ hours, public meeting).

2 p.m.

Presentations by GE; AIF and EPRI on Anticipated Transients Without Scram (ATWS) (approximately 2 hours, public meeting).

CONTACT PERSON FOR MORE INFORMATION: Walter Magee (202) 634–1410.

AUTOMATIC TELEPHONE ANSWERING SERVICE FOR SCHEDULE UPDATE: (202) 634–1498.

Those planning to attend a meeting should reverify the status on the day of the meeting.

Dated: October 21, 1980.

Walter Magee,

Office of the Secretary.

[S–1976–80 Filed 10–24–80; 3:24 pm]

BILLING CODE 7590–01–M

7

[OPO401]

PAROLE COMMISSION.

(The Commissioners presently maintaining offices at Washington, D.C. Headquarters.)

TIME AND DATE: 9:30 a.m., Thursday, November 6, 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.

MATTERS TO BE CONSIDERED: Referrals from Regional Commissioners of approximately 5 cases in which inmates of federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

CONTACT PERSONS FOR MORE INFORMATION: Linda Wines Marble, Chief Case Analyst, National Appeals Board, U.S. Parole Commission (202) 724–3094.

[S–1970–80 Filed 10–24–80; 11:10 am]

BILLING CODE 4410–01–M

federal register

Tuesday
October 28, 1980

Part II

Department of Agriculture

Federal Grain Inspection Service

Proposed Revision to the U.S. Standards for Beans

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 68

Proposed Revision to the United States Standards for Beans

AGENCY: Federal Grain Inspection Service [1].

ACTION: Proposed rule.

SUMMARY: The Federal Grain Inspection Service (FGIS) proposes to revise the format of the grade tables in the U.S. Standards for Beans (7 CFR § 68.101 *et seq.*) issued under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), to include the grade factor limitations presently shown in footnotes, and the special grades and special grade requirements currently shown in § 68.138. The number of grade tables would increase from four to eight allowing the grade tolerances for the classes of beans to be presented in a concise and clear format. Section 68.138 would also be revised to include "U.S. Choice Handpicked" and "U.S. Prime Handpicked" in the class Pea beans, and "U.S. Extra No. 1" in the class Large Lima, Baby Lima, and Miscellaneous Lima beans as special grade designations. The grade designation currently shown in § 68.137 would be revised to clarify the grade U.S. Substandard. Inasmuch as the factor information appears elsewhere on the certificate, FGIS is also proposing that the requirement to show the percentages of splits, damaged beans, contrasting classes, and foreign material on the grade line be deleted when the grade U.S. Substandard is applied. These proposed format revisions to the grade tables in the United States Standards for Beans are made in the interest of clarity and to promote a better understanding of the standards, and do not change any of the present grading factors or grading tolerances.

DATE: Written comments must be submitted on or before December 29, 1980.

ADDRESS: Comments should be submitted in writing in duplicate to the Director, Issuance and Coordination Staff, Federal Grain Inspection Service, USDA, Room 1127, Auditors Building, 1400 Independence Ave., S.W., Washington, D.C. 20250. All comments received will be made available for public inspection at the above office during regular business hours.

FOR FURTHER INFORMATION CONTACT: James L. Driscoll, Director, Federal Grain Inspection Service, Standardization Division, U.S. Department of Agriculture, Bldg. #221, Richards-Gebaur AFB, Grandview, Missouri 64030, Telephone (816) 348–2861. The Draft Impact Analysis, describing the options considered in developing this proposed rule and the impact of implementing each option, is available on request from the Director, Issuance and Coordination Staff, (202) 447–3910.

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 "not significant."

The Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*), provides for the issuance by the Secretary of Agriculture of standards with respect to quality, condition, quantity, grade, and packaging of agricultural commodities. It further grants authority for the inspection of commodities upon request from interested parties and the collection of a fee to cover the cost of service.

Pursuant to sections 203 and 205 of the Agricultural Marketing Act of 1946 (7 U.S.C. 1622 and 1624), notice is hereby given in accordance with the administrative procedure provisions of Section 553 of Title 5, United States Code, that the U.S Department of Agriculture proposes revisions to the United States Standards for Beans.

The Department, in the interest of clarity and to promote a better understanding of the standards promulgated under the Act, proposes to revise the format of the grade tables in the United States Standards for Beans (7 CFR § 68.101 *et seq.*).

The present format of the United States Standards for Beans has caused some difficulty in correctly applying the standards. Presently, many grade determining factors are cited in footnotes, special grade tolerances are not contained in a tabular form where they could be easily applied, and special grade requirements are separated from other grade requirements.

It is proposed that the tables presently shown in § 68.133 through § 68.138 be revised and that the number of grade tables be expanded from the present four tables to eight tables covering § 68.133 to § 68.140. Further, the present sections 68.137 and 68.138 have been rewritten to incorporate into the appropriate proposed tables some of the information which currently appears in the text of the two sections. In addition, it is proposed that in section 68.137, the designation for the grade U.S. Substandard be amended to delete the requirement that the percentages for splits, damaged beans, contrasting classes, and foreign material be shown on the grade line. This factor information appears elsewhere on the certificate if an official determination is made during the course of inspection. The present § 68.137, Grade Designations, as revised, would be redesignated as § 68.141; and the present § 68.138, Special grades, special grade requirements, and special grade designations, as revised, would be redesignated as § 68.142, Special Grade Designations.

Accordingly, it is proposed that §68.133 through § 68.142 of the United States Standards for Beans read as follows:

Subpart B—United States Standards for Beans [2]

* * * * *

BILLING CODE 3410-02-M

[1] Authority to exercise the functions of the Secretary of Agriculture contained in the Agricultural Marketing Act of 1946 as amended (7 U.S.C. 1621–1627) concerning inspection and standardization activities related to grain and similar commodities and products thereof, has been delegated to the Administrator, Federal Grain Inspection Service (7 U.S.C. 75a; 7 CFR 68.2(e)).

[2] Compliance with the provisions of these standards does not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act, or other Federal Laws.

§68.133 Grades, Grade Requirements, Special Grades and Special Grade Requirements for the Class PEA BEANS.

SPECIAL GRADE and GRADE	GENERAL APPEARANCE	PERCENT MAXIMUM LIMITS OF ---						
		MOISTURE 1./	TOTAL DEFECTS (Total damaged, Total foreign material, Contrasting classes, Splits)	BADLY DAMAGED	FOREIGN MATERIAL: TOTAL (include stones)	FOREIGN MATERIAL: STONES	CONTRASTING CLASSES 2./	CLASSES THAT BLEND 3./
U.S. Choice Handpicked	SHALL NOT GRADE OFF COLOR	**18.0**	**1.5**	**0.3**	**0.01**	**0.01**	**0.01**	**2.0**
U.S. Prime Handpicked	SHALL NOT GRADE OFF COLOR	**18.0**	**3.0**	**0.3**	**0.01**	**0.01**	**0.01**	**2.0**
U.S. No. 1	SHALL NOT GRADE OFF COLOR	18.0	2.0	2.0	0.4	0.2	0.5	4.0
U.S. No. 2	THE SPECIAL GRADE OFF COLOR MAY BE APPLIED	18.0	3.0	3.0	0.8	0.4	1.0	4.0
U.S. Substandard	THE SPECIAL GRADE OFF COLOR MAY BE APPLIED	18.0	U.S. Substandard shall be beans which do not meet the requirements for the grades U.S. Choice Handpicked through U.S. No. 2 or U.S. Sample grade. Beans which are not well screened shall also be U.S. Substandard, except for beans which meet the requirements for U.S. Sample grade.					
U.S. Sample grade	THE SPECIAL GRADE OFF COLOR MAY BE APPLIED	18.0	U.S. Sample grade shall be beans which are musty, sour, heating, materially weathered, or weevily; which have any commercially objectionable odor; which contain insect webbing or filth, animal filth, any unknown foreign substance, broken glass, or metal fragments; or which are otherwise of distinctly low quality.					

1./ Beans with more than 18.0 percent moisture are assigned the Special grade high moisture.
2./ Beans with more than 2.0 percent contrasting classes are classed Mixed beans.
3./ Beans with more than 15.0 percent classes that blend are classed Mixed beans.

§68.134 Grades and Grade Requirements for the Class BLACKEYE BEANS.

GRADE	GENERAL APPEARANCE	PERCENT MAXIMUM LIMITS OF ---							
		MOISTURE 1./	TOTAL DEFECTS (Total damaged, Total foreign material, Contrasting classes, Splits)	TOTAL DAMAGED	CLEAN CUT WEEVIL BORED 2./	FOREIGN MATERIAL		CONTRASTING CLASSES 3./	CLASSES THAT BLEND 4./
						TOTAL (include stones)	STONES		
U.S. No. 1	THE SPECIAL GRADE OFF COLOR MAY BE APPLIED	18.0	4.0	2.0	0.0	0.5	0.2	0.5	5.0
U.S. No. 2		18.0	6.0	4.0	0.2	1.0	0.4	1.0	10.0
U.S. No. 3		18.0	8.0	6.0	0.5	1.5	0.6	2.0	15.0
U.S. Substandard		18.0	U.S. Substandard shall be beans which do not meet the requirements for the grades U.S. No. 1 through U.S. No. 3 or U.S. Sample grade. Beans which are not well screened shall also be U.S. Substandard, except for beans which meet the requirements for U.S. Sample grade.						
U.S. Sample grade		18.0	U.S. Sample grade shall be beans which are musty, sour, heating, materially weathered, or weevily; which have any commercially objectionable odor; which contain insect webbing or filth, animal filth, or any unknown foreign substance, broken glass or metal fragments; or which are otherwise of distinctly low quality.						

1./ Beans with more than 18.0 percent moisture are assigned the Special grade high moisture.
2./ Blackeye beans with more than 0.5 percent clean cut weevil bored beans are graded U.S. Sample grade.
3./ Beans with more than 2.0 percent contrasting classes are classed Mixed beans.
4./ Beans with more than 15.0 percent classes that blend are classed Mixed beans.

§68.135 Grades, Grade Requirements, Special Grades, and Special Grade Requirements for the Classes YELLOWEYE BEANS and CRANBERRY BEANS.

SPECIAL GRADE and GRADE	GENERAL APPEARANCE	PERCENT MAXIMUM LIMITS OF --- MOISTURE 1./	TOTAL DEFECTS (Total damage, Total foreign material, Contrasting classes, Splits)	TOTAL DAMAGE (Includes Badly damaged)	BADLY DAMAGED	FOREIGN MATERIAL TOTAL (Include Stones)	FOREIGN MATERIAL STONES	CONTRASTING CLASSES 2./	CLASSES THAT BLEND 3./	WHITE BEANS SIMILAR IN SIZE AND SHAPE IN THE CLASS YELLOWEYE BEANS, IN ADDITION TO CLASSES THAT BLEND
U.S. Choice Handpicked	**SHALL NOT GRADE OFF COLOR**	**18.0**	**1.5**	**1.5**	**0.3**	**0.01**	**0.01**	**0.01**	**5.0**	**5.0**
U.S. No. 1 Handpicked		**18.0**	**4.0**	**2.0**	**0.3**	**0.01**	**0.01**	**0.01**	**5.0**	**5.0**
U.S. No. 2 Handpicked		**18.0**	**6.0**	**4.0**	**0.3**	**0.01**	**0.01**	**0.01**	**10.0**	**5.0**
U.S. No. 3 Handpicked		**18.0**	**8.0**	**6.0**	**0.3**	**0.01**	**0.01**	**0.01**	**15.0**	**—**
U.S. No. 1	THE SPECIAL GRADE OFF COLOR MAY BE APPLIED	18.0	4.0	2.0	2.0	0.5	0.2	0.5	5.0	5.0
U.S. No. 2		18.0	6.0	4.0	4.0	1.0	0.4	1.0	10.0	5.0
U.S. No. 3		18.0	8.0	6.0	6.0	1.5	0.6	2.0	15.0	---
U.S. Substandard		18.0	U.S. Substandard shall be beans which do not meet the requirements for the grades U.S. Choice Handpicked, through U.S. No. 3, or U.S. Sample grade. Beans which are not well screened shall also be U.S. Substandard, except for beans which meet the requirements for U.S. Sample grade.							
U.S. Sample grade		18.0	U.S. Sample grade shall be beans which are musty, sour, heating, materially weathered, or weevily; which have any commercially objectionable odor; which contain insect webbing or filth, animal filth, any unknown foreign substance, broken glass or metal fragments; or which are otherwise of distinctly low quality.							

1./ Beans with more than 18.0 percent moisture are assigned the Special grade high moisture.
2./ Beans with more than 2.0 percent contrasting classes are classed Mixed beans.
3./ Beans with more than 15.0 percent classes that blend are classed Mixed beans.

§68.136 Grades, Grade Requirements, Special Grades and Special Grade Requirements for the Class PINTO BEANS.

SPECIAL GRADE and GRADE	GENERAL APPEARANCE	PERCENT MAXIMUM LIMITS OF ---						
		MOISTURE 1./	TOTAL DEFECTS (Total damaged, Total foreign material Contrasting classes, Splits)	BADLY DAMAGED	FOREIGN MATERIAL		CONTRASTING CLASSES 2./	CLASSES THAT BLEND 3./
					TOTAL (Include stones)	STONES		
U.S. Choice Handpicked	SHALL NOT GRADE OFF COLOR	18.0	2.0	0.3	0.01	0.01	0.01	5.0
U.S. No. 1 Handpicked		18.0	3.0	0.3	0.01	0.01	0.01	5.0
U.S. No. 2 Handpicked		18.0	5.0	0.3	0.01	0.01	0.01	10.0
U.S. No. 3 Handpicked		18.0	7.0	0.3	0.01	0.01	0.01	15.0
U.S. No. 1	THE SPECIAL GRADE OFF COLOR MAY BE APPLIED	18.0	3.0	3.0	0.5	0.2	0.5	5.0
U.S. No. 2		18.0	5.0	5.0	1.0	0.4	1.0	10.0
U.S. No. 3		18.0	7.0	7.0	1.5	0.6	2.0	15.0
U.S. Substandard		18.0	U.S. Substandard shall be beans which do not meet the requirements for the grades U.S. Choice Handpicked, through U.S. No. 3 or U.S. Sample grade. Beans which are not well screened shall also be U.S. Substandard, except for beans which meet the requirements for U.S. Sample grade.					
U.S. Sample grade		18.0	U.S. Sample grade shall be beans which are musty, sour, heating, materially weathered, or weevily; which have any commercially objectionable odor; which contain insect webbing or filth, animal filth, any unknown foreign substance, broken glass or metal fragments; or which are otherwise of distinctly low quality.					

1./ Beans with more than 18.0 percent moisture are assigned the Special grade high moisture.
2./ Beans with more than 2.0 percent contrasting classes are classed Mixed beans.
3./ Beans with more than 15.0 percent classes that blend are classed Mixed beans.

§68.137 Grades, Grade Requirements, Special Grades, and Special Grade Requirements for the Classes MARROW, GREAT NORTHERN, SMALL WHITE, FLAT SMALL WHITE, WHITE KIDNEY, LIGHT RED KIDNEY, DARK RED KIDNEY, SMALL RED, PINK, BLACK TURTLE SOUP, and MISCELLANEOUS BEANS.

SPECIAL GRADE and GRADE	GENERAL APPEARANCE	PERCENT MAXIMUM LIMITS OF ---						
		MOISTURE 1./	TOTAL DEFECTS (Total damaged, Total foreign material, Contrasting classes, Splits)	BADLY DAMAGED	FOREIGN MATERIAL		CONTRASTING CLASSES 2./	CLASSES THAT BLEND 3./
					TOTAL (Include Stones)	STONES		
U.S. Choice Handpicked	**SHALL NOT GRADE OFF COLOR**	**18.0**	**1.5**	**0.3**	**0.01**	**0.01**	**0.01**	**5.0**
U.S. No. 1 Handpicked		**18.0**	**2.0**	**0.3**	**0.01**	**0.01**	**0.01**	**5.0**
U.S. No. 2 Handpicked		**18.0**	**4.0**	**0.3**	**0.01**	**0.01**	**0.01**	**10.0**
U.S. No. 3 Handpicked		**18.0**	**6.0**	**0.3**	**0.01**	**0.01**	**0.01**	**15.0**
U.S. No. 1	THE SPECIAL GRADE OFF COLOR MAY BE APPLIED	18.0	2.0	2.0	0.5	0.2	0.5	5.0
U.S. No. 2		18.0	4.0	4.0	1.0	0.4	1.0	10.0
U.S. No. 3		18.0	6.0	6.0	1.5	0.6	2.0	15.0
U.S. Substandard		18.0	U.S. Substandard shall be beans which do not meet the requirements for the grades U.S. Choice Handpicked, through U.S. No. 3 or U.S. Sample grade. Beans which are not well screened shall also be U.S. Substandard, except for beans which meet the requirements for U.S. Sample grade.					
U.S. Sample grade		18.0	U.S. Sample grade shall be beans which are musty, sour, heating, materially weathered, or weevily; which have any commercially objectionable odor; which contain insect webbing or filth, animal filth, any unknown foreign substance, broken glass or metal fragments; or which are otherwise of distinctly low quality.					

1./ Beans with more than 18.0 percent moisture are assigned the Special grade high moisture.
2./ Beans with more than 2.0 percent contrasting classes are classed Mixed beans.
3./ Beans with more than 15.0 percent classes that blend are classed Mixed beans.

§68.138 Grades, Grade Requirements, Special Grades, and Special Grade Requirements for the Class MUNG BEANS.

SPECIAL GRADE and GRADE	GENERAL APPEARANCE	PERCENT MAXIMUM LIMITS OF --- MOISTURE 1./	TOTAL DEFECTS (Total damaged, Total foreign material, Contrasting classes, Splits)	BADLY DAMAGED	CLEAN-CUT WEEVIL BORED 2./	FOREIGN MATERIAL: TOTAL (Include Stones)	FOREIGN MATERIAL: STONES	CONTRASTING CLASSES 3./	CLASSES THAT BLEND 4./
U.S. Choice Handpicked	SHALL NOT GRADE OFF COLOR	18.0	1.5	0.3	0.1	0.01	0.01	0.01	5.0
U.S. No. 1 Handpicked		18.0	2.0	0.3	0.1	0.01	0.01	0.01	5.0
U.S. No. 2 Handpicked		18.0	4.0	0.3	0.2	0.01	0.01	0.01	10.0
U.S. No. 3 Handpicked		18.0	6.0	0.3	0.5	0.01	0.01	0.01	15.0
U.S. No. 1	THE SPECIAL GRADE OFF COLOR MAY BE APPLIED	18.0	2.0	2.0	0.1	0.5	0.2	0.5	5.0
U.S. No. 2		18.0	4.0	4.0	0.2	1.0	0.4	1.0	10.0
U.S. No. 3		18.0	6.0	6.0	0.5	1.5	0.6	2.0	15.0
U.S. Substandard		18.0	U.S. Substandard shall be beans which do not meet the grade requirements for the grades U.S. Choice Handpicked, through U.S. No. 3 or U.S. Sample grade. Beans which are not well screened shall also be U.S. Substandard, except for beans which meet the requirements for U. S. Sample grade.						
U.S. Sample grade		18.0	U.S. Sample grade shall be beans which are musty, sour, heating, materially weathered, or weevily; which have any commercially objectionable odor; which contain insect webbing or filth, animal filth, any unknown foreign substance, broken glass or metal fragments; or are otherwise of distinctly low quality.						

1./ Beans with more than 18.0 percent moisture are assigned the Special grade high moisture.
2./ Mung beans with more than 0.5 percent clean cut weevil bored beans are graded U.S. Sample grade.
3./ Beans with more than 2.0 percent contrasting classes are classed Mixed beans.
4./ Beans with more than 15.0 percent classes that blend are classed Mixed beans.

§68.139 Grades, Grade Requirements, Special Grades, and Special Grade Requirements for the Class LARGE LIMA BEANS.

GRADE	GENERAL APPEARANCE	PERCENT MAXIMUM LIMITS OF --- MOISTURE 1./	TOTAL BLISTERED WRINKLED AND DEFECTS (Blistered, wrinkled, Total damage, Total foreign material, Contrasting classes, Splits)	SPLITS	BROKENS	BEANS THROUGH A SIEVE 30/64"	28/64"	24/64"	DAMAGED BEANS TOTAL	DAMAGED BEANS BADLY DAMAGED	FOREIGN MATERIAL TOTAL (Include stones)	FOREIGN MATERIAL STONES	CONTRASTING CLASSES 2./	CLASSES THAT BLEND 3./
U.S. Extra No. 1	4./	17.0	4.0	2.0	3.0	20	5	—	1.0	0.2	0.2	0.01	0.2	2.0
U.S. No. 1	THE SPECIAL GRADE OFF COLOR MAY BE APPLIED	18.0	6.0	3.0	5.0	--	25	5	2.0	0.5	0.5	0.2	0.5	5.0
U.S. No. 2		18.0	9.0	5.0	5.0	--	40	5	3.0	1.0	1.0	0.3	1.0	10.0
U.S. Substandard		18.0	U.S. Substandard shall be beans which do not meet the requirements for the grades U.S. Extra No. 1, through U.S. No. 2 or U.S. Sample grade. Beans which are not well screened shall also be U.S. Substandard, except for beans which meet the requirements for U.S. Sample grade.											
U.S. Sample Grade		18.0	U.S. Sample grade shall be beans which are musty, sour, heating, materially weathered, or weevily; which have any commercially objectionable odor; which contain insect webbing or filth, animal filth, any unknown foreign substance, broken glass or metal fragments; or which are otherwise of distinctly low quality.											

1./ Beans with more than 18.0 percent moisture are assigned the Special grade high moisture.
2./ Beans with more than 2.0 percent contrasting classes are classed Mixed beans.
3./ Beans with more than 15.0 percent classes that blend are classed Mixed beans.
4./ Must be of good natural color.

§68.140 Grades, Grade Requirements, Special Grades, and Special Grade Requirements for the Classes BABY LIMA and MISCELLANEOUS LIMA BEANS.

GRADE	GENERAL APPEARANCE	PERCENT MAXIMUM LIMITS OF ---								
		MOISTURE 1./	BLISTERED WRINKLED AND/OR BROKEN	SPLITS	TOTAL DEFECTS (Total damage, Total foreign material, Contrasting classes)	BADLY DAMAGED	FOREIGN MATERIAL		CONTRASTING CLASSES 2./	CLASSES THAT BLEND 3./
							TOTAL (Include stones)	STONES		
U.S. Extra No. 1	4./	17.0	2.0	2.0	1.0	0.5	0.2	0.01	0.2	2.0
U.S. No. 1	THE SPECIAL GRADE OFF COLOR MAY BE APPLIED	18.0	3.0	3.0	2.0	1.0	0.5	0.2	0.5	5.0
U.S. No. 2		18.0	5.0	5.0	3.0	1.5	1.0	0.3	1.0	10.0
U.S. No. 3		18.0	8.0	8.0	5.0	2.0	1.5	0.6	2.0	15.0
U.S. Substandard		18.0	U.S. Substandard shall be beans which do not meet the requirements for the grades U.S. Extra No. 1, through U.S. No. 3 or U.S. Sample grade. Beans which are not well screened shall also be U.S. Substandard, except for beans which meet the requirements for U.S. Sample grade.							
U.S. Sample grade		18.0	U.S. Sample grade shall be beans which are musty, sour, heating, materially weathered, or weevily; which have any commercially objectionable odor; which contain insect webbing or filth, animal filth, any unknown foreign substance, broken glass or metal fragments; or which are otherwise of distinctly low quality.							

1./ Beans with more than 18.0 percent moisture are assigned the Special grade high moisture.
2./ Beans with more than 2.0 percent contrasting classes are classed Mixed beans.
3./ Beans with more than 15.0 percent classes that blend are classed Mixed beans.
4./ Must be of good natural color.

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§ 68.141 Grade designations.

The grade designation for all classes of beans shall include in the following order: (1) the letters "U.S."; (2) the name or number of the grade or the name of any applicable special grade designation as appears in section 68.142 (a)–(d); (3) the class, and in the case of Mixed beans, the name and percentage of each class in the mixture; and (4) the special grade designations for "high moisture" or "off-color" if applicable as appears in section 68.142 (e) and (f). In addition, the designation for the grade "U.S. Substandard" shall include the percentage of sound beans. Mixed beans shall be graded according to the grade requirements of the class of beans which predominates in the mixture. The factors of contrasting classes, classes that blend and sieve size requirements in Large Limas shall be disregarded in Mixed beans.

§ 68.142 Special grade designations.

(a) *Choice handpicked.* The special grade designation "Choice handpicked" shall be applicable to all classes of beans, except Blackeye, Large Lima, Baby Lima, Miscellaneous Lima, and Mixed beans. The "Choice handpicked" designation shall include in the following order: (1) the letters "U.S."; (2) the words "Choice handpicked"; and (3) the class.

(b) *Prime handpicked.* The special grade designation "Prime handpicked" is applicable only to the class "Pea beans". The "Prime handpicked" designation shall include in the following order: (1) the letters "U.S."; (2) the words "Prime handpicked"; and (3) "Pea beans."

(c) *Handpicked.* The special grade designation "Handpicked" is applicable to all classes of beans, except Pea, Blackeye, Large Lima, Baby Lima, Miscellaneous Lima, and Mixed beans. The "Handpicked" designation shall include in the following order: (1) the letters "U.S."; (2) the numerical grade; (3) the word "Handpicked"; and (4) the class.

(d) *Extra No. 1.* The special grade designation "Extra No. 1" is applicable to the classes Large Lima, Baby Lima and Miscellaneous Lima beans. The "Extra No. 1" designation shall include in the following order: (1) the letters "U.S."; (2) the words "Extra No. 1"; and (3) the class.

(e) *High moisture.* The special grade designation "High moisture" is applicable to all classes of beans containing over 18.0 percent moisture. The "High moisture" designation shall follow the class name with the words "High moisture" and the percentage of moisture.

(f) *Off-color.* The special grade designation "Off-color" shall be applicable to all classes of beans that upon the removal of total defects, are distinctly off-color due to age or any other natural cause but are not materially weathered. The "Off-color" designation shall follow the name of the class with the words "Off-color." The special grades "Choice Handpicked," "Prime Handpicked," "Handpicked" and "Extra No. 1" and the grade U.S. No. 1 in the class Pea beans shall not be applied if the beans are determined to be off-color.

* * * * *

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

Done in Washington, D.C., on: October 22, 1980.

D. R. Galliart,

Acting Administrator.

[FR Doc. 80-33450 Filed 10-27-80; 8:45 am]

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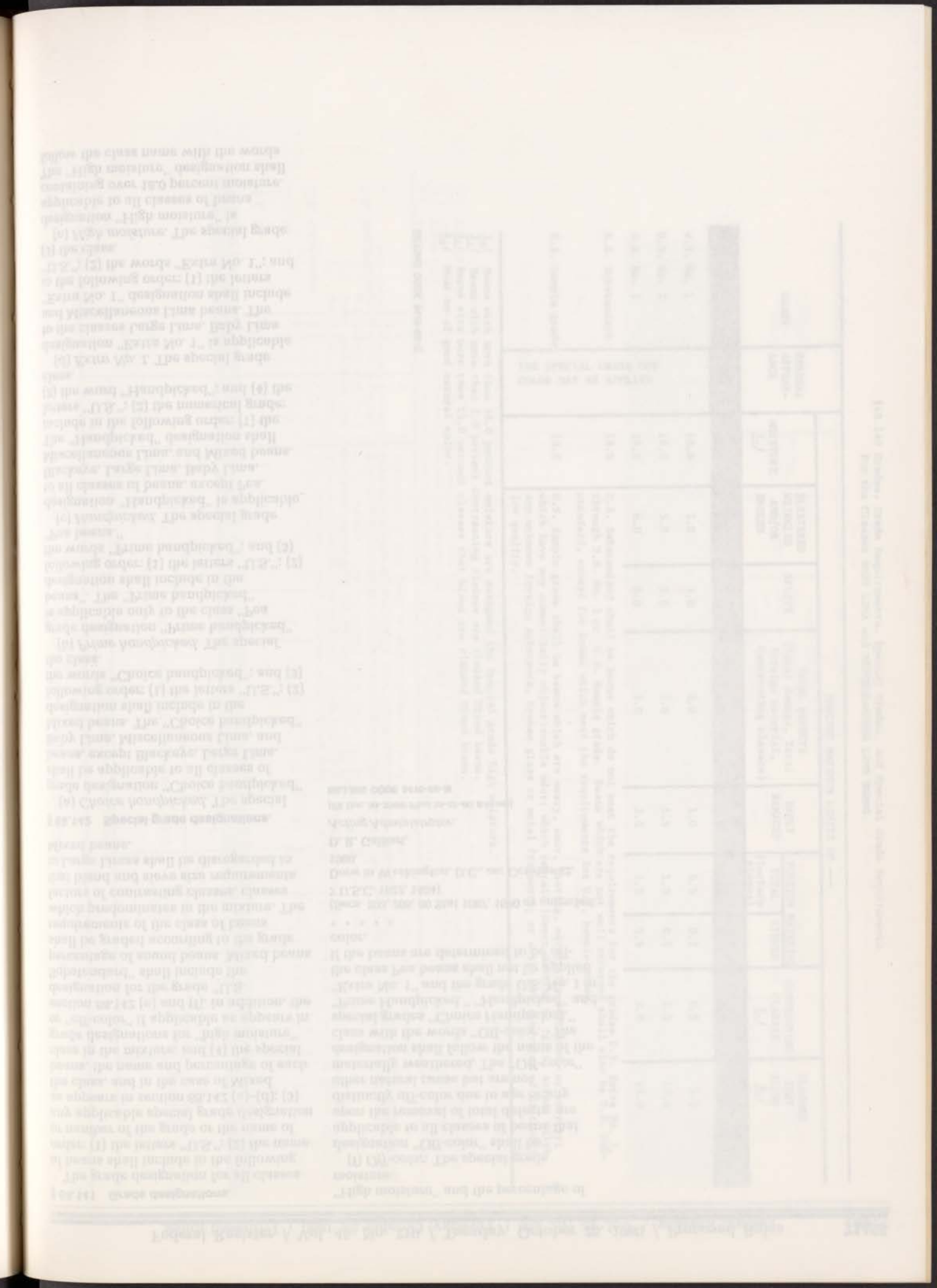

federal register

Tuesday
October 28, 1980

Part III

Department of Energy

Coordinated State Grant Programs; Proposed Rulemaking and Notice of Public Hearings

DEPARTMENT OF ENERGY

10 CFR Parts 420, 440, 455, 465, and 477

Coordinated State Grant Programs

AGENCY: Department of Energy.

ACTION: Proposed rulemaking and notice of public hearings.

SUMMARY: The Department of Energy (DOE) proposes to establish procedures to coordinate energy conservation programs conducted by the States and to consolidate the process by which a State applies to the Department of Energy for financial assistance for these programs. For these purposes, this proposed rulemaking consolidates in 10 CFR Part 420 the regulations for the State Energy Conservation Program (10 CFR Part 420), the Energy Extension Service (10 CFR Part 465) and the Program for Weatherization Assistance for Low-Income Person (10 CFR Part 440). It also establishes the procedure by which a State makes one application for financial assistance for these programs, the Emergency Energy Conservation Program (10 CFR Part 477) and for its expenses administering the Energy Conservation Programs for Schools and Hospitals and for Buildings Owned by Units of Local Government and Public Care Institutions (10 CFR Part 455). Finally, today's proposal establishes requirements for the submission, review and approval of a coordinated State grant application and provides coordinated administrative requirements.

DATES: Written comments must be received on or before December 29, 1980.

Public hearings will be held as follows:

December 3 and 4, 1980—San Francisco, Calif.

December 9 and 10, 1980—Washington, D.C.

See supplementary information, Section III for further information.

ADDRESSES: Public hearing location—Washington, D.C., Department of Energy, Room 2105, 9:30 am, 2000 M Street, NW. All written comments and requests to speak at the Washington, D.C. hearing should be addressed to: Ms. Carol Snipes, Hearings and Dockets Conservation and Solar Energy, Department of Energy, Mail Stop 6B–025, 1000 Independence Avenue, SW., Washington, D.C. 20585, ATTN: CAS–RM–80–510.

Public hearing location: San Francisco, California, Ramada Inn, Fisherman's Wharf, Crocker Hopkins Room, 9:30 am., 590 Bay Street.

Requests to speak at the San Francisco hearing should be addressed to: Terry Osborne, Department of Energy, Region IX, 333 Market Street, San Francisco, California 95105.

FOR FURTHER INFORMATION CONTACT:

Ron Bowes, Grants Management and Technical Assistance, Department of Energy, Mail Stop 2H–027, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–2308.

Richard F. Kessler or Catherine Edgerton, Office of General Counsel, Department of Energy, Mail Stop 6A–152, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252–9519.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

Congress, Regions and States have all expressed interest in coordinating the application and administrative procedures for energy conservation and renewable resource programs. This proposed rulemaking represents a first step in addressing these concern and will pave the way for further energy conservation and renewable resource program coordination.

This proposed rulemaking amends the program regulations for four State energy conservation grant programs and provides a funding mechanism for a fifth program, the Emergency Energy Conservation Program. All five programs are administered by the Office of Conservation and Solar Energy of the Department of Energy (DOE). The proposed amendments establish the framework for a consolidated approach to State energy conservation planning and provide uniform procedures to improve the administration of DOE's State energy conservation grant programs. Today's proposal modifies requirements for the following five programs:

- *State Energy Conservation Programs* (SECP), 10 CFR Part 420;
- *Energy Extension Service* (EES), 10 CFR Part 465;
- *Weatherization Assistance for Low-Income Persons*[1] (WAP), 10 CFR Part 440;
- *Emergency Energy Conservation Program* (EECA), 10 CFR Part 477; and
- *Energy Conservation Programs for Schools and Hospitals and for Buildings Owned by Units of Local Government and Public Care Institutions* (IBGP), 10 CFR Part 455.

These programs are collectively referred to as the "coordinated State grant programs". The proposed amendments are described in detail in Section II. To summarize briefly, DOE proposes that each State submit a single annual coordinated State grant application to obtain financial assistance for one or more coordinated State grant programs. Under the proposed amendments a State seeking financial assistance for a coordinated State grant program would submit a coordinated State grant application. The proposed amendments also standardize requirements for submission, review and approval, reporting, recordkeeping and other administrative procedures to the extent possible for the coordinated State grant programs.

These proposed changes will reduce the burden of work on States and DOE Regions by reducing duplication of administrative procedures. While adjustment to the new procedures may cause a temporary increase in work at the State level, DOE believes that the long-term benefits anticipated from these amendments warrant any such increase. DOE is particularly interested in soliciting the States' perspectives and insights on this issue, and invites their response.

Today's proposal was shaped by the existing program legislation. No revisions in the legislation are required. This has meant that the proposed changes cannot permit commingling of funds among programs, because each program has specific, legislatively-mandated objectives, activities, and funding restrictions.

Thus, under the proposed changes, States will be required to account for each program's funds separately and to observe all program-specific restrictions on the use of those funds.

In addition, these proposed amendments apply only to activities for which the grant recipient is the State (i.e., the Governor or a State agency).

[1] The current WAP regulations were published as an interim final rule, 45 FR 13026 (Feb. 27, 1980). DOE expects to publish the final rule in November, 1980. Today's proposed regulation changes are made to the interim final regulations.

Accordingly, although local or tribal organization applicants under WAP are subject to those sections in Subpart A dealing with administrative procedures (see § 420.14(c)–§ 420.19), they will not be required to submit a coordinated State grant application.

Although IBGP Phase I (Preliminary Energy Audits and Energy Audits) comprises grants to States, Phase I activities will not be included in the grants coordination effort. This is because awarding of IBGP Phase I grants was completed in FY 80 and no further grants are anticipated for this phase of IBGP. Today's issuance, therefore, contains no changes to the IBGP Phase I regulations. With regard to Phase II, DOE proposes to amend only the State administrative expenses grant portion of IBGP which provides financial assistance to a State to carry out certain administrative responsibilities.[2] No changes have been made relating to applications for technical assistance or energy conservation measures.

Because its implementation is reserved for emergency conditions, EECA differs from the other coordinated State energy conservation grant program.[3] DOE believes that it is helpful, however, to integrate EECA with the other programs at the planning stage. For this reason, the proposed regulations provide a mechanism for States to receive funding for developing, modifying amd implementing State emergency conservation plans. In addition, one minor technical amendment is proposed to existing EECA program regulations (10 CFR Part 477).

DOE believes that energy conservation can best be achieved through coordinated efforts. This proposed rulemaking is one attempt to promote a coordinated approach to energy conservation and renewable resource planning and to reduce, by consolidation, the burden of Federal regulation.

II. Proposed Regulation Changes

A. Introduction

The proposed amendments to the coordinated State grant programs are described in detail in this section. Today's issuance proposes essentially procedural changes to both the form and content of the regulations for the coordinated State grant programs.

DOE proposes to revise the format of the present regulations for the coordinated State grant programs by consolidating all of the regulations, except EECA and IBGP, under one part of the Code of Federal Regulations (10 CFR Part 420). This part will be composed of five subparts. Subpart A, General Requirements, contains regulations that are common to all the coordinated State grant programs. For example, this includes the purpose of the coordinated approach, definitions common to all the programs, submission schedule, contents of the coordinated application and plan, DOE review and approval procedures, administrative review procedures, and reporting and recordkeeping requirements.

Subparts B through D will consist of the program-specific regulations for the SECP, EES, and WAP programs, respectively. The proposed amendments to the existing program regulations for SECP, EES and WAP will recodify the regulations, delete requirements that are included in Subpart A and insure that the remaining program-specific regulations will conform to, and not contradict, the provisions of Subpart A. DOE proposes the following new Code of Federal Regulations citations for these three programs:

(a) SECP (10 CFR Part 420) changed to 10 CFR Part 420, Subpart B (§ 420.100 *et seq.*);

(b) EES (10 CFR Part 465) changed to 10 CFR Part 420, Subpart C (§ 420.200 *et seq.*);

(c) WAP (10 CFR Part 440) changed to 10 CFR Part 420, Subpart D (§ 420.300 *et seq.*);

Proposed Part 420, Subpart E, will add new EECA regulations. This subpart will deal with procedures to enable a State to obtain financial assistance to develop, modify or implement a State's emergency conservation plan. Note, however, that the existing EECA regulations under 10 CFR Part 477 are not recodified under Part 420 and contain only one proposed technical amendment that cross-references the funding mechanism established in 10 CFR Part 420, Subpart E.

In addition to these proposed subparts, today's issuance proposes amendments to the IBGP regulations. Although not recodified under 10 CFR Part 420, the proposed changes to the IBGP regulations will enable the State administrative expenses grant portion of the program to be administered as part of the coordinated State grant programs. IBGP has not been recodified because the OBGP regulations deal for the most part with non-State applicants for financial assistance. Since only a small portion of the lengthy IBGP regulations address requirements for the State administrative expenses grant, recodification would decrease the accessibility of proposed 10 CFR Part 420. Additionally, recodification could confuse or mislead IBGP applicants other than a State since it would place IBGP administrative requirements which apply to both State and non-State applicants in Subpart A. For these reasons, these amended regulations have not been assigned a subpart under 10 CFR Part 420, but instead, retain their existing Code of Federal Regulations citation (10 CFR Part 455).

The proposed changes to the IBGP regulations, however, conform to the regulations in proposed Part 420, Subpart A in two ways. Sections in the IBGP regulations that apply only to States, and that relate to the regulations in Subpart A, are cross-referenced to the relevant sections in Subpart A. Proposed § 455.62(a), regarding coordinated State grant applications for State administrative expenses, provided an example of this cross-referencing. Changes are proposed to other IBGP regulations that address both State and local applicants but that pertain to sections in Subpart A, to standardize IBGP as much as possible with the applicable regulations in Subpart A. Proposed § 455.3, concerning administration of grants is an example of this.

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[2] DOE has provided IBGP Phase I grants to States to conduct preliminary energy audits and energy audits for schools and hospitals and for units of local government and public care institutions. This award process has been completed and no further Phase I awards are planned for future years. In order to apply for IBGP Phase II (Technical Assistance and Energy Conservation Measures), a State must develop a State plan describing the results of Phase I and outlining the procedures it will use to monitor Phase II activities. Under Phase II, DOE makes technical assistance grants to schools and hospitals and to units of local government and public care institutions and grants for energy conservation measures to schools and hospitals. Although institutions are the primary recipients in Phase II, a State may apply for a State administrative grant as part of Phase II. A State could be eligible to receive a State administrative expenses grant amounting to 5 percent of its total allocation for Technical Assistance and Energy Conservation Measures. See 10 CFR 455.62 and 10 CFR 455.83.

[3] Implementation of EECA occurs when the President, after determining that emergency conditions exist, establishes monthly emergency conservation targets. The conditions requiring the implementation of EECA include an existing or imminent severe energy supply interruption or a need to restrain domestic energy demand in order to fulfill the obligation of the United States under the international energy program. If targets are established by the President, a State must implement its State emergency conservation plan. The EECA regulations in 10 CFR Part 477 discuss the requirements of the State and Federal plans. Proposed 10 CFR Part 420, Subpart E provides a mechanism whereby a State can apply for funds to develop or modify a State emergency conservation plan. Subpart E also establishes procedures whereby a State can apply, through an amendment to its coordinated State grant application, for funds to implement its emergency conservation plan.

B. Proposed General Requirements, Subpart A

1. *Overview.* Proposed Subpart A establishes regulatory requirements common to all coordinated State grant programs. These proposed requirements include the submission of one coordinated State grant application for all coordinated State grant programs, a revised submission schedule and consolidated review process for the coordinated State grant application and new requirements concerning the content of the coordinated State grant application. Subpart A also proposes uniform requirements for recordkeeping and administrative review procedures to be used by the coordinated State grant programs. In some cases, the new uniform procedure differs from the presently existing language of the individual program regulations without substantially altering the requirements. In a few cases, however, the proposed language also provides new substantive requirements.

2. *Uniform Submission and Review Schedule.* A major objective of today's issuance is to propose a uniform submission and review schedule for the coordinated State grant programs in an effort to facilitate program coordination and reduce duplicative administrative requirements for both the States and the Regional DOE offices. Proposed § 420.12(a) will require each State to submit a single annual coordinated State grant application covering all of the coordinated State grant programs for which the State is applying for financial assistance. Under the new procedures, the coordinated State grant application would be submitted according to the following schedule:

(a) Due date for coordinated State grant application: October 1–December 31.

(b) Due date extensions: Not more than 90 days (i.e., not past March 31).

(c) DOE review period: Not specified in the regulations. However, DOE is anticipating a 90 day review period which should include all negotiations between a State and the Regional DOE office.

(d) Budget period: 12 month period. First possible starting day for budget period is January 1. Last possible starting day is July 1. Coordinated State grant programs in each State will select in conjunction with the DOE Regional Office one anniversary date for the State budget period and will adhere to this starting date in subsequent years.

The October 1–December 31 application period proposed in § 420.12(b) provides a State with a three month period during which to submit its coordinated State grant application. The application, in accordance with proposed § 420.12(a), will be submitted by the State agency designated by the Governor as the applicant.

DOE considered two alternatives to the proposed application period. The first alternative would designate an application period from January 1 to March 31. This alternative gives a State additional time after the appropriation of funds has normally been made by Congress for preparation of a coordinated State grant application. However, it precludes a State from selecting a calendar year budget period. DOE considered the advantages and disadvantages of the proposed October 1–December 31 application period versus an alternative January 1–March 31 period. DOE feels that the disadvantage of not permitting a calendar year budget period outweighs the advantages of allowing more time for preparation of the coordinated State grant application since some States prefer a calendar year budget period.

The second alternative is to replace the application period with a single due date, either December 31 or March 31. A set due date does not allow States the flexibility to choose the most appropriate due date and budget period. It also concentrates the review workload for the Regional Offices. For these reaons, DOE believes that a single due date is not an attractive alternative to the proposed regulations.

Proposed § 420.12(f) allows the applicant to request extensions for submission of all or part of the coordinated State grant application. All requests for extensions will be reviewed and approved or disapproved by the Regional Representative. There are two instances where DOE expects that an applicant might request an extension. First, a State might request an extension if it elects a budget period that is toward the end of the allowable January 1–July 1 starting date period and the extension will not delay program operations. The second instance involves a request by the applicant to allow a delay in submission for a specific coordinated State grant program. DOE hopes to discourage this second category of extensions and intends for a State to submit its entire coordianted State grant application at one time.

Moreover, if a State obtains an extension to apply for financial assistance for a coordinated State grant program, it will nevertheless be required to adhere to the budget period selected by the State for the coordianted State grant programs, even if this means a grant for the program will be awarded for less than a 12 month period. For example, if a State chooses a January 1 to December 31 budget period but a program which receives an extension does not obtain its Notice of Grant Award until March 1, then this program's budget period will run from March 1 to December 31.

DOE analyzed two alternatives to the proposed regulations regarding extensions. The first alternative is to follow WAP regulations which do not permit extensions. Since the other coordinated State grant programs allow extensions, DOE believes that this alternative would prove too inflexible. The proposed regulations would, accordingly, extend this flexibility to WAP. DOE does not want to preclude the operation of a coordinated State grant program in cases where special circumstances prevent a State from submitting its coordinated State grant application on time.

The second alternative is to permit extensions for less than 90 days. The proposed submission and review schedule can accommodate extensions of up to 90 days without disruption to the schedule. Therefore, DOE feels that it is not necessary to restrict extensions to fewer than 90 days and that extensions of up to a maximum of 90 days could be granted.

The Regional Representative will review and approve all coordinated State grant applications. In order to insure that a State can begin its coordinated State grant programs on the chosen anniversary date, it is DOE's intent that review of a coordinated State grant application be completed within 90 days of receipt of the application. Note that this period includes all negotiations between a State and the Regional DOE Office.

Under proposed § 420.12(c), each State chooses an anniversary date for a one year budget period. A State may select any anniversary date from January 1 to July 1. Within this range, a State may choose the 12 month budget period it finds most appropriate, including a one year period running with its fiscal year. Barring unforeseen emergencies, States will retain the same budget period each year.

As part of the development of the proposed submission and review schedule described above, DOE considered whether obstacles existed which would prevent any of the five programs from participating in this schedule. Although no insurmountable difficulties have been identified, DOE has noted three potential concerns relating to the proposed submission and review requirements. One concern is that the slowest program could set the pace for the State submission. For

example, a coordianted State grant program desiring a January 1 starting date may have to settle for a later starting date if the January 1 date is unrealistic for the remaining coordinated State grant programs. DOE does not view this as a problem likely to affect a large number of States. However, DOE would like to solicit comments on this issue.

A second concern may arise where a coordinated State grant program switches from a budget period beginning early in the year (i.e., January) to one beginning late in the year (i.e., July). In this instance, the coordinated State grant program will need to use carry-over money for the 6-month period from January to July, since new funding will not become available until July. Stretching existing funds for this additional period may pose a problem for individual coordinated State grant programs. States should notify DOE if they anticipate that this will be a problem.

A third issue relates to WAP. At the State level most WAP programs are run by a different State office, i.e., the State economic opportunity office, than the State energy office which usually manages the other coordinated State grant programs. Submission of a coordinated State grant application will require more coordination between these two State offices than at present. DOE would like to solicit comments on this issue.

3. *Start-Up Time for Coordinated State Grant Programs.* DOE expects to make full use of the coordinated State grant program in the fiscal year 1982 (FY 82) grant cycle. DOE did, however, consider one alternative to requiring all five programs to begin the proposed schedule in FY 82.

The alternative considered is to delay inclusion of WAP until FY 83. This alternative would permit completion of the major WAP program review currently underway and adjustment to any resulting WAP program changes before WAP adopts the proposed schedule. Since the WAP program review has progressed rapidly and is nearing its final stages, DOE foresees no major reason at this time to exclude WAP from the proposed schedule in FY 82. DOE would like to solicit comments on this issue.

4. *Content of Coordinated State Grant Program Application.*—a. *General, Proposed § 420.12(d).* The proposed amendments relating to the contents of an application are designed to provide a State applicant with a logical format for presenting information about the five State grant programs in a way which facilitates the development of comprehensive State energy conservation planning.

Under proposed § 420.12(a), the Governor of each State will designate one State agency to be the applicant for the coordinated State grant application. The grantee designated by the Governor to receive financial assistance for a coordinated State grant program will be specified in the coordinated State grant application. The grantee, not the applicant, will be the actual recipient of financial assistance for a coordinated State grant program. The grantee is, therefore, responsible for program-specific administration and implementation. Under proposed § 420.12(d)(3)(iv), the grantee designated by the Governor for a coordinated State grant program shall execute an assurance that the information contained in the application regarding the program is accurate and complete; and the grantee is ready, willing and able to carry out its responsibilities for the program in a timely manner in accordance with the application. In this way, DOE feels reasonably assured that the agency or department charged to carry out a coordinated State grant program on behalf of a State stands ready and prepared to do so.

The applicant will be responsible for overseeing the preparation of the coordinated State grant application by all the grantees and insuring that it is submitted according to the chosen State submission schedule. The role of the applicant is especially important in coordinating the development of the narrative overview. The applicant will alert the coordinated State grant program grantees as to the kinds of information neeeded for the narrative overview and will facilitate communication between the different coordinated State grant programs.

Proposed § 420.12(d) sets out the requirements for the content for the coordinated State grant application. DOE proposes that the coordinated State grant application. DOE proposes that the coordinated State grant application consist of three components. The first component of the application contains the name and address of the applicant and all grantees, a list of the coordinated State grant programs for which financial assistance is being requested, budget and milestone information and assurances. See proposed § 420.12(d) (1)–(3). It should be noted that although the name of the State office or agency that receives financial assistance should be given on the application, the grantee is ultimately the State.

The second component, proposed § 420.12(d)(4), is the narrative overview. The narrative overview is a submission requirement only if a State seeks financial assistance for the SECP or EES programs. However, it requires information concerning all of a State's coordinated State grant programs. The narrative overview combines information currently contained in each individual coordinated State grant plan or narrative, plus some additional information, into a single comprehensive statement.

The third component of the coordinated State grant application, proposed § 420.12(d)(3)(ii), consists of the plan, narrative and other program submissions specific to each coordinated State grant program. DOE feels that by requiring both application and plan components, proposed § 420.12 retains in the coordinated State grant application the current distinction between the State application and plan that now exists for each program.

b. *Narrative Overview, Proposed § 420.13.* DOE intends the narrative overview to be primarily a planning document. It is expected to bring together and replace information that is currently discussed elsewhere in program plans. It also includes information that is additional to current requirement, such as a discussion of State management practices. The scope of the narrative overview is broad, which DOE hopes will facilitate more comprehensive State energy conservation and renewable resource planning. This approach is expected to help States minimize program duplication and identify areas where energy conservation and renewable resource efforts are particularly needed.

DOE anticipates that all of the coordinated State grant programs will contribute to the narrative overview. The narrative overview, however, is a submission requirement for only SECP and EES because the authorities for both programs emphasize the need to coordinate the energy conservation efforts of a State. Consequently, the WAP, EECA and IBGP portions of the coordinated State grant application can be approved even if the narrative overview section is incomplete.

Under DOE's proposal, the narrative overview consists of four sections. The first section, as specified in proposed § 420.13(b)(1), is intended to provide a State with an opportunity to delineate its overall energy conservation and renewable resource goals and to formulate a strategy to achieve those goals.[4] Proposed § 420.13(b)(1) requires

[4] The EES State plan currently includes a section on objectives, but the EES discussion is not as comprehensive as the discussion required in the narrative overview.

discussion of overall State energy conservation goals and the relationship of these goals to the energy consumption and supply patterns of the State. Proposed § 420.13(b)(2) requires discussion of the specific objectives of the coordinated State grant programs, including why these objectives were selected, how they relate to the State energy conservation goals and how they complement other energy conservation activities in the State. Finally, proposed § 420.13(b)(3) will require discussion of the State's strategy to reach its energy conservation goals and a description of how the emphasis and funding given to each coordinated State grant program relates to this strategy.

The second section of the narrative overview is set out in proposed § 420.13(c). It will deal with procedures for coordinating EES, SECP, WAP, IBGP and EECA programs with other energy conservation activities within the State. The EES, SECP, and WAP coordinated State grant programs presently require a discussion of coordination procedures in their respective applications or plans. While the EES requirement is incorporated into proposed § 420.13(c), the requirements for the other two programs will be retained in the program-specific regulations (proposed § 420.114(c)(SECP) and proposed § 420.315(a)(6) (WAP)). However, a State will be able to fulfill all three coordination requirements by placing the necessary information in the narrative overview.

The coordination discussion required as part of the narrative overview by proposed § 420.13(c) is expected to demonstrate that the combined effect of all the energy conservation programs in the State is complementary rather than duplicative. Such discussion will also more specifically describe the ways in which the coordinated State grant programs are collaborating to improve their overall effectiveness. DOE proposed that the State also indicate how other State and Federal resources are being used to reinforce and add to the services being provided by the coordinated State grant programs and how the coordinated State grant programs are supplementing other related energy conservation measures in the State. DOE feels that careful analysis by a State of how the energy conservation programs in the State relate to each other and interrelate as a whole will help the State produce a more effective combination of services.

Proposed § 420.13(d), which deals with the third section of the narrative overview, focuses on the management practices of the coordinated State grant programs. DOE feels that the focus on management in the narrative overview will assist a State in running efficient and accountable coordinated State grant programs. Such discussion will address several management issues, including the State's procedure to insure the timely submission of the coordinated State grant application and other required documents and to insure establishment of reliable financial controls and effective procurement practices. A State will also be required to show that it has assigned responsibilities that insure that each coordinated State grant program will comply with these management policies.

Proposed § 420.13(e) will require the fourth section of the narrative overview to describe the public comment procedures undertaken by the coordinated State grant programs. The EES and WAP regulations currently contain provisions for soliciting public comment on proposed applications and plans. While these requirements will be retained in the program-specific regulations (proposed § 420.211(b)(2)(EES) and proposed § 420.314(a)(WAP)) DOE proposes that the description of how the public comment procedures are obtained and utilized be placed in the narrative overview, in accordance with proposed § 420.13(e). Note that public comment is not currently required by SECP regulation. Proposed § 420.13(e) will make solicitation of public comment mandatory for SECP.

Section 420.13(e) of today's proposed rule requires that the public comment discussion include a summary of all procedures used by the State to obtain public comment on the coordinated State grant programs, the name of the organizations that provided comment, and how these comments affected the contents of each coordinated State grant program. A State may choose to coordinate its solicitation of public comments for all of the programs. For example, WAP is legislatively required to hold a public hearing to receive public comment on the State Weatherization plan. A State may choose to combine this hearing with public hearings planned for other coordinated State grant programs.

5. *Specific Program Plan, Narrative or Submission.* The third component of the coordinated State grant application consists of the individual program submissions currently required for each coordinated State program. The contents of the SECP, EES and WAP plans are specified in proposed § 420.111, § 420.213 and § 420.312, respectively. In today's issuance, DOE proposes several substantive changes to the SECP State plan, several minor changes to the EES State plan and no significant changes to the Weatherization State plan. A State will submit a narrative for IBGP which describes State administrative expenses and a proposal for EECA which discusses development, modification or implementation of an emergency conservation plan.[5]

With the exception of EECA, the proposed regulations require the annual submission of individual program plans or narratives as part of the coordinated State grant application. This corresponds to current WAP and IBGP submission requirements. It differs, however, from existing SECP and EES program requirements. SECP presently submits amendments to the State plan each year, rather than the entire plan. EES currently develops a three year plan with amendments to the plan submitted annually. DOE feels that a State will obtain a more complete picture of how the program plans interrelate if complete plans are submitted each year.

As an alternative to the proposed regulations, DOE is also considering whether to require a two year plan for EES and SECP, but retain annual plans and narratives for WAP and IBGP. DOE feels that a two year plan for SECP and EES could facilitate the development of long-term energy conservation goals. DOE is soliciting comments on the two year plan option for SECP and EES.

Additionally, DOE considered alternatives to the proposed contents of the coordinated State grant application. One alternative is to include a single comprehensive plan in the plan component of the coordinated State grant application, instead of the separate SECP, EES, WAP plans and the IBGP narrative. DOE feels that the development of a single plan, although a seemingly attractive alternative, would require a major effort on the part of the States, as it would be difficult to write a single plan that adequately treats the SECP and EES planning requirements and the WAP and IBGP production requirements. It is also doubtful that a State would be able to attain a level of program coordination beyond that which would be achieved by these propsed regulations. DOE feels that the proposed coordinated State grant application will foster program coordination and comprhensive State energy conservation planning, and at the same time will not unduly burden States.

[5] For a detailed description of these requirements, see Section C, Proposed Program-Specific Regulation Changes, (Section C.1 for SECP, Section C.2 for EES, Section C.3 for WAP, Section C.4 for EECA and Section C.5 for IBGP).

6. *Financial Assistance and Allocation of Financial Assistance, Proposed § 420.10, § 420.11.* Proposed § 420.10(c) directs that financial assistance provided for a specific coordinated State grant program may not be used for any other coordinated program. DOE is not authorized at this time to allow a State to use funds appropriated for one of the coordinated State grant programs for another of the coordinated State grant programs. Proposed § 420.11(c) discusses reallocation of unobligated funds and redistribution of tentatively allocated funds. This proposed section does not alter existing program requirements, nor does it add requirements to programs whose regulations do not address these issues. Instead, it proposes that DOE follow the procedures specified in the program-specific regulations. Existing EES regulations and proposed EECA regulations contain provisions on reallocation. Current WAP regulations provide for the redistribution of tentatively allocated funds based on State program performance. SECP regulations do not address these issues, nor do IBGP regulations for State administrative expenses grants.

Concern was expressed whether a flexible budget period created difficulties in carrying out reallocation of funds under WAP. For example, one State may select the earliest anniversary date, January 1, while another State may select the latest date, July 1. If DOE were to reallocate funds in September, a potentially inequitable situation might arise. First, the January 1 State will have had eight months (January to August) of program performance during the budget period, the July 1 State only two (July and August). Although reallocation decisions will be based on past performance over identical time periods (regardless of budget period), funding decisions made too early in the budget period of any State may result in inadequate funding for the State for the remainder of the budget perod. DOE anticipates making reallocation decisions only once annually in future years, so that no further funds would be available later in the year to correct such situations. However, DOE plans to make adjustment for the length of the remaining budget period. All other things being equal at the time DOE reallocates funds, a State with a remaining eight month budget period would require more funds than a State with a remaining four month budget period.

Proposed § 420.212(b) specifies that under the EES program if a State's allocation is not obligated by the Regional Representative during the fiscal year, the unobligated funds may be reallocated among the States for the next budget period. If partial funding is adopted, this reallocation procedure might pose a problem for a State that chooses a budet period that is toward the end of the January 1 to July 1 cycle. The fiscal year would end soon after the budget period began for the coordinated State grant programs. Any funds not obligated by September 30 would be subject to possible reallocation by DOE. A State would need to consult with its Regional Representative on this issue if partial funding were adopted. DOE notes, however, that it has no current plans to use partial funding for the EES program.

7. *Definitions, Proposed § 420.01.* Proposed § 420.01 includes definitions that apply to the entire Part 420, while program-specific regulations contain definitions that apply only to the individual subparts. Most of these definitions appear in existing program regulations. This proposed section simply consolidates these definitions in one place. Some of these definitions, however, are altered slightly from existing regulatory definitions for standardization purposes. For example, the proposed definition for "State," is standardized, but at the same time worded such that existing program-specific requirements are retained. Other definitions, such as "applicant" and "budget period" are new to all of the coordinated State grant programs. Because IBGP regulations are not included in Part 420, the standardized and new definitions under proposed § 420.01 are added to § 455.2 of the existing IBGP regulations, where appropriate.

8. *Administrative Review, Proposed § 420.15.* Proposed § 420.15, dealing with administrative review, represents a combination of the administrative review requirements of the existing SECP, EES and WAP program regulations. It also establishes Secretarial review in the Financial Assistance Appeals Board Regulations, 10 CFR 1024.

The proposed regulations provide administrative review procedures in three cases: (1) If a resubmitted application fails to meet the review criteria; (2) if the resubmitted application is untimely; or (3) if a Regional Representative finds that a coordinated State grant program is failing to comply with the terms of its award of financial assistance, including compliance with DOE regulations. In accordance with proposed § 420.15, the Regional Representative sends a notice of this determination to the grantee and may suspend payments to the grantee pending final determination. The notice will inform the grantee of a date of the public hearing to be held by a review panel composed of three disinterested members. The review panel will submit a report containing its recommendations to the Regional Representatives who will then make a "final determination" based upon the report. The grantee may then appeal the Regional Representative's decision to the Financial Assistance Appeals Board. If the final determination of the appeal is negative, the grantee will be ineligible to participate in the coordinated State grant program unless and until there is no longer a failure to comply.

9. *Recordkeeping, Reporting and Administration of Financial Assistance Requirements, Proposed § 420.16, 420.17, 420.18.* Proposed § 420.16 requires recipients of financial assistance to provide reports in accordance with 10 CFR Part 600.

Proposed § 420.17 deals with recordkeeping requirements. Existing SECP, EES and WAP regulations describe recordkeeping requirements in detail, while proposed § 420.17 references the recordkeeping requirements contained in the Financial Assistance regulations, 10 CFR Part 600. Although the presentation of the existing and proposed recordkeeping regulations differs, the requirements are essentially unchanged. Existing IBGP regulation, § 455.4, also presents a detailed description of recordkeeping requirements. While this language is retained for IBGP, the requirements for IBGP are similar to those in the Financial Assistance regulations.

Proposed § 420.18(a) consolidates the administration of financial assistance requirements for SECP, EES and WAP currently appearing in existing § 420.15, § 465.15 and § 440.2, respectively. While administration requirements for IBGP are retained in proposed § 455.3, the language and content of the IBGP requirements are standardized as much as possible with the requirements in proposed § 420.18(a).

DOE also proposes several changes to the existing administration of financial assistance requirements. First, OMB A–89, "Catalog of Federal Domestic Assistance" is deleted. All of the coordinated State grant programs will continue to be listed in the "Catalog of Federal Domestic Assistance." However, the reference to A–89 is not included in proposed § 420.18 because it does not specifically deal with the administration of financial assistance. Second, OMB A–73, "Audit on Federal Operations and Programs by Executive

Branch Agencies" (referred to in existing program-specific regulations as Federal Management Circular 73–2), OMB A–97, Rules and Regulations permitting Federal Agencies to Provide Specialized or Technical Services to State and Local Units of Government under Title III of the Intergovernmental Coordination Act of 1968" and Treasury Circular 1082, "Notification to States of Grants-in-Aid Information" are deleted since they describe Federal rather than State responsibilities. Finally, Treasury Circular 1075, "Treasury and Fiscal Requirements Manual," and DOE Assistance Regulations (10 CFR Part 600), which are new to some of the programs, are included in proposed § 420.18(a).

Additionally, proposed § 420.18(b) affirms DOE's policy of assuring that small and disadvantaged businesses and/or Indian tribes are afforded a reasonable opportunity to become equitably involved in its financial assistance programs, including those involving the Conservation and Solar's State Grant Programs. Accordingly, the Department encourages that the State grantees and other proposers make a special effort to substantively involve such businesses in activities offered for support under these grant programs. The DOE encourages its State grantees to institute program policy factors to be used in selecting its sub-grantees under these grant programs which include the extent to which proposals feature small and disadvantaged business and/or Indian tribes involvement. In addition, positive efforts shall be made by grantees to assure utilization of minority-owned or disadvantaged business sources of supplies and services. A goal oriented system should be established in order to maximize disadvantaged business participation. All such efforts should allow these sources the maximum feasible opportunity to compete for subagreements and contracts to be performed utilizing Federal grant funds.

C. Proposed Program-Specific Regulation Changes

This section discusss proposed program-specific regulation changes to the five coordinated State grant programs. The proposed changes to SECP, EES and WAP are primarily technical changes such as recodification, deletion of sections now incorporated into a standardized version in Subpart A of 10 CFR Part 420 and minor revisions in regulatory language. The proposed amendments to IBGP are also primarily technical in nature and relate the State administrative expenses grant portion of the IBPG regulations to the requirements contained in Part 420, Subpart A, where appropriate. The proposed regulations dealing with the funding for State emergency conservation plans are new. They add a new Subpart E to Part 420 of the regulations which addresses the provision of, and application for, financial assistance for developing and modifying and implementing State emergency conservation plans. Also, one minor technical change is proposed for 10 CFR Part 477.

Before discussing in detail the proposed changes to each program's regulations, several technical amendments will be described that have been made to three of the ccordinated State grant programs (SECP, EES and WAP). First, as already mentioned, the SECP, EES, and WP regulations are recodified as Part 420, proposed Subparts B through D, respectively. This proposed change requires the correction of all references in the existing regulations to these sections, as well as revising the term "part" to "subpart" whenever it appears in proposed Subparts B through D and refers to a regulation which is redesignated as a subpart. A second proposed amendment that applies to Subparts B through D is the revision of the term "application" to "coordinated State grant application" indicating that a State will now submit one application which covers all of the coordinated State grant programs. Similarly, DOE proposes to change the term "program" to "coordinated State grant program."

1. *Proposed Programs—Specific Regulation Changes for SECP.*

§ *420.2 Definitions.* (Existing.)

§ *420.101 Definitions.* (Proposed.)

The definitions for "DOE," "Governor," "grantee," "Regional Representative," "Secretary" and "State" are deleted from this section since a standardized version of these definitions is now included in proposed § 420.01 of Subpart A. A proposed definition for "SECP" is added to the section. Two proposed definitions, already used by EES, are added, "Conservation techniques and technologies," and "Technical support." Both are needed to achieve improved coordination between SECP and EES activities. Finally, the terms "Act," "plan" and "supplemental plan," respectively. The proposed definition for SECP and the proposed revisions in terminology permit identification of requirements in Subpart B which are specific to SECP. Proposed Subpart B is revised, where applicable, to reflect this more precise terminology.

§ *420.3 Financial assistance.* (Existing.)

§ *420.110 Financial assistance and allocation of financial assistance.* (Proposed.)

This proposed section has been revised so that financial assistance is provided for an approved coordinated State grant application for financial assistance to carry out an SECP plan, a supplemental SECP plan, or both. DOE feels that the proposed change in title from "Financial assistance" to "Financial assistance and allocation of financial assistance" increases the accuracy of the title and is more consistent with the titles used in comparable sections of other proposed subparts.

Two phrases are inserted, where appropriate, to signify that the regulations under discussion are specific to SECP. The first phrase, "under this subpart" is inserted between the words "assistance" and "to" which appears in paragraphs (a), (b) and (c). The second phrase, "for carrying out an SECP plan, a supplemental plan, or both, in accordance with § 420.113 and § 420.114" is proposed for addition to the end of paragrpah (a).

Proposed § 420.110(d) lists program-specific review criteria. It incorporates existing § 420.5(a) (1), (2) and (3). It also adds a technical correction by explicitly requiring that a supplemental SECP plan meet the minimum program requirements listed in proposed § 420.114.

A final change is the deletion of the phrase "on a calendar year basis," which appears between the terms "both" and "from" in existing paragraph (a). As discussed earlier, proposed § 420.12 of Subpart A consolidates the budget period for the coordinated State grant programs.

§ *420.4 Annual State applications.* (Existing.)

§ *420.111 SECP requirements for annual coordinated State grant applications.* (Proposed.)

This proposed section requires a State to submit a coordinated State grant application in accordance with proposed § 420.12 and lists the specific SECP requirements that a State must address in the coordinated State grant application. The proposed section eliminates the requirement to submit information already obtained under proposed § 420.12, thereby cutting down paperwork by eliminating unnecessary repetition.

Clarifying the SECP requirements for submission of the annual coordinated State grant application necessitates a

number of changes. First, DOE proposes to change the title of the section from "Annual State applications" to "SECP requirements for annual coordinated State grant applications" in order to reflect the fact that this section refers only to SECP-specific requirements for submitting the coordinated State grant application.

Second, DOE proposes to delete portions of existing § 420.4(a), § 420.4(b)(1), § 420.4(b)(2)(ii) (A), (B), (C), (D) and (E) and § 420.4(d) and to incorporate other portions of these regulations into proposed Subparts A and B. The requirements of existing § 420.4(a) regarding the application due date and the number of copies to be submitted are superseded by proposed § 420.12 (a) and (b). The use of DOE Form CS–1 specified by this paragraph, is no longer required. The requirement in existing § 420.4(b)(1) that an application include the name and address of the grantee is now covered for a coordinated State grant application in proposed § 420.12(d)(3)(i). The budget information required by existing § 420.4(b)(2)(ii) (A) and (B) is now addressed by proposed § 420.12(d)(3)(ii) and § 420.13(c)(2). Proposed § 420.12(d)(3)(ii) specifies the inclusion of budget information in the application part of the coordinated State grant application, while proposed § 420.13(c)(2) requires the narrative overview to contain a discussion of how State and Federal resources are being used to supplement assistance provided under this proposed part. The milestone information required by existing § 420.4(b)(2)(ii)(C) now appears in proposed § 420.12(d)(3)(ii). The requirements of existing § 420.4(b)(2)(ii)(B) regarding inclusion in the SECP and supplemental SECP plans of a narrative statement that describes amendments and new program measures is now incorporated into proposed § 420.111(a)(1). Existing § 420.4(b)(2)(ii)(E) requiring an explanation of how the minimum criteria for required program measures will be satisfied is redesignated as § 420.111(a)(2).

DOE proposes to add several new requirements to the SECP and supplemental SECP plans in order to improve these plans and to achieve greater consistency between SECP and EES planning functions. Proposed § 420.111(a) (4)–(7) requires the description of the following elements in a SECP or supplemental SECP plan: The target audience, services to be provided, technical support for each activity, organizational responsibilities, the administering organization, overall centralized technical support, and implementation procedures.

Finally, the requirements contained in existing § 420.4(d) are deleted and appear in a revised format in proposed § 420.12(f).

§ *420.5 Review and approval of annual State applications and State plans.* (Deleted.)

This entire section is deleted. The requirement described in existing § 420.5(a) that the Regional Representative review each timely SECP application is contained in proposed § 420.14(a) of proposed Subpart A which requires review of each timely coordinated State grant application. The criteria for approval listed in existing § 420.5(a) (1), (2) and (3) are retained in proposed Subpart B, § 420.110(d). Proposed § 420.14(b) specifies that approval of the coordinated State grant application for SECP is contingent upon meeting the review criteria listed in proposed § 420.110(d). The requirements of existing § 420.5(b) regarding resubmission of coordinated State grant applications that do not conform with the criteria for approval are slightly revised in proposed § 420.14(c). A determination by the Regional Representative that the initial coordinated State grant application does not meet the review criteria indicates the need for a period of revision and negotiation and not automatic denial of the coordinated State grant application.

§ *420.6 Energy Conservation Goals.* (Existing.)

§ *420.112 Energy Conservation Goals.* (Proposed.)

This section is amended by adding paragraph (d) which seeks to promote program evaluation by the States. It requires States to submit annually an estimate of actual energy savings by program measure, which have occurred as a result of providing program services.

§ *420.10 Administrative review.* (Deleted.)

This entire section is deleted. Proposed § 420.15 consolidates the administrative review requirements applying to all coordinated State grant programs. This proposed section makes one major change to the existing SECP administrative review process. First, the Regional Representative, after receipt of the report of the review panel, will make a determination rather than a recommendation on the hearing. DOE feels that the responsibility for making a decision on the hearing should be delegated to the Regional Representative since he or she is more closely involved with the review and approval of the coordinated State grant applications. The Regional Representative's decision may then be appealed to the Financial Assistance Appeals Board rather than the Secretary.

§ *420.12 Recordkeeping.* (Deleted.)

The entire recordkeeping section is deleted from the SECP program-specific regulations and replaced by proposed § 420.17. DOE proposes to conform recordkeeping requirements to those found in the Financial Assistance Regulations, 10 CFR Part 600. No significant differences exist between the proposed and existing requirements.

§ *420.13 Reports.* (Deleted.)

The entire reporting section is deleted from the SECP program-specific regulations and replaced by proposed § 420.16. DOE proposes to conform reporting requirements to those found in the Financial Assistance Regulations, 10 CFR Part 600. No significant differences exist between the proposed and existing requirements.

§ *420.15 Administration of Financial Assistance.* (Deleted.)

This entire section is deleted. These requirements are incorporated with some revisions in proposed § 420.18. The revisions include the deletion of Federal Management Circular 73–2, Treasury Circular 1082 and OMB A–97.

2. *Proposed Program-Specific Regulation Changes for EES.*

§ *465.2 Definitions.* (Existing.)

§ *420.201 Definitions.* (Proposed.)

DOE proposes addition of a definition for "State EES plan." Proposed § 420.201 changes the terms "Act," "SECP," and "State Program" to "EES Act," "SECP plans" and "State EES program," respectively. Deleted from the proposed definition section and inserted without amendment in proposed Subpart A, § 420.01 are the terms "DOE," "Governor," "grantee," "Regional Representative" and "Secretary." The definition for "State" including eligible territories and possessions is also deleted and inserted in proposed Subpart A, § 420.01 without substantive revision.

§ *465.6 Financial assistance.* (Existing.)

§ *420.211 Financial assistance.* (Proposed.)

Proposed § 420.211(a) emphasizes that EES funds are provided only for EES activities by: (1) Insertion of "under this subpart," between "assistance" and

"from;" (2) insertion of "to conduct a comprehensive EES program," between "available" and "for;" and (3) insertion of "approved for carrying out a State EES plan." DOE proposes adding "in accordance with § 420.14" to the end of proposed § 420.211(a) to bring the financial assistance requirements of proposed § 420.211 into alignment with the uniform review and approval procedures proposed in Subpart A. Finally, "on a calendar year basis" is deleted from existing § 465.6(a) to enable a State to select its own budget period, as discussed above.

Additionally, proposed § 420.211 makes two further significant revisions to § 465.6. First, paragraphs (b), (c), and (d) concerning funding formulas, reallocation and special State projects are moved with minor changes to proposed § 420.212 (Allocation of financial assistance). Next, a new paragraph (b) is added to proposed § 420.211. In this proposed paragraph, DOE sets out the EES information to be included in the coordinated State grant application (along with the requirements specified in proposed § 420.12 and § 420.13 of proposed Subpart A) to make a State eligible for EES financial assistance. Proposed subparagraph (b)(2) incorporates the EES public comment requirements currently included in subparagraph (c)(5) of existing § 465.7, and adds "as part of the submission required by § 420.13(e)." As discussed earlier, the written description of the EES public comment process will be placed in the narrative overview section of the coordinated State grant application.

Finally, DOE proposes the addition of subparagraph (c) to § 420.211 to describe program-specific review and approval criteria. This proposed paragraph incorporates existing § 465.9(a).

§ *465.7 Annual State applications.* (Deleted.)

This section is deleted. Existing § 465.7(a) dealing with the invitation to submit an initial State application is no longer needed, as all States and territories have now submitted initial applications. Existing § 465.7(b) and (c)(1), (2), (3), and (d) have been incorporated into proposed Subpart A, § 420.12(a), (b), (d) and (f) (coordinated State grant application) with several changes. Existing § 465.7(b) specifies the number of copies of an EES application to be submitted and the submission due date. Proposed § 420.12(a) will require States to submit an original and two copies of the coordinated State grant application. As discussed earlier, proposed § 420.12(b) specifies a flexible application period (October 1–December 31) which is later than the September 30 due date currently required for EES applications. Although organization of budget and milestones by calendar quarters is no longer requires by the proposed regulations, DOE intends to continue to require budget and milestone information by calendar quarter. The information contained in § 465.7(c)(4),(5) and (6) (funds supplanting, public comment and environmental impact requirements) is moved to proposed § 420.213(a)(9), proposed § 420.211(b) and proposed § 420.213(a)(10), respectively, of this proposed subpart.

§ *465.6 Financial assistance.* (Existing.)

§ *420.212 Allocation of financial assistance.* (Proposed.)

Proposed § 420.212 comprises information and procedures taken from existing § 465.6(b),(c) and (d). DOE proposes to insert the phrases "to conduct a comprehensive EES program" and "under this subpart" to increase the specificity of the procedures, and to substitute the phrase "budget period" for "calendar year" since State EES programs will not necessarily operate on a calendar year basis. In addition DOE proposes to amend subparagraph (b) by changing the work "shall" to "may." Under the existing regulations, if the Regional Representatives does not obligate all of a State's allocation during the fiscal year, the unobligated funds are reallocated among the States for the next year. DOE proposes to make this reallocation process optional rather than mandatory. The remaining proposed amendments to this section are technical.

§ *465.8 Submission and contents of State plans.* (Existing.)

§ *420.213 Contents of State EES plans.* (Proposed.)

DOE proposes to delete the words "submission and" from the heading of this section and existing paragraphs (a) through (c) dealing with the existing triennial submission schedule for the EES plan. As required in proposed § 420.12, an EES plan will be submitted annually as part of the coordinated State grant application.

The remainder of proposed § 420.213 includes all EES plan requirements currently in § 465.8(c) except those requirements involving discussion of objectives, strategy, and inter-program coordination currently found in existing § 465.8(c)(1) (i), (ii) and (iii). These will be incorporated in the narrative overview discussion required by proposed § 420.13 (b) (2), (3) and (c).

The remaining proposed amendments to this section are minor technical changes.

§ *465.9 Approval of annual State application and State plans.* (Deleted.)

This entire section has been deleted. DOE proposes to move the information contained in § 465.9(a) to proposed § 420.211(c). Section 465.9(b) is superseded by proposed § 420.14, DOE review and approval of the annual coordinated State grant application.

§ *465.10 Development and implementation of a State EES plan by the Director.* (Existing.)

§ *420.214 Development and implementation of a State EES plan by the Director.* (Proposed.)

Existing § 465.10 remains largely unchanged by the proposed DOE amendments, aside from redesignating existing § 465.11(j) (Administrative review) as proposed § 420.214(f). This proposed paragraph provides for financial assistance to persons other than the grantee in cases where financial assistance to the grantee has been terminated. DOE proposes this change to accommodate an EES-specific requirement not covered by the remainder of the administrative review regulations incorporated under § 420.15 applying to all coordinated State grant programs. DOE proposes to insert the phrase "for financial assistance under this subpart in accordance with § 420.12" to achieve consistency with the standardized procedures proposed in Subpart A, and, at the same time, clarify the specific application of this section to EES.

§ *465.11 Administrative review.* (Deleted.)

Aside from moving § 465.11(j) to proposed § 420.214(f), the existing section is superseded in Subpart A by proposed § 420.15. The procedures for administrative review proposed in § 420.15 differ in several important ways from those in existing § 465.11. First, the grantee rather than the Governor is the recipient of the notice of intended denial, termination or suspension of financial assistance. Second, under existing § 465.11, the Regional Representative submitted a recommendation to the Secretary who in turn issued the final decision. As discussed earlier, in proposed § 420.15, the Regional Representative is authorized to issue a decision, with further appeal of this decision by the grantee to the Financial Assistance Appeals Board.

§ *465.4 Comprehensive Program and Plan for Federal Energy Education, Extension and Information Activities.* [Reserved] (Existing.)

§ *420.215 Comprehensive Program and Plan for Federal Energy Education, Extension and Information Activities.* (Proposed.)

Space for completion of this section was reserved in the existing EES regulations (10 CFR Part 465.34). DOE takes this opportunity to complete this section which, as proposed, describes DOE responsibilities for preparing an annual Comprehensive Program and Plan for Federal Energy Education, Extension and Information Activities.

§ *465.5 National Advisory Board.* (Existing.)

§ *420.216 National Advisory Board.* (Proposed.)

The proposed amendments to existing § 465.5 are of a minor, technical nature.

§ *465.12 Prohibited expenditures.* (Existing.)

§ *420.217 Prohibited expenditures.* (Proposed.)

The proposed amendments to existing § 465.12 are technical in nature.

§ *465.13 Recordkeeping.* (Deleted.)

The entire recordkeeping section is deleted from the EES program-specific regulations and replaced by proposed § 420.17. DOE proposes to conform recordkeeping requirements to those found in the Financial Assistance Regulations, 10 CFR Part 600. No significant differences exist between the proposed and existing requirements.

§ *465.14 Reports.* (Deleted.)

The entire reporting section is deleted from the EES program-specific regulations and replaced by proposed § 420.16. DOE proposes to conform reporting requirements to those found in the Financial Assistance Regulations, 10 CFR Part 600. No significant differences exist between the proposed and existing requirements.

§ *465.15 Administration of financial assistance.* (Deleted.)

DOE proposes to eliminate § 465.15 by incorporating it into proposed § 420.18 in Subpart A, with the following proposed changes: (1) addition of the phrase "but without limitation," which permits the inclusion of additional circulars, as desired; (2) inclusion of DOE Assistance Regulations (10 CFR Part 600); and (3) deletion of Federal Management Circular 73–2, OMB A–97 and Treasury Circular 1082.

3. *Proposed Program-Specific Changes for WAP.*[6]

§ *440.2 Administration of grants.* (Deleted.)

DOE proposes to delete this section because the requirements contained in it for the administration of financial assistance now appear, with some revisions, in proposed § 420.18. Note, however, that proposed § 420.18 applies to any grant provided under Part 420. Accordingly, local applicants under WAP, therefore, also must comply with these regulations. The proposed amendments to existing § 440.2 include the addition of Treasury Circular 1075, "Treasury and Fiscal Requirements Manual" and the deletion of Federal Management Circular 73–2, OMB A–89, OMB A–97 and Treasury Circular 1082. Existing § 440.2(b), which discusses the ownership of tools and equipment acquired with grant funds, now appears with minor revisions as proposed § 420.316(e).

§ *440.3 Definitions.* (Existing.)

§ *440.301 Definitions.* (Proposed.)

DOE proposes to amend this section by deleting the definitions for "DOE," "Governor," "grantee," "Regional Representative," "Secretary" and "State," not consolidated in proposed § 420.01 of proposed Subpart A. The proposed definitions for "grantee," "Regional Representative" and "State" include in Subpart A contain minor technical changes necessary for standardization purposes. DOE also proposes to amend the definition for "Governor" incorporated into Subpart A by adding at the end of the definition, the phrase "or a person duly designated in writing by the Governor to act upon his or her behalf." DOE does not feel that this will alter existing program policies. A definition for "State Weatherization plan" is also proposed in § 420.301, and the term "plan" is change to "State Weatherization plan" throughout the text of proposed Subpart D.

§ *440.10 Allocation of funds.* (Existing.)

§ *420.310 Financial assistance and allocation of financial assistance.* (Proposed.)

DOE proposes to change the title of this section from "Allocation of funds" to "Financial assistance and allocation of financial assistance" in order to more accurately describe the contents of the section.

[6] See n. 1, *supra.*

§ *440.12 State applications.* (Existing.)

§ *420.312 Weatherization requirements for coordinated State grant applications.* (Proposed.)

This section contains several proposed amendments. One change is to revise the title from "State applications" to "Weatherization requirements for coordinated State grant applications" to indicate that a State applying for financial assistance for WAP must submit a coordinated State grant application fulfilling the program-specific WAP requirements.

A second proposed change is to amend existing § 440.12(a) by inserting the words "To be eligible for financial assistance under this part, a State shall submit a coordinated State grant application in accordance with § 420.12. The Regional Representative shall review each timely coordinated State grant application in accordance with § 420.14 and, if the submission otherwise complies with the applicable provisions of Subpart A and this subpart, provide financial assistance." DOE feels that such a proposed revision emphasizes the requirement that a State submit a coordinated State grant application and specifies the review criteria. The due date information in existing § 440.12(a) is incorporated into proposed § 420.12(b).

DOE also proposes to delete existing § 440.12(b)(1) requesting the name and address of the State agency or office responsible for administering the program, now incorporated into proposed § 420.12(d)(3) of Subpart A. This requires renumbering of subparagraphs (2)–(10).

Finally, DOE proposes to amend existing § 440.12(b)(6), (proposed § 420.312(b)(5)), by adding the phrase "to be shown as milestones required in § 420.12(d)(3)(ii)" between the work "schedule" and "which." While this proposed change repeats the requirements of § 420.12(d)(3)(ii), its placement in this section insures that local applicants are aware of the requirements they must fulfill.

§ *440.13 Local applications.* (Existing.)

§ *420.313 Local applications.* (Proposed.)

An important revision to this section is the addition of language to paragraph (b) that clarifies how Subpart A relates to local applicants. This is needed since existing § 440.30 (Adminstrative review), § 440.23 (Reports) § 440.22 (Recordkeeping), § 440.2 (Administration of grants) and § 440.15(d) (Antidiscrimination), which apply to local applicants, are incorporated into

proposed § 420.14(c)–420.19 in proposed Subpart A. Since local applications currently comply with these administrative procedures, this proposed language does not add new requirements for local applicants, but instead insures that the regulations inform local applicants of the requirements they must fulfill.

Existing § 440.13(a)(1) is revised by inserting the phrase "for financial assistance under this subpart" after the term "application." DOE feels that such an addition clarifies that the requirements of Subpart D are specific to WAP. Also the phrase "within 90 days after notice" appearing in existing § 440.13(a)(1) between the words "application" and "in" is deleted.

§ *440.14 Administrative requirements.* (Existing.)

§ *420.314 Administrative requirements.* (Proposed.)

Several changes are proposed to this section. First, the phrase "for financial assistance under this subpart" is inserted after the word "application" in paragraph (a). Again, this addition clarifies that the requirements contained in proposed Subpart D are specific to WAP. Second, existing § 440.14(b) is amended by inserting the phrase "in addition to the information required in paragraph (a) of this section," between the words "which" and "shall." DOE feels that this addition clarifies the requirement that the State Weatherization plan must include the requirements of proposed § 420.314(a), as well as those of proposed § 420.314(b).

§ *440.15 Minimum program requirements.* (Existing.)

§ *420.315 Minimum program requirements.* (Proposed.)

Existing paragraph (d), which discusses nondiscrimination, is deleted since an identical provision appears in proposed § 420.19.

§ *440.16 Allowable expenditures.* (Existing.)

§ *420.316 Allowable expenditures.* (Proposed.)

DOE proposes to modify existing § 440.16 by adding the existing § 440.2(b) requirement that tools or equipment acquired with grant funds provided under this proposed subpart are the property of the grantee and redesignating existing § 440.16 as proposed § 420.316.

§ *440.22 Recordkeeping.* (Deleted.)

This entire section is deleted and replaced by proposed § 420.17. DOE proposes to conform recordkeeping requirements to those found in the Financial Assistance Regulations, 10 CFR Part 600. No significant differences exist between the proposed and existing requirements.

The proposed regulation deletes the reference to Federal Management Circular (FMC) 74–7, now superceded by OMB Circular A–102. Recipients of financial assistance are still required to comply with OMB A–102, as cited in proposed § 420.18.

§ *440.23 Reports.* (Deleted.)

This entire section is deleted and replaced by proposed § 420.16. DOE proposes to conform reporting requirements to those found in the Financial Assistance Regulations, 10 CFR Part 600. No significant differences exist between the proposed and existing requirements.

§ *440.30 Administrative review.* (Deleted.)

DOE proposes to delete this entire section. Existing § 440.30 (a) and (b), addressing resubmission of an application which does not conform to the review criteria, now appears with some revision in proposed § 420.14(c). DOE feels that the proposed regulation conveys more clearly that a determination by the Regional Representative that the initial coordinated State grant application does not meet the review criteria indicates the need for a period of revision and negotiation and does not imply an automatic denial.

Existing §§ 440.30(c)–(j), addressing the administrative review requirements, now appear in proposed § 420.15. DOE intends that these consolidated administrative review procedures also apply to local applicants, in accordance with proposed § 420.15(a)(3), if a Regional Representative intends to deny the application of a local applicant. Proposed 420.15 changes the existing WAP administrative review process, by requiring a review panel made up of three disinterested members who present their report to the Regional Representative within 10 working days of the hearing. Proposed 420.15 also specifies that a grantee may appeal "final determinations" to the Financial Assistance Appeals Board rather than the Secretary as provided in existing regulations.

4. *Proposed Program-Specific Changes to EECA.* Proposed Subpart E will establish procedures to enable a State to obtain financial assistance to develop, modify, or implement a State's emergency conservation plan. DOE proposes to involve EECA in the grants coordination process by providing States the opportunity to submit their application for financial assistance to develop an emergency conservation plan prior to the declaration of an emergency as part of the coordinated State grant application. DOE cannot emphasize strongly enough the desirability of a State's developing its emergency conservation plan prior to the declaration of an emergency by the President under § 211 of EECA. After declaration of an emergency, States may submit, under the proposed regulation, an amendment to their coordinated State grant application for financial assistance to develop or implement their emergency conservation plans. As previously mentioned, the proposed regulations do not recodify the existing EECA regulations (10 CFR Part 477) under Part 420, Subpart E, nor do they significantly amend the text of these regulations. The only proposed amendment to Part 477 cross-references the funding mechanism established for EECA under 10 CFR Part 420, Subpart E.

DOE notes that no funds are currently available for financial assistance under this proposed subpart. Nevertheless, DOE feels it is important to obtain public comment concerning the proposed method of funding the development and implementation of emergency conservation plans so that a funding mechanism is in place if financial assistance becomes available. DOE proposes to allocate funds using the funding formula for supplemental SECP plans which provides that 75 percent of available funds will be divided on the basis of State population and 25 percent of available funds will be divided among participating States equally. DOE also wishes to alert States to the 20 percent matching requirements in proposed § 420.410(c) and the reallocation provision described in proposed § 420.410(d). DOE is particularly interested in receiving comments on both of these proposed sections.

In proposed § 420.411(a), DOE proposes procedures for applying for financial assistance to develop or modify a State emergency conservation plan and in proposed § 420.411(b), procedures for applying for financial assistance to implement an emergency conservation plan. Under proposed § 420.411(a), a State may submit, as part of its coordinated State grant application, a proposal for developing or modifying a State emergency conservation plan. DOE urges each State to undertake a continuing emergency energy conservation planning effort. The financial assistance

mechanism proposed in § 420.411(a) will allow a State to update its emergency conservation plan annually so that the State will have a current plan ready for approval should the President establish emergency energy conservation targets. According to the EECA Act, the State plans are to be treated as contingency plans under Sections 202 and 203 of the Energy Policy and Conservation Act, 42 U.S.C. 6262–63 (EPCA). Emergency conservation plans may be funded as stand-by plans under the authority of § 362(e) of EPCA, 42 U.S.C. 6322(e).

Because a State may not apply for financial assistance to implement its approved emergency conservation plan until the President has established emergency energy conservation targets, a State will not be able to apply for implementation funds according to the proposed coordinated submission schedule set forth in proposed § 420.12. With this in mind, DOE proposes § 420.411(b) allowing a State to apply for implementation funds by submitting an amendment to its coordinated State grant application. This amended application will be submitted within 15 days of receipt of notice of availability of financial assistance for implementation, or within 15 days after approval of its State emergency conservation plan, whichever is later. It must include a copy of the State's approved emergency conservation plan and a proposal for implementing the plan.

DOE strongly encourages States to develop and update their emergency conservation plans prior to the President's establishment of emergency energy conservation targets. However, if a State has not developed a plan, or if it needs to modify an approved plan in order to comply with the President's targets, the State may apply for financial assistance under proposed § 420.411(a)(2) to complete these activities prior to its application for financial assistance to implement the plan, under proposed § 420.411(b).

5. *Proposed Program-Specific Regulation Changes For IBGP.*

§ *455.2 Definitions.*

DOE proposes to add definitions for "coordinated State grant application" and "Regional Representative" to existing § 455.2, in order to relate the IBGP regulations to proposed Part 420, Subpart A. Also, the existing definition for "grantee" is revised slightly to conform to the definition contained in proposed § 420.01.

§ *455.3 Administration of grants.*

DOE proposes to add OMB Circular A–95, "Evaluation, Review and Coordination of Federal and Federally Assisted Programs and Projects," Treasury Circular 1075, "Treasury and Fiscal Requirements Manual" and DOE Assistance Regulations (10 CFR Part 600) to this section. These additions are needed to standardize IBGP regulations with proposed § 420.18. Second, DOE proposes to delete Federal Management Circular 73–2, OMB A–89, OMB A–97 and Treasury Circular 1082. Finally, this section is renumbered to accommodate the proposed additions and deletions.

§ *455.5 Suspension and termination of grants.*

This section contains one amendment. The last sentence of existing § 455.5 is deleted, since OMB A–102 and A–110 are both circulars listed in proposed § 455.3 (Administration of grants). The following sentence is added in it place: "A grant to a State made pursuant to § 455.62 and § 455.83 shall be accorded the procedures prescribed in § 420.15 regarding termination and suspension." Note that § 455.5 does not prescribe the administrative review procedures in proposed § 420.15 except for the State administrative expenses portion of IBGP Phase II. Accordingly, the procedures prescribed in proposed § 420.15 would only apply to the termination or suspension of a State administrative expenses grant made in accordance with § 455.62 and § 455.83.

§ *455.62 Grant applications for State administrative expenses.* (Existing).

§ *455.62 Coordinated State grant applications for State administrative expenses.* (Proposed).

DOE proposes to revise the title from "Grant applications for State administrative expenses" to "Coordinated State grant applications for State administrative expenses."

A second proposed change revises § 455.62(a) to include the IBGP State administrative expenses application as part of the coordinated State grant application. While proposed paragraph (a) permits a State to apply for its entire State administrative expenses grant as part of the coordinated State grant application, a State will initially receive only 2 percent of its total allocation for Technical Assistance and Energy Conservation Measures. After a State forwards the ranked Technical Assistance and Energy Conservation Measure applications to DOE in accordance with § 455.71–.72, it may apply for the remaining funds by submitting an amendment to the coordinated State grant application. If a State finds that the total amount of grants awarded in the State equal the State's total allocation for Technical Assistance and Energy Conservation Measures, then the State's amendment to the coordinated State grant application will simply indicate this fact. If the total amount of grants awarded for a State is less than the total State allocation, then the State's amendment to the coordinated State grant application will include modified budget forms showing the revised amount of the State's administrative expenses grant. In both cases, DOE will, upon review and approval of the application amendment, award the State a second grant for an amount not exceeding 5 percent of the total of all grant awards for Technical Assistance and Energy Conservation Measures within that State for that grant program cycle less the amount previously awarded during the same grant program cycle for administrative expenses, so long as this amount does not exceed 50 percent of the total projected administrative expenses.

The third proposed change is deletion of § 455.62(b)(1), which requires a State application to include the name and address of the grantee. This requirement now appears in proposed § 420.12(d)(3). Existing § 455.62(b)(2) is renumbered as proposed § 455.62(b)(1).

The fourth proposed change adds precision to existing § 455.62(b)(2) (proposed § 455.62(b)(1)), clarifying that the requirements listed in this subparagraph represent a partial rather than complete listing of budget requirements for the coordinated State grant application.

Finally, existing § 455.62(b) is amended by adding a new subparagraph (2). Proposed § 455.62(b)(2) stipulates that a State must include in the IBGP portion of its coordinated State grant application any additional information required by DOE.

§ *455.63 Grantee records and reports.*

Section § 455.63(b) is amended by deleting the phrase "by the end of January and July of each year" appearing at the beginning of the paragraph. Also, the word "quarterly" is inserted between the words "a" and "report" in this same paragraph. This brings the IBGP regulations into alignment with the current reporting procedures of the other coordinated State grant programs.

§ *455.73 State duties.*

DOE proposes to revise § 455.73(b) as follows: "Each State shall submit a quarterly report to the Secretary, following State plan approval for the duration of the grant program, providing—." This revised paragraph indicates the required submission of

quarterly reports, as discussed above. Second, § 455.73(c) is amended by deleting the terms "August" and replacing it with the phrase "second quarterly," to indicate that the information required in proposed § 455.73(c) should be included in the second of the quarterly reports.

§ 455.83 Grant awards for State administrative expenses.

Proposed § 455.83(a) amends existing paragraph (a) to bring it into alignment with the grants coordination effort. The proposed language permits the Regional Representative to make an initial State administrative expenses grant, consisting of 2 percent of the State's total allocation for Technical Assistance and Energy Conservation Measures, upon approval of the coordinated State grant application. It further specifies that the Regional Representative may provide an additional State administrative expenses grant after the State has forwarded its ranked Technical Assistance and Energy Conservation Measure applications to DOE, and upon approval of an amendment to the coordinated State grant application. As described above, this second grant will be for an amount not exceeding 5 percent of all grant awards for Technical Assistance and Energy Conservation Measures less any amounts previously awarded during that grant program cycle, and not exceeding 50 percent of the total projected administrative expenses.

Existing § 455.83(b) is redesignated as § 455.83(c) and a new paragraph (b) is added. Proposed § 455.83(b) addresses review and approval procedures for a coordinated State grant application regarding State administrative expenses. By cross-referencing proposed § 420.14 and proposed § 420.15 of Subpart A, proposed § 453.83(b) relates the IBGP regulations to the review and approval procedures and the administrative review procedures of proposed Subpart A. Note that proposed § 455.83(b) identifies the Regional Representative rather than the Secretary as the approving official. This agrees with proposed § 420.14 which also specifies the Regional Representative as the approving official. Furthermore, denial of a State administrative expenses grant portion of a coordinated State grant application is subject to the administrative review provisions of proposed § 420.15.

III. Opportunities for Public Comment

A. Written Comments

Interested persons are invited to participate in this rulemaking by submitting data, views or arguments with respect to the proposal set forth in this notice to: Ms. Carol Snipes, Hearings and Dockets Conservation and Solar Energy, Department of Energy, Mail Stop 6B–025, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Comments should be identified on the outside of the envelope, and on the documents themselves, with the designation "Coordinated State Grant Programs," Docket Number CAS–RM–80–510. Fifteen (15) copies should be submitted. All comments received on or before December 29, 1980, and all other relevant information, will be considered by DOE before final action on this rule.

Any person submitting information which that person believes to be confidential and which may be exempt by law from public disclosure should submit one complete copy, as well as fifteen copies from which the information claimed to be confidential has been deleted. DOE shall make a determination of any such claim. This procedure is set forth in 10 CFR 1004.11 (44 FR 1908, Jan. 8, 1979).

B. Public Hearings

DOE will hold two public hearings on this proposed rule. A public hearing will be held in San Francisco at 9:30 a.m., local time, on December 3 and 4, 1980, at the Ramada Inn, Fisherman's Wharf, Crocker Hopkins Room, 590 Bay Street, San Francisco, California 94133. A second public hearing will be held in Washington, D.C. at 9:30 a.m., local time, on December 9 and 10, 1980, at the Department of Energy, Room 2105, 2000 M Street N.W., Washington, D.C. 20461.

Any person who has an interest in the proposed regulation or who is a representative of a group or class of persons which has an interest in it may make a written request for an opportunity to make an oral presentation. Such a request for the San Francisco hearing should be addressed to Terry Osborn, Department of Energy, Region IX, 333 Market Street, San Francisco, California 94105, (415) 764–7027 and must be received by 4:30 p.m., local time, on November 17, 1980. Requests to speak at the Washington, D.C. hearing should be addressed to Ms. Carol Snipes, Hearings and Dockets Conservation and Solar Energy, Department of Energy, Mail Stop 6B–025, 1000 Independence Avenue, S.W., Washington, D.C. 20585, ATTN: CAS–RM–80–510, (202) 252–9319 and must be received by 4:30 p.m., local time, on November 25, 1980. A request may also be hand delivered between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Requests should be marked the same as for written comments with the additional notation "With Request to Speak."

The person making the request should describe briefly his or her interest in the proceeding and, if appropriate, state why that person is a proper representative of a group. The person should also give a concise summary of the proposed oral presentation and should provide a phone number where the person may be reached. Each person selected to be heard at the public hearing to be held in San Francisco will be notified by DOE by November 21, 1980. Each person selected to be heard at the public hearing to be held in Washington, D.C. will be notified by December 2, 1980. Those persons selected to be heard must bring 15 copies of their statement to the hearing. If a person cannot provide 15 copies, alternate arrangements can be made in advance of the hearing. This should be done in the letter requesting to speak.

C. Conduct of Hearings

DOE reserves the right to select persons to speak at the hearings, to schedule their presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation will be limited, based on the number of persons requesting to speak.

A DOE official will preside at each hearing. These will not be judicial or evidentiary type hearings. Questions may be asked of speakers only by those conducting the hearing, and there will be no cross-examination of persons presenting statements. Any decision made by DOE with respect to the subject matter of the hearings will be based on all the information available to DOE.

Any participant who wishes to ask a question at the hearing may submit the question, in writing, to the presiding officer. The presiding officer will determine whether the question is relevant and material, and whether the time limitations permit it to be presented for answer.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made and the entire record of the hearing, including the transcript, will be retained by DOE and made available for inspection at the DOE Freedom of Information Office, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585 between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday except Federal holidays.

Any person may purchase a copy of the transcript from the reporter.

If DOE must cancel a hearing, DOE will make every effort to publish an advance notice of such cancellation in the **Federal Register.** Notice of cancellation will also be given to all persons scheduled to speak at the hearing. Hearing dates after the first scheduled day may be cancelled in the event no public testimony has been scheduled in advance.

IV. Other Matters

A. Notice of Information Requirements for Program Announcements

In compliance with the "Notice of Information Requirements for Program Announcements," issued by OMB on May 27, 1980, 45 FR 35954 (May 28, 1980), the following information is provided. The official program number and title as outlined by OMB Circular A–89, "Catalog of Federal Domestic Assistance," for each coordinated State program is as follows—

81.041 State Energy Conservation Program;
81.043 Supplemental State Energy Conservation Program;
81.050 Energy Extension Service;
81.042 Weatherization Assistance Program for Low-Income Persons;
Not Assigned—Emergency Energy Conservation Program; and
81.052 Energy Conservation for Institutional Buildings.

DOE believes that this listing is likely to be changed once operation of these programs as the coordinated State grant programs begins. As required by proposed § 420.18(a)(1), DOE also notes the applicability of OMB Circular A–95 regarding State and local clearinghouse review of Federal and Federally Assisted Programs and Projects.

B. Environmental Review.

DOE has reviewed the proposed coordinated State grant programs regulatory amendments in accordance with its responsibilities under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.* The regulation will serve two primary purposes: 1) to facilitate coordinated and comprehensive State energy conservation planning, and 2) to simplify the administration procedures of coordinated State energy conservation grant programs.

It is DOE's judgment that the function of the coordinated State grant program regulation is primarily administrative in nature. DOE has therefore determined that this proposed regulation does not constitute a major Federal action significantly affecting the environment within the meaning of NEPA, and that an environmental impact statement is not required.

Pursuant to the requirements of NEPA, DOE reviewed, at the time of each proposal, the environmental impacts of each of the five State grant programs affected by this rulemaking. In each instance, DOE determined that the program was not a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA, and that an environmental impact statement was not required to support the action. it is DOE's judgment that the rulemaking proposed herein, being administrative in nature, will not affect the environmental impacts associated with each of the five State grant programs. Under the proposed rule, each program maintains its original identity and specific objectives, which are, in most cases, fairly dissimilar (e.g., weatherizing homes versus reducing highway speed limits in times of energy shortages). The States cannot commingle program funds and any restrictions or limitations in the individual programs would still be in effect. Although the proposed rule encourages greater coordination in the implementation of the five grant programs by decreasing the administrative burden on the States, the proposal is not expected to affect the environmental impacts associated with each of the programs, nor is it anticipated that the proposal would lead to cumulative, significant impacts from the five separate programs, given the very minor impacts originally estimated for each program and the relatively small overlap of individual program objectives and participants. The determinations reached from the prior environmental analyses regarding the absence of the need for environmental impact statements for these programs remain valid. A summary of each of these analyses follows.

1. *State Energy Conservation Program (SECP).* An environmental assessment for the original SECP program under the Energy Policy and Conservation Act was prepared. Notice of the availability of this assessment was published with the proposed rulemaking in the **Federal Register** on June 16, 1977 (41 FR 24410, 24412–13).

A subsequent environmental assessment of the Energy Conservation and Production Act amendments to the program was completed prior to issuance of the guidelines applicable to supplemental plans. Notice of this second assessment was published with the notice of proposed rulemaking in the **Federal Register** on March 25, 1977 (42 FR 16150–51).

Each plan and supplemental plan was required to include a detailed description of the increase or decrease in environmental residuals expected from the implementation of the subject plan and an indication of how the environmental factors were considered in the selection of program measures. Environmental impact determinations were considered and published for each plan prior to funding. Applications for financial assistance submitted in accordance with the regulation will be subject to NEPA review, as appropriate, prior to approval in a manner similar to the treatment of applications filed under existing regulations.

2. *Energy Extension Service (EES).* The environmental assessment (DOE/EA–0042) prepared for EES was discussed in the notice of proposed rulemaking (NOPR) for the EES program published on June 5, 1978 (43 FR 24316) in the **Federal Register.**

3. *Weatherization Assistance for Low-Income Persons (WAP).* DOE published a notice of availability of the environmental assessment (DOE/EA–0085) of WAP on April 10, 1979 in the **Federal Register** (44 FR 21323). DOE subsequently reviewed the environmental impacts of amendments to WAP that were published in the **Federal Register** on February 27, 1980 (45 FR 13028). DOE determined that no new or additional environmental impacts were associated with these amendments and that no additional environmental assessment or impact statement was required.

4. *Energy Conservation Programs for Schools and Hospitals and for Buildings Owned by Units of Local Government and Public Care Institutions (IBGP).*

An environmental assessment (DOE/EA–0079) of IBGP was prepared. Notice of the public availability of that environmental assessment, together with the negative determination of environmental impact reached pursuant to an evaluation of the environmental assessment, was published in the **Federal Register** on March 12, 1979 (44 FR 13554). The proposed amendments to the IBGP regulation do not affect this previous determination.

5. *Emergency Energy Conservation Program (EECA).* DOE has reviewed environmental impacts of EECA (10 CFR 477 as published in the **Federal Register** on February 7, 1980). It was DOE's judgment that the function of EECA, being purely administrative in nature, would not have any significant impacts upon the environment.

Regarding the individual energy conservation measures included in the

Standby Federal Plan which could be implemented by the President and are used by the States as guidance in developing their individual conservation plans, it is DOE's judgment that none of these measures will have any significant impacts upon the environment or upon the health or safety of individuals. The impacts of alternative measures which States may elect to substitute for the conservation measures included in the Federal Plan will be evaluated by DOE using the environmental information submitted by each State with its individual plan.

DOE does believe, however, that it is appropriate to take certain steps to ensure that the risk to susceptible individuals of adverse impacts from the buildings temperature restrictions conservation measure is reduced to the maximum extent practicable. DOE has therefore developed provisions in the Federal Plan to provide that information concerning individual actions to mitigate the potential adverse effects of building temperature restrictions is provided to the public should the President implement this measure, or should a State include this measure in its individual conservation plan, and that exemptions are granted in those instances where it is demonstrated that the restrictions will have a significant adverse impact on the health and safety of specified individuals.

C. EPA Review

As required by Section 7(a)(1), 15 U.S.C. 766(a)(1), of the Federal Energy Administration Act of 1974 (15 U.S.C. 761 *et seq.*), a copy of this proposed rule was submitted to the Administrator of the Environmental Protection Agency for comments on the impact of this proposed rule on the quality of the environment. The Administrator had no comments to make at this time, but reserved the right to provide further comments in accordance with the Administrator's responsibilities under Section 309 of the Clean Air Act once the proposed rule has been released for more extensive review and public comment.

D. Regulatory Review

It has been determined that the proposed regulation is significant, as that term is used in Executive Order 12044 and amplified in DOE Order 2030. This determination is based on the fact that by increasing coordination between the five State energy conservation grant programs, this proposed rulemaking will encourage a comprehensive approach to energy conservation planning and simplify program procedures. It has been further determined that this regulatory action is not likely to have a major impact, as defined by Executive Order 12044 and DOE Order 2030. Consequently, no regulatory analysis will be prepared in this instance.

E. Urban Impact Analysis

This proposed regulation has been reviewed in accordance with OMB Circular A–116 to assess the impact on urban centers and communities. In accordance with the DOE finding that the regulation is not likely to have a major impact, DOE has determined that no community and urban impact analysis of the rulemaking is necessary, pursuant to section 3(a) of Circular A–116.

In consideration of the following DOE proposes to amend Parts 420, 440, 455, 465 and 477 of Chapter II of Title 10 of the Code of Federal Regulations as set forth below.

(Title III, Part D, as amended, of the Energy Policy and Conservation Act, 42 U.S.C. 6321 *et seq.*; the National Energy Extension Service Act, enacted as Title V of the Energy Research and Development Administration Authorization Act of 1977, 42 U.S.C. 7001 *et seq.*; Federal Grant and Cooperative Agreement Act of 1977, 41 U.S.C. 501 *et seq.*; Title IV, Part A of the Energy Conservation and Production Act, as amended, 42 U.S.C. 6851 *et seq.*; Title III of the National Energy Conservation Policy Act, Pub. L. 95–619, 92 Stat. 3206 *et seq.*; Section 365(e)(2), 42 U.S.C. 6325(e)(2), of the Energy Conservation and Production Act, 42 U.S.C. 3801 *et seq.*; Title II of the Emergency Energy Conservation Act of 1979, Pub. L. 96–102, 93 Stat. 757, 42 U.S.C. 8501 *et seq.*; Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*)

Issued in Washington, D.C., October 7, 1980.

Worth Bateman,

Acting Under Secretary.

1. Part 420 is redesignated and revised to read as follows:

PART 420—COORDINATED STATE GRANT PROGRAMS

Subpart A—General Requirements

Subpart B—State Energy Conservation Program

Subpart C—Energy Extension Service

Subpart D—Program for Weatherization Assistance for Low-Income Persons

Sybpart E—Emergency Energy Conservation Program

Authority: (Title III, Part D, as amended, of the Energy Policy and Conservation Act, 42 U.S.C. 6321 *et seq.;* the National Energy Extension Service Act, enacted as Title V of the Energy Research and Development Administration Authorization Act of 1977, 42 U.S.C. 7001 *et seq.;* Federal Grant and Cooperative Agreement Act of 1977, 41 U.S.C. 501 *et seq.;* Title IV, Part A of the Energy Conservation and Production Act, as amended, 42 U.S.C. 6851 *et seq.;* Title III of the National Energy Conservation Policy Act, Pub. L. 95–619, 92 Stat. 3206 *et seq.;* Section

365(e)(2) 42 U.S.C. 6325(e)(2), of the Energy Conservation and Production Act, 42 U.S.C. 3801 *et seq.*; Title II of the Emergency Energy Conservation Act of 1979, Pub. L. 96–102, 93 Stat 757, 42 U.S.C. 8501 *et seq.*; Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*)

Subpart A—General Requirement

§ 420.00 Purpose and scope.

This part establishes procedures to coordinate energy conservation programs conducted by the States and to consolidate the process by which a State applies to the Department of Energy for financial assistance for these programs. For these purposes, this part—

(a) Consolidates in one part the regulations for the State Energy Conservation Program, the Energy Extension Service and the Program for Weatherization Assistance for Low-Income Persons.

(b) Establishes the procedure by which a State makes one application for financial assistance for these programs and—

(1) the Energy Conservation Programs for Schools and Hospitals and for Buildings Owned by Units of Local Government and Public Care Institutions; and

(2) the Emergency Energy Conservation Program.

(c) Establishes requirements for the submission, review and approval of a coordinated State grant application.

§ 420.01 Definitions.

"Applicant" means a department, office or other entity of the State designated by the Governor to submit to the Regional Representative the annual coordinated State grant application.

"Budget period" means the period of 12 consecutive months, commencing upon an anniversary date selected by a State on or after January 1, but not later than July 1, during which a State carries out its coordinated State grant program activities.

"DOE" means the Department of Energy.

"Governor" means the chief executive officer of a State and the Mayor of the District of Columbia, or a person duly designated to writing by the Governor to act upon his or her behalf.

"Grantee" means a State or other entity named in the Notice of Grant Award as the recipient of financial assistance provided for a coordinated State grant program.

"Local applicant" means a Community Action Agency or unit of general purpose local government.

"Regional Representative" means the Regional Representative of the Department of Energy.

"Secretary" means the Secretary of the Department of Energy.

"State" means any State of the United States and the District of Columbia and a Territory.

"Target Audience" means the persons identified by a grantee to receive assistance provided by the grantee under a coordinated State grant program.

"Territory" means with respect to the State Energy Conservation Program, the Energy Extension Service and the Emergency Energy Conservation Plan, any territory or possession of the United States which includes the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands; with respect to the Energy Conservation Programs for Schools and Hospitals and for Buildings Owned by Units of Local Government and Public Care Institutions, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and American Samoa.

§ 420.02 Coordinated State grant programs.

(a) The coordinated State grant programs for which financial assistance is provided under this part consist of the following—

(1) State Energy Conservation Program;

(2) Energy Extension Service;

(3) Program for Weatherization Assistance for Low-Income Persons;

(4) Emergency Energy Conservation Program; and

(5) Energy Conservation Programs for Schools and Hospitals and for Units of Local Government and Public Care Institutions.

(b) Subpart A and the DOE Assistance Regulations, 10 CFR Part 600, prescribe requirements for the coordinated State grant programs. Additional requirements specific to each coordinated State grant program are provided as follows—

Coordinated State grant program	Regulatory provisions
State Energy Conservation Program.	Subpart B
Energy Extension Service	Subpart C
Program for Weatherization Assistance for Low-Income Persons.	Subpart D
Emergency Energy Conservation Program.	Subpart E and 10 CFR Part 477
Energy Conservation Programs for Schools and Hospitals and Buildings Owned by Units of Local Government and Public Care Institutions.	10 CFR Parts 450 and 455

(c) The Secretary may require, by rule, that a DOE program to provide financial assistance to the States, other than those listed in paragraph (b) of this section, shall be conducted as a coordinated State grant program under this part.

§ 420.10 Financial assistance.

(a) The Regional Representative shall provide financial assistance to a State for a coordinated State grant program from funds available for the program for any fiscal year.

(b) To obtain financial assistance for a budget period for one or more coordinated State grant programs, a State shall submit one annual consolidated grant application in accordance with § 420.12.

(c) Financial assistance provided for a coordinated State grant program shall not be used for any other coordinated State grant program in the absence of express Congressional authority and the prior written approval of DOE.

§ 420.11 Allocation of financial assistance.

(a) DOE shall determine for each State the allocation or tentative allocation of financial assistance for a coordinated State grant program from available funds in accordance with the allocation formula prescribed by rule for the coordinated State grant program, as provided in the following—

Coordinated State grant program	Regulatory provisions
State Energy Conservation Programs.	For plans, § 420.110(b) and for supplemental plans, § 420.110(c)
Energy Extension Service	§ 420.212(a)
Program for Weatherization Assistance for Low-Income Persons.	§ 420.310(b)
Emergency Energy Conservation Program.	§ 420.410(b)
Energy Conservation Programs for Schools and Hospitals and for Buildings Owned by Units of Local Government and Public Care Institutions.	§ 455.83(a)

(b) The Regional Representative shall notify each State of the allocation or tentative allocation for which the State may apply.

(c) DOE may reallocate unobligated funds or redistribute tentatively allocated funds for a coordinated State grant program in accordance with the provisions, if any, prescribed by

regulations applicable to the coordinated State grant program, as follows—

Coordinated State grant program	Regulatory provisions
Energy Extension Service	§ 420.212(b)
Program for Weatherization Assistance for Low-Income Persons.	§ 420.310
Emergency Energy Conservation Program.	§ 420.410(d)
Energy Conservation Programs for Schools and Hospitals and for Buildings Owned by Units of Local Government and Public Care Institutions.	§ 455.102

§ 420.12 Coordinated State grant application.

(a) Financial assistance under this part shall be provided to a State upon approval of an annual application. Application for financial assistance shall be made by the State agency designated by the Governor as the applicant. The applicant shall submit an original and two copies to the Regional Representative of an annual cooridinated State grant application executed by the Governor.

(b) The annual coodinated State grant application shall be submitted on or after October 1 but no later than December 31 of each year.

(c) In the first coordinated State grant application submitted under this part, the applicant shall select the anniversary date for its budget period. The budget period shall be a consecutive 12-month period which shall commence on or after January 1, but no later than July 1 and shall apply to the coordinated State grant programs of the State.

(d) An annual coodinated State grant application shall include—

(1) The name and address of the applicant;

(2) The coordinated State grant programs for which the applicant requests financial assistance;

(3) For each coordinated State grant program for which financial assistance is sought—

(i) The name and address of the grantee designated by the Governor as the recipient of financial assistance for the coodrinated State grant program;

(ii) budget information, including where appropriate the source and amount of any non-Federal contributions, and a listing of milestones for the activities to be carried out during the budget period;

(iii) The submission requirements prescribed by the applicable coordinated State grant program regulations referred to in § 420.02(b);

(iv) An assurance executed by the grantee designated in the application as the recipient of financial assistance for a coordinated State grant program that—

(A) The information contained in the application regarding the program is accurate and complete; and

(B) The grantee is ready, willing and able to carry out its responsibilities for the program in a timely manner in accordance with the application; and

(4) If financial assistance is applied for under subparts B or C, a narrative overview prepared in accordance with § 420.13.

(e) The application shall contain the name and address of the public official authorized to amend this application on behalf of the State for each coordinated State grant program for which application for financial assistance is made.

(f) The applicant may request permission to submit all or part of an annual coordinated State grant application after December 31 by submitting a written request to the Regional Representative on or before December 15. The extension shall only be granted for a period not to exceed 90 days if, in the Regional Representative's judgment, appropriate justification is shown, and the Regional Representative determines that participation by the State submitting the request is likely to result in significant progress toward achieving the purposes of this part.

§ 420.13 Narrative overview.

(a) The narrative overview shall discuss the objectives, coordination and management of coordinated State grant programs for which a State is applying for financial assistance under § 420.12.

(b) The discussion of objectives shall describe State energy conservation and renewable resource goals including any Federally mandated goals and shall include—

(1) The relationship of these goals to the energy consumption and supply patterns of the State;

(2) A description of the objectives of the coordinated State grant programs including—

(i) Why these objectives were selected with particular reference to potential energy savings, increased use of renewable resources, and types and number of people affected;

(ii) How these objectives help accomplish the State energy conservation goals;

(3) A description by sector of the strategy to achieve the State energy conservation goals. This description shall include a discussion of how the target audiences to be addressed and the services to be provided by the coordinated State grant programs, including the emphasis and funding given to each, are a part of this strategy.

(c) The discussion of coordination shall describe procedures for ensuring that effective coordination exists among local, State, Federal and privately-funded energy conservation programs contributing to the State energy conservation goals including the coordinated State grant programs, university extension programs and other energy conservation programs, and include a description of—

(1) Strategies used, as applicable, by a coordinated State grant program to increase the effectiveness and productivity of another coordinated State grant program;

(2) How State and other Federal resources are being used to reinforce and supplement assistance provided by the coordinated State grant programs; and

(3) How financial assistance provided under this part is being used to supplement other related energy conservation activities in the State.

(d) The discusison of management shall describe state policies and practices to improve management of all coordinated State grant programs under this part and to build capability in effective program administration. The discussion shall include an explanation of—

(1) The steps taken to carry out procedural requirements relating to coordinated State grant programs including—

(i) Submission of timely, accurate and complete applications, plans and reports;

(ii) Establishment of reliable financeial controls and effective procurement practices; and

(iii) Steps to be taken to review program effectiveness and improve performance;

(2) The assignment of responsibilities, including an organizational chart, designation of an applicant and procedures for the coordinated State grant programs, to assure that the administration of a coordinated State grant program will be conducted in accordance with the State's management practices and policies.

(e) The narrative overview shall also contain a discussion of the opportunities for public participation in the development of coordinated State grant programs including—

(1) A written summary and chronology of the procedures used to obtain public comments; including those required by other provisions of this part; and

(2) The name of the organizations which provided comments and how their comments affected the contents of a coordinated State grant program.

§ 420.14 Review and approval.

(a) The Regional Representative shall review a timely coordinated State grant application. The Regional Representative shall approve, in whole or in part, a coordinated State grant application or modification thereto if he or she determines that—

(1) The application meets the requirements of this part and 10 CFR Part 600;

(2) If financial assistance has been provided for a coordinated State grant program in the preceding 12 months, the State is making satisfactory progress in meeting the purposes for which the financial assistance was provided and required additional financial assistance.

(b) The contents of the application relating to a coordinated State grant program shall meet specific applicable requirements for review and approval for the coordinated State grant program, as follows—

Coordinated State Grant Program and Regulatory Provisions

State Energy Conservation Program—§ 420.110(d)
Energy Extension Service—§ 420.211(c)
Program for Weatherization Assistance for Low-Income Persons—§ 420.411(c)
Emergency Energy Conservation Program—§ 420.411(c)
Energy Conservation Programs for Schools and Hospitals and Buildings Owned by Units of Local Government and Public Care Institutions—§ 455.62(b)

(c) If all or a portion of the annual coordinated State grant application is not approved in accordance with paragraph (a) of this section, the Regional Representative shall return to the applicant the portion of the application which does not meet the criteria in paragraph (a) or (b) of this section together with a written explanation. The Regional Representative shall consult with the applicant to determine a reasonable time period for modifying and resubmitting the disapproved portion(s) of the application.

§ 420.15 Administrative review.

(a) The Regional Representative shall give notice to the applicant in the event that the Regional Representative finds that—

(1) Any part of an application resubmitted by an applicant in accordance with paragraph § 420.14(c) fails to comply with this regulation;

(2) Any part of an application returned to an applicant pursuant to § 420.14(c) is not timely resubmitted as provided in § 420.14(c); or

(3) In the Weatherization Assistance Program, the Regional Representative intends to deny the application of a local applicant.

(b) The Regional Representative shall assure notice is given to a grantee in the event of a finding that there is a failure by the grantee to comply substantially with the provisions of this part.

(c) The Regional Representative shall issue such notice in written form sent by registered mail, return receipt requested, including—

(1) A statement of reasons for a determination regarding the findings referred to in paragraph (a) or (b) of this section which the Regional Representative intends to make, including an explanation whether any amendments or other actions would result in compliance with the regulation;

(2) The date, place, and time of a public hearing to be heard before a review panel, one subject of which shall be the proposed determination, which hearing shall not be later than 15 working days after the receipt of such notice; and

(3) The manner in which views may be presented.

(d) A party which has received notice under paragraph (c) of this section—

(1) May make a written submission of its views with supporting data and arguments to the Regional Representative on or before the date of the public hearing; and

(2) Shall be afforded an opportunity to make an oral presentation at the public hearing.

(e) The review panel shall be appointed by the Regional Representative and shall consist of three disinterested members. The review panel shall consider all relevant views and data including arguments and other submissions made on or before the date of the public hearing.

(f) The review panel shall submit a written report containing its findings and recommendations to the Regional Representative within 10 working days after the date of the public hearing. The Regional Representative shall make, not later than 5 working days after receipt of the report of the review panel, a "final determination" in writing stating the reasons for the determination and give notice of the determination to any party which has received notice under paragraph (c) of this section.

(g) A party may appeal in writing from an adverse "final determination" under paragraph (b) made by the Regional Representative in accordance with paragraph (f) of this section to the Financial Assistance Appeals Board in accordance with the procedures set forth in 10 CFR Part 1024.

(h) Anything herein to the contrary notwithstanding, the public hearing referred to in subparagraph (c)(2) for a determination under subparagraph (a)(3) of this section may be combined, at the discretion of the Regional Representative, with any other public hearing in the State conducted pursuant to this part.

(i) Upon or subsequent to issuance of the notice provided in paragraph (b), the Regional Representative may direct the suspension of payments to any grantee pending a final determination. Upon a final determination of failure to comply, the grantee will be ineligible to participate in the coordinated State grant program under this part for which the determination has been made unless and until the Regional Representative is satisfied that there is no longer a failure to comply.

§ 420.16 Reports.

Reports shall be furnished by any recipient of financial assistance under this part, in such form as may be prescribed, in accordance with 10 CFR Part 600.

§ 420.17 Recordkeeping.

Each State or other entity within a State receiving financial assistance under this part shall make and retain records required by 10 CFR Part 600.

§ 420.18 Administration of financial assistance.

(a) Grants provided under this part shall comply with applicable law including, but without limitation, the requirements of—

(1) Office of Management and Budget Circular A–95, entitled "Evaluation, Review and Coordination of Federal and Federally Assisted Programs and Projects;"

(2) Office of Management and Budget Circular A–102, entitled "Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments;"

(3) Federal Management Circular 74–4 (34 CFR 255), entitled "Cost Principles Applicable to Grants and Contracts with State and Local Governments;"

(4) Treasury Circular 1075, entitled "Treasury and Fiscal Requirements Manual;"

(5) DOE Assistance Regulations (10 CFR Part 600); and

(6) Other procedures which DOE may from time to time prescribe for the administration of financial assistance provided under this part.

(b) A grantee shall procure supplies and services to assure that disadvantaged businesses are utilized where possible as sources of supplies and services as prescribed in OMB Financial Management Circular A–102.

§ 420.19 Antidiscrimination.

Recipients of DOE financial assistance awards which are provided under DOE Federal Assistance programs shall comply with Part 1040, Chapter X, Title 10 of the Code of Federal Regulations "Nondiscrimination in Federally Assisted Programs" (10 CFR Part 1040).

►Subpart B◄ [Part 420]—State Energy Conservation ►Program◄ [Plans] [1]

Sec.

Authority: Title III, Part D, as amended, of the Energy Policy and Conservation Act, 42 U.S.C. 6321 *et seq.*; Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*

§ ►420.100◄ [420.1] Purpose and scope.

(a) This ►sub◄ part prescribes requirements for program measures for the State Energy Conservation Program to be included in plans and supplemental plans, and guidelines for the development, modification and funding of plans and supplemental plans. It is the purpose of this ►sub◄ part to promote the conservation of energy and to reduce the rate of growth of energy demand through the development and implementation of a comprehensive State Energy Conservation [plans] Program and the provision of Federal financial and technical assistance to States ►to support it◄ [in support of such program].

(b) DOE has the responsibility to foster and promote comprehensive State Energy Conservation ►Program◄ plans by providing technical and financial assistance for specific State initiatives to conserve and improve efficiency in the use of energy and to encourage the use of renewable resources. Because of the diversity of conditions among the various States and regions of the Nation, a wholly Federally administered program would not be as effective as one which is tailored to meet local requirements and to respond to local opportunities.

§ ►420.101◄ [420.2] Definitions.

As used in this part—

["Act" means Title III, Part C, as amended, of the Energy Policy and Conservation Act, 42 U.S.C. 6321 *et seq.*] [7]

"ASHRAE 90–75" means those designated standards developed by the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Incorporated, as approved by its Board of Directors on August 11, 1975, to provide design requirements for improvements of energy utilization in new buildings.

"Btu" means British thermal unit.

"British thermal unit" means the quantity of heat necessary to raise the temperature of one pound of water one degree Fahrenheit at 39.2 degrees Fahrenheit and one atmosphere of pressure.

"Building" means any structure which includes provision for a heating or cooling system, or both, or for a hot water system.

"Carpool" means the sharing of a ride by two or more people in an automobile.

"Carpool matching and promotion campaign" means a campaign to coordinate riders with drivers to form carpools and/or vanpools.

"Commercial building" means any building other than residential building, including any building constructed for industrial or public purposes.

►"Conservation techniques and technologies" means actions likely to result in energy conservation.◄

["DOE" means the Department of Energy.] [8]

"Energy audit" means a survey of a building or buildings that is conducted in accordance with § ►420.113 (b)(3)◄ [420.7 (b)(3)] and Subpart B of 10 CFR Part 450 and which—

(a) Identifies the type, size, energy use level and the major energy using systems of such building or buildings;

(b) Determines appropriate energy conservation maintenance and operating procedures; and

(c) Indicates the need, if any, for the acquisition and installation of energy conservation measrues.

"Energy conservation" means energy conservation, efficient energy use or the utilization of renewable energy resources which results in energy savings based upon a net reduction in the use of non-renewable energy resources.

"Energy conservation measure" means a measure which is identified as an energy conservation measure in accordance with Subpart D of 10 CFR Part 450.

"Energy measure" means an energy conservation measure or a renewable-resource energy measure as prescribed in Subpart D of 10 CFR Part 450.

"Environmental residual" means any pollutant or pollution causing factor which results from any activity.

"Exempted building" means—

(a) Any building whose peak design rate of energy usage for all purposes is less than one watt (3.4 Btu's per hour) per square foot of floor area for all purposes;

(b) Any building with neither a heating nor cooling system;

(c) Any mobile home; or

(d) Any building owned or leased in whole or in part by the United States.

"Exterior envelope physical characteristics" means the physical nature of those elements of a building which enclose conditioned spaces through which thermal energy may be transferred to or from the exterior.

["Governor" means the chief executive officer of a State and the Mayor of the district of Columbia, or a person duly designated in writing by the Governor to act upon his or her behalf.

"Grantee" means the State or other entity named in the Notice of Grant Award as the recipient.] [9]

"HVAC" means heating, ventilating and air conditioning.

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[1] Language which DOE proposes to add to existing regulations is set off with arrows ►◄ and language which DOE proposes to delete is set off with brackets [ ].

[2] § 420.5(a) (1), (2) and (3) redesignated as § 420.110(d); § 420.5(b) incorporated in § 420.14(c).

[3] § 420.10 incorporated in § 420.15.

[4] § 420.12 redesignated as § 420.17.

[5] § 420.13 incorporated in § 420.16.

[6] § 420.15 incorporated in § 420.18.

[7] "Act" amended to read as "SECP Act" and realphabetized in § 420.101.

[8] "DOE" relocated in § 420.01.

[9] "Governor" and "grantee" relocated in § 420.01.

"Heating, ventilating and air conditioning" means a system that provides heating, ventilation and/or air conditioning within or associated with a building.

"HUD minimum property standard" means any of the rules and regulations adopted by the Department of Housing and Urban Development establishing minimum acceptable levels of site design, site preparation, exterior and interior appurtenances which standard is applied to single or multifamily housing units which seek assistance under one or more programs administered by the Assistant Secretary for Housing and Mortgage Credit of the Department of Housing and Urban Development.

"Industrial plant" means any fixed equipment or facility which is used in connection with, or as part of, any process or system for industrial production or output.

"Major building type" means a class of building within which similar functions occur such as hospitals, restaurants, hotels and supermarkets.

"Metropolitan Planning Organization" means that organization required by the Department of Transportation, and designated by the Governor as being responsible for coordination within the State, to carry out transportation planning provisions in a Standard Metropolitan Statistical Area.

"National energy conservation program" means a program which is authorized by Federal statute and is wholly implemented by the Federal government, without the active participation of a State or local government, other than for usual coordination or acknowledgement.

"Park-and-ride lot" means a parking facility generally located at or near the trip origin of carpools, vanpools, and/or mass transit.

["Plan" means a State energy conservation plan including required program measures in accordance with § 420.7 and otherwise meeting the applicable provisions of this part.][10]

"Political subdivision" means a unit of government within a State, including a county, municipality, city, town, township, parish, village, local public authority school district, special district, council of governments, or any other regional or intrastate governmental entity or instrumentality of a local government exclusive of institutions of higher learning and hospitals.

"Preferential traffic control" means any one of a variety of traffic control techniques used to give carpools, vanpools and public transportation vehicles priority treatment over single occupant vehicles other than bicycles and other two-wheeled motorized vehicles.

"Program measure" means one or more State actions, in a particular area, designed to effect energy conservation, excluding actions in areas specifically covered by national energy conservation programs.

"Public building" means any building which is open to the public during normal business hours, except exempted buildings, including—

(a) Any building which provides facilities or shelter for public assembly, or which is used for educational, office or institutional purposes;

(b) Any inn, hotel, motel, sports arena, supermarket, transportation terminal, retail store, restaurant, or other commercial establishment which provides services or retail merchandise;

(c) Any portion of an industrial plant building used primarily as office space; or

(d) Any building owned by a State or political sub-division thereof, including libraries, museums, schools, hospitals, auditoriums, sport arenas, and university buildings.

"Public transportation" means any scheduled or nonscheduled transportation service for public use.

["Regional Representative" means the Regional Representative of the DOE.][11]

"Renewable resource energy measure" means a measure which is identified as a renewable resource energy measure in accordance with Subpart D of 10 CFR Part 450.

"Residential building" means any structure which is constructed for residential occupancy.

["Secretary" means the Secretary of DOE.][12]

►"SECP" means State Energy Conservation Program.

"SECP Act" means Title III, Part C, as amended, of the Energy Policy and Conservation Act, 42 U.S.C. 632 *et seq.*

"SECP plan" means a State energy conservation program plan including required program measures in accordance with § 420.113 [420.7] and otherwise meeting the applicable provisions of this subpart.◄

["State" means a State, the District of Columbia, Puerto Rico, or any territory or possession of the United States.][13]

"Suplemental ►SECP◄ plan" means a supplemental State energy conservation ►program◄ plan including required program measures in accordance with § ►420.114◄ [420.8] and otherwise meeting the applicable provisions of this ►sub◄ part.

►"Technical support" means activities provided by a State, such as specialized analyses, preparation of materials, training or other activites, which are necessary to implement a SECP plan or a supplemental SECP plan effectively.◄

"Transit level of service" means characteristics of transit service provided which indicate its quantity, geographic area of coverage, frequency and quality (comfort, travel, time, fare and image).

"Urban area traffic restriction" means a setting aside of certain portions of an urban area as restricted zones where varying degrees of limitation are placed on general traffic usage and/or parking.

"Vanpool" means a group of riders using a vehicle, with a seating capacity of not less than eight individuals and not more than fifteen individuals, for transportation to and from their residences or other designated locations and their place of employment, provided the vehicle is driven by one of the pool members.

"Variable working schedule" means a flexible working schedule to facilitate carpool, vanpool and/or public transportation usage.

§ ►420.110◄ [420.3] Financial assistance ►and allocation of financial assistance.◄

(a) The Regional Representative shall provde financial assistance ►under this subpart◄ to develop, modify or implement ►an SECP◄ [a] plan, a supplemental ►SECP◄ plan, or both, [on a calendar year basis,] from funds available for any fiscal year, to each State having an approved annual ►coordinated State grant◄ application ►for carrying out an SECP plan, a supplemental SECP plan, or both, in accordance with § 420.113 and § 420.114◄.

(b) Financial assistance►under this subpart◄ to develop, implement or modify ►SECP◄ plans shall be allocated among the States from funds available for any fiscal year, based on the following formula—

(1) Forty percent of available funds will be divided on the basis of the resident population of the participating States as of July, 1976, as reported by the Department of Commerce, Bureau of Census, in their most recent publication of "Current Population Reports;"

(2) Twenty-five percent of available funds will be divided among the participating States equally; and

(3) Thiry-five percent of available funds will be divided on the basis of estimated energy savings in calendar

[10] "Plan" amended to read as "SECP Plan", and realphabetized in § 420.101.

[11] "Regional Representative" relocated in § 420.01.

[12] "Secretary" relocated in § 420.01.

[13] "State" relocated in § 420.01.

year 1980 resulting from the implementation of State energy conservation plans; provided, however, that no State shall receive more than 20 percent of the funds available to be divided on the basis of the estimated energy savings in calendar year 1980; and

(c) Financial assistance ►under this subpart◄ to develop, implement or modify supplemental ►SECP◄ plans shall be allocated among the States from funds available for any fiscal year, based on the following formula—

(1) Seventy-five percent of available funds will be divided on the basis of the resident population of the participating States as of July, 1976, as reported by the Department of Commerce, Bureau of Census, in their most recent publication of "Current Population Reports;"

(2) Twenty-five percent of available funds will be divided among the participating States equally.

►(d) The Regional Representative shall provide financial assistance under this subpart if he or she determines in accordance with § 420.14 that—

(1) The submission made in accordance with § 420.111 conforms to the requirements of subpart B;

(2) If financial assistance is to be provided for an SECP plan, the proposed program measures are consistent with a State's achievement of its energy conservation goal and interim goals, if any, in accordance with § 420.112;

(3) The provisions of the application regarding program measures—

(i) For an SECP plan satisfy the minimum program requirements under § 420.113; or

(ii) For a supplemental SECP plan satisfy the minimum program requirements under § 420.114.◄

§ ►420.111◄ [420.4] ►SECP requirements for annual coordinated State grant applications◄ [Annual State applications].

[(a) To be eligible for financial assistance under this part, a State on or before the last day of the calendar year shall submit an original and two copies to the Regional Representative of an annual application, executed by the Governor. The annual application shall be submitted in accordance with DOE Form CS–1 and shall request financial assistance for either a plan or a supplemental plan or for both.

(b) An application shall include—

(1) The name and address of the grantee;][14]

►To be eligible for financial assistance under this subpart, a State shall submit a coordinated State grant application in accordance with §420.12 and shall include with the application—◄

►(a)◄ [(2)] With respect to either ►an SECP◄ [a] plan or supplemental ►SECP◄ plan or both—

►(1)◄ [(i)] ►A copy of the plan showing ◄[A description of] proposed modifications, including new and amended program measures ►and a description of proposed modifications◄;

►(2)◄ [(ii)] For the year in which financial assistance will be provided ◄, ►[—]◄ an explanation of how the minimum criteria for required program measures prescribed in § 420.113 for a SECP plan and §420.114 for a supplemental SECP plan shall be satisfied.◄

[(A) A budget listed by program measure and by object class category;

(B) A narrative statement detailing the nature of amendments and of new program measures;

(C) A listing of milestones by calendar quarter; and

(D) A description of the source and amount of funding, if any, other than financial assistance provided under this part, which is expected to be available to the State;][15]

[(E) An explanation of how the minimum criteria for required program measures prescribed in § 420.7 for SECP plans and § 420.8 for supplemental SECP plans shall be satisfied.][16]

►(3)◄ [(iii)] A detailed description of the estimated energy savings and the estimated cost of implementation for each program measure described in the ►coordinated State grant◄ application; and

►(4) A description for each program measure which shall include—

(i) The target audience, why it was selected and the estimated number of persons in the State which the SECP program expects to reach;

(ii) The services to be provided, including—

(A) How the services will meet the needs of the target audience;

(B) The conservation techniques and technologies to be used in each service;

(C) The type and estimated number of energy audits if any are included; and

(D) The geographic areas in which the services shall be delivered and why these areas were selected;

(iii) Any technical support which is necessary to provide the services, including the organization that will provide the technical support and why the organization was selected; and

(iv) The organization which shall implement the program measure and any other organization which shall provide a service to the target audience, why the selection was made and the approximate number of any new personnel to be employed to implement the program measure,

(5) A description of the organization which shall administer the overall development and implementation of the SECP plan or supplemental SECP plan, which shall include—

(i) Why the administering organization was selected;

(ii) The provisions made for coordination between the administering organization and any other organizations assisting in the implementation of the SECP plan or supplemental SECP plan; and

(6) A description of any additional technical support not described in subparagraph (a)(4)(iii) of this section which is required to facilitate implementation of the SECP plan or supplemental SECP plan including a description of—

(i) The type of technical support provided;

(ii) Why support is needed; and

(iii) The organization that will provide support; and

(7) A description of the procedure that the grantee will use to achieve timely implementation of the SECP plan or supplemental SECP plan;◄

►(b)◄ [(3)] A detailed description of the increase or decrease in environmental residuals expected from implementation of either ►an SECP◄ [a] plan or supplemental ►SECP◄ plan, or both, defined insofar as possible through the use of information to be provided by DOE, and an indication of how these environmental factors were considered in the selection of program measures.

(c) The detailed description of estimated energy savings for ►an SECP◄ [a] plan, specified in subparagraph ►(a)(3)◄ [(b)(2)(iii)] of this section, shall include—

(1) The estimated energy savings in Btu's expected as a result of the implementation of the program measure for calendar year 1980, and beyond;

(2) The sources of numerical data, any assumptions, and the actual calculations used by the State to estimate the energy savings;

(3) For those program measures for which DOE has not made available a methodology for estimating the energy savings, the methodology used to estimate the energy savings; and

(4) The manner in which the State will assess actual energy savings under the program measure.

[14] § 420.4(a) incorporated in § 420.12(a) and (b); § 420.4(b)(1) incorporated in § 420.12(d)(3).

[15] § 420.4(b)(2)(ii)(A), (C) and (D) are incorporated into § 420.12; § 420.4(b)(2)(ii)(B) is incorporated into §420.111(a)(1).

[16] § 420.4(b)(2)(ii)(E) redesignated as § 420.111(a)(2).

[(d) The Governor may request an extension of the annual submission date by submitting a written request to the Regional Representative on or before December 15. The extension shall only be granted, for a period not to exceed three months, if, in the Regional Representative's judgment, acceptable and substantial justification is shown, and the Regional Representative determines that participation by the State submitting the request is likely to result in significant progress toward achieving the purposes of this part.][17]

[§ 420.5 Review and approval of annual State applications and State plans.]

[(a) The Regional Representative shall review each timely annual application and provide financial assistance if he or she determines that—

(1) The application conforms to the requirements of this part;

(2) The proposed program measures are consistent with a State's achievement of its energy conservation goal and interim goals, if any, in accordance with § 420.6;

(3) The provisions of the application regarding program measures satisfy the minimum program requirements prescribed by § 420.7.][18]

[(b) If the annual application is not approved according to paragraph (a) of this section, the Regional Representative shall return it to the State together with a written statement describing why the annual State application fails to meet the requirements of this part. The State will be given a reasonable period of time, as determined by the Regional Representative, to amend its annual application and submit it for reconsideration according to paragraph (a) of this section.][19]

§ ►420.112◄ [420.6] Energy conservation goals.

(a) DOE shall set an energy conservation goal for each State for calendar year 1980 pursuant to § 364 of the ►SECP◄ Act.

(b) DOE may set interim goals for the States pursuant to § 364 of the ►SECP◄ Act.

(c) With regard to interim goals prescribed in accordance with paragraph (b) of this section, DOE shall specify the assumptions used in the determination of the projected energy consumption in each State, taking into account population trends, economic growth, and the effects of national energy conservation programs.

►(d) States shall submit annually an estimate of actual energy savings, by program measure, which have occurred as a result of providing program services (or portions thereof) funded by this grant program.◄

§ ►420.113◄ [420.7] Minimum criteria for required program measures for ►SECP◄ plans.

►An SECP◄ [A] plan shall satisfy all of the following minimum criteria for required program measures.

(a) Mandatory lighting efficiency standards for public buildings shall—

(1) Be under implementation throughout all political subdivisions of the State;

(2) Apply to all public buildings above a certain size, as determined by the State;

(3) For new public buildings, be no less stringent than provisions of section 9 of ASHRAE 90–75; and

(4) For existing public buildings, contain the elements deemed appropriate by the State.

(b) Program measures to promote the availability and use of carpools, vanpools and public transportation shall—

(1) Have at least one of the following actions under implementation in at least one urbanized area with a population of 50,000 or more within the State or in the largest urbanized area within the State if that State does not have an urbanized area with a population of 50,000 or more—

(i) A carpool/vanpool matching and promotion campaign;

(ii) Park-and-ride lots;

(iii) Preferential traffic control for carpoolers and public transportation patrons;

(iv) Preferential parking for carpools and vanpools;

(v) Variable working schedules;

(vi) Improvements in transit level of service for public transportation;

(vii) Exemption of carpools and vanpools from regulated carrier status;

(viii) Parking taxes, parking fee regulations or surcharge on parking costs;

(ix) Full-cost parking fees for State and/or local government employees;

(x) Urban area traffic restrictions;

(xi) Geographical or time restrictions on automobile use; or

(xii) Area or facility tolls; and

(2) Be coordinated with the relevant Metropolitan Planning Organization, unless no Metropolitan Planning Organization exists in the urbanized area, and not be inconsistent with any applicable Federal requirements.

(c) Mandatory standards and policies affecting the procurement practices of the State and its political subdivisions to improve energy efficiency shall—

(1) With respect to all State procurement and with respect to procurement of political subdivisions to the extent determined feasible by the State, be under implementation; and

(2) Contain the elements deemed appropriate by the State to improve energy efficiency through the procurement practices of the State and its political subdivisions.

(d) Mandatory thermal efficiency standards for new and renovated buildings shall—

(1) Be under implementation, with respect to all buildings other than exempted buildings, throughout all political subdivisions of the State;

(2) Take into account the exterior envelope physical characteristics, HVAC system selection and configuration, HVAC equipment performance and service water heating design and equipment selection;

(3) For all new commercial buildings, be no less stringent than a standard consistent with provisions of Section 4–9 of ASHRAE 90–75, unless the operation of Section 327 of the Energy Policy and Conservation Act, as amended, 42 U.S.C. 6297, renders reliance on such standard to be impracticable;

(4) For all new residential buildings, be no less stringent than either the HUD minimum property standards or a standard consistent with the provisions of sections 4–9 of ASHRAE 90–75, unless the operation of Section 327 of the Energy Policy and Conservation Act, as amended, 42 U.S.C. 6297, renders reliance on such standards to be impracticable; and

(5) For renovated buildings—

(i) Apply to those buildings determined by the State to be renovated buildings; and

(ii) Contain the elements deemed appropriate by the State regarding thermal efficiency standards for renovated buildings.

(e) A traffic law or regulation which permits the operator of a motor vehicle to make a right turn at a red light after stopping shall—

(1) Be in a State's motor vehicle code and under implementation throughout all political subdivisions of the State, except as provided in paragraph (e)(3) of this section;

(2) Permit the operator of a motor vehicle to make a right turn (left turn with respect to the Virgin Islands) at a red traffic light after stopping except where specifically prohibited by a traffic sign for reasons of safety or except where generally prohibited in an urban enclave for reasons of safety; and

(3) For any State without such traffic law or regulation in effect before December 31, 1978, be ready for

[17] § 420.4(d) redesignated as § 420.12(f).
[18] See footnote 2.
[19] See footnote 2.

implementation by June 27, 1979, and fully meet the requirements of paragraphs (e)(1) and (2) of this section thereafter.

§ ►420.114◄ [420.8] Minimum criteria for required program measures for supplemental ►SECP◄ plans.

A supplemental ►SECP◄ plan shall satisfy all of the following minimum criteria for required program measures.

(a) Procedures for carrying out a continuing public education effort to increase significantly public awareness of the energy and cost savings which are likely to result from the implementation, including implementation through group efforts, of energy measures shall—

(1) Be under implementation; and

(2) Provide a public awareness program regarding energy audits with respect to buildings and industrial plants which at least includes a campaign publicizing the availability of energy audits in at least one urbanized area with a population greater than 50,000 or in the largest urbanized area within a State if the State does not have an urbanized area within a State if the State does not have an urbanized area with a population of 50,000 or more. The campaign must make clear reference to the range of technical assistance available to the owner or occupant of the building or industrial plant and provide a point of contact with the organization administering the energy audits, including a telephone number;

(b) Procedures for carrying out a continuing public education effort to increase significantly public awareness of information and other assistance, including information as to available technical assistance, which is or may be available with respect to the planning, financing, installing, and monitoring the effectiveness of measures likely to conserve, or to improve efficiency in the use of energy, including energy measures shall—

(1) Be in place and under implementation; and

(2) Contain the elements considered appropriate by a State.

(c) Procedures for ensuring that effective coordination exists among various local, State and Federal energy conservation programs within and affecting such State, including the comprehensive energy extension service program, under 10 CFR Part [460,]►420, Subpart B◄ shall—

(1) Be in place and under implementation; and

(2) Contain provisions for activities considered appropriate by a State such as coordinating local and State agencies to prevent duplication of energy conservation activities or conducting public hearings to ensure tht individuals and groups concerned with program measures to be incorporated in ►an SECP◄ plan or supplemental ►SECP◄ plan and all other energy conservation programs in the State, shall be afforded the opportunity to participate in their development, implementation, and modification.

(d) Procedures for encouraging and for carrying out energy audits with respect to buildings and industrial plants shall—

(1) Be under implementation throughout all political subdivisions of the State;

(2) Be in accordance with subpart B of 10 CFR Part 450; and

(3) Provide and make available, to the extent feasible, Class A energy audits in at least one political subdivision for the buildings or industrial plants in at least one of the following categories and as many Class C energy audits as are practicable within the State in the remaining categories—

(i) Apartment buildings;

(ii) Educational institutions;

(iii) Hospitals;

(iv) Hotels and motels;

(v) Industrial plants;

(vi) Office buildings;

(vii) Restaurants;

(viii) Retail stories;

(ix) Transportation terminals; [and]

(x) Warehouses and storage facilities; [and]

►(xi) Fast food restaurants;

(xii) Public assemply buildings;

(xiii) Grocery stores; and

(xiv) Light industry; and◄

(4) Make available Class B or C audits to all individuals, as requested by such individuals, who are occupants of residential dwelling units in a State at no direct cost to those persons.

§ ►420.115◄ [420.9] Extensions for compliance with required program measures.

An extension of time by which a required program measure must be ready for implementation may be granted if DOE determines that the extension is justified. A written request for an extension, with accompanying justification and an action plan acceptable to for achieving compliance in the shortest reasonable time, shall be made to the appropriate Regional Representative. Any extension shall be only for the shortest reasonable time that DOE determines necessary to achieve compliance. The action plan shall contain a schedule for full compliance and shall identify and make the most reasonable commitment possible to provision of the resources necessary for achieving the scheduled compliance.

[§ 420.10 Administrative review.

(a) If the Regional Representative intends to deny an annual State application resubmitted by the Governor according to § 420.5(b) or refuses to accept an annual State application resubmitted by the Governor after the time period referred to in § 420.5(b) has expired, the Regional Representative shall give notice to the Governor.

(b) If the Regional Representative determines that implementation of a State plan approved according to § 420.5 fails to meet the requirements of this part, the Secretary shall give notice to the Governor of his or her intent to terminate or suspend financial assistance to the grantee.

(c) The notice required by paragraphs (a) or (b) of this section shall be issued in writing by registered mail with return receipt requested and include—

(1) A statement of the reasons for the intended denial, termination or suspension of financial assistance;

(2) The date, place and time of a public hearing to be held by a review panel concerning the intended denial, termination or suspension of financial assistance, the hearing to be held within 15 working days after the date of receipt by the Governor of the notice; and

(3) The manner in which views may be presented.

(d) The Governor may submit written views with supporting data to the Regional Representative on or prior to the date of the public hearing and shall be offered an opportunity to make an oral presentation at the public hearing.

(e) The review panel shall be appointed by the Regional Representative and shall consist of three disinterested members.

(f) The review panel shall consider all relevant views and data submitted on or prior to the date of the public hearing. The review panel shall submit a written report containing its findings and recommendations to the Regional Representative within 10 working days after the date of the public hearing.

(g) The Regional Representative shall submit the report, together with his or her recommendations, to the Secretary within 5 working days after receipt of the report.

(h) The Secretary shall issue a final determination, accompanied by a statement of the reasons for the actions taken, within 10 working days after receipt of the submission from the Regional Representative.

(i) Upon issuance of the notice referred to in paragraphs (a) and (b) of this section, the Secretary may suspend financial assistance to the grantee pending a final determination. If the Secretary makes a final determination

adverse to the grantee, the Regional Representative shall terminate financial assistance to the grantee.] [20]

§ ►420.116◄ [420.11] Technical assistance.

At the request of the Governor of any State to DOE and subject to the availability of personnel and funds, DOE will provide information and technical assistance to the State in connection with effectuating the purposes of this part.

[§ 420.12 Recordkeeping.

Each State or other entity within a State receiving financial assistance under this part shall make and retain records required by the Secretary, including records which fully disclose the amount and disposition of financial assistance received; the cost of administration, the total cost of all activities for which assistance is given or used; the source and amount of any funds not supplied by the Secretary; and any data and information which the Secretary determines are necessary to protect the interests of the United States and to facilitate an effective financial audit and performance evaluation. The Secretary, or any of his or her duly authorized representatives, shall have access, until three years after the completion of the activities involved, to any books, documents, records or receipts which the Secretary determines are related or pertinent, either directly or indirectly, to financial assistance provided under this part.] [21]

[§ 420.13 Reports.

Each State receiving financial assistance under this part shall submit to the Regional Representative a quarterly program performance report and a quarterly financial status report. The report shall contain such information as the Secretary may prescribe in order to monitor effectively the implementation of a plan or supplemental plan. The reports shall be submitted to the Regional Representative within 30 days following the end of each calendar quarter.] [22]

§ ►420.117◄ [420.14] Prohibited expenditures.

Grants awarded under this part shall not be used directly or indirectly—

(a) To purchase equipment, other than office equipment, such as weatherization materials and law enforcement equipment;

(b) For construction, such as construction of mass transit systems and exclusive bus lanes;

(c) To subsidize fares for public transportation; or

(d) For subsidies for utility rate demonstrations or State insulation tax credits.

[§ 420.15 Administration of financial assistance.

Except where this part provides otherwise, the award and administration of this part will be governed by the following—

(a) Office of Management and Budget Circular A–102, entitled "Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments;"

(b) Office of Management and Budget Circular A–95, entitled "Evaluation, Review and Coordination of Federal and Federally Assisted Programs and Projects;"

(c) Federal Management Circular 73–2 (34 CFR 251), entitled "Audit on Federal Operations and Programs by Executive Branch Agencies;"

(d) Federal Management Circular 74–4 (34 CFR 255), entitled "Cost Principles Applicable to Grants and Contracts with State and Local Governments;"

(e) Office of Management and Budget Circular A–97, entitled "Rules and Regulations Permitting Federal Agencies to Provide Specialized or Technical Services to State and Local Units of Government under Title III of the Intergovernmental Coordination Act of 1968;"

(f) Treasury Circular 1082 Revised, entitled "Notification to States of Grant-in-Aid Information;"

(g) Treasury Circular 1075, entitled "Treasury Fiscal Requirements Manual;"

(h) DOE Assistance Regulations (10 CFR Part 600); and

(i) Such procedures applicable to this part as DOE may from time to time prescribe for the award or administration of financial assistance provided under this part.] [23]

►Subpart C◄ [Part 465]—Energy Extension Service

Sec.

Authority: National Energy Extension Service Act, enacted as Title V of the Energy Research and Development Administration Authorization Act of 1977, Title V of Pub. L. 95–39, 91 Stat. 191 *et seq.*, 42 U.S.C. 7001 *et seq.;* Department of Energy Organization Act, Pub. L. 95–91, 91 Stat. 965 *et seq.*, 42 U.S.C. 101 *et seq.;* Federal Grant and Cooperative Agreement Act of 1977, Pub. L. 95–224, 92 Stat. 3 *et seq.*, 41 U.S.C. 501 *et seq.;* E.O. 12009, 42 F.R. 46267; E.O. 12044, 43 F.R. 12660.

§ ►420.200◄ [465.1] Purpose and scope.

This ►sub◄ part contains the regulation adopted by DOE to establish a comprehensive Energy Extension Service program which shall—

(a) Establish a positive energy outreach program directed toward small businesses and individual energy users and the organizations that influence their energy consumption;

(b) Stimulate, provide for and supplement programs for the conduct of evaluation, planning and other technical assistance of energy conservation efforts, including energy outreach activities of States; and

(c) Provide financial and technical assistance to the States for State ►EES◄ plans which contribute to the implementation of the comprehensive Energy Extension Service program.

§ ►420.201◄ [465.2] Definitions.

As used in this ►sub◄part—

["Act" means the National Energy Extension Service Act, Title V of Pub. L. 95–39, 42 U.S.C. 7001 *et seq.*] [7]

"Barriers to energy conservation" means problems or obstacles identified by small energy users which prevent or hinder them from adopting conservation techniques and technologies.

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[20] See footnote 3.
[21] See footnote 4.
[22] See footnote 5.

[23] See footnote 6.

[1] §465.7(a) is deleted; §465.7(b), (c) (1), (2), (3) and (d) incorporated in § 420.12; §465.7(c) (4) and (6) redesignated as § 420.213(a) (9) and (10); § 420.7(c) (5) redesignated as § 420.211(b).

[2] §465.9(a) redesignated as § 420.211(c); §465.9(b) incorporated in § 420.14(c).

[3] §465.11 incorporated in § 420.15 except §465.11(j) which is redesignated as § 420.214(f).

[4] §465.13 redesignated as § 420.17.

[5] §465.14 incorporated in § 420.16.

[6] §465.15 incorporated in § 420.18.

[7] "Act" amended to read "EES Act", and realphabetized in § 420.201.

"Building" means any structure which includes provisions for a heating, cooling or hot water system, or which is used as a residential dwelling unit.

"Community action agency" means a private corporation or public agency established pursuant to the Economic Opportuntiy Act of 1964, Pub. L. 88–452, 42 U.S.C. 2701 *et seq.*, which is authorized to administer funds received from Federal, State, local or private funding entities to assess, design, operate, finance and oversee antipoverty programs.

"Conservation techniques and technologies" means actions likely to result in energy conservation.

"Director" means the Director of the EES office of DOE.

["DOE" means the Department of Energy.] [8]

"Energy audit" means a procedure to measure the consumption or cost of energy in order to identify conservation techniques and technologies in a building or industrial process.

"EES" means Energy Extension Service.

►"EES Act" means the National Energy Extension Service Act, Title V of Pub. L. 95–39, 42 U.S.C. 7001 *et seq.*◄

"EES office" means the national office of DOE established to develop and carry out the comprehensive EES program in accordance with the provisions of this part.

"Energy conservation" means energy conservation, efficient energy use or the utilization of renewable energy resources.

["Governor" means the chief executive officer of a State and the Mayor of the District of Columbia, or a person duly designated in writing by the Governor to act upon his or her behalf.

"Grantee" means a State or entity of the State named in the notice of grant award as the recipient of financial assistance provided under this part.

"Regional Representative" means the Regional Representative of the Secretary.] [9]

"SECP ►plans◄"means the State energy conservation ►program◄ plans developed and implemented pursuant to ►Subpart B◄ [10 CFR 420.]

["Secretary" means the Secretary of the Department of Energy.] [10]

"Service" means technical assistance, instruction, information dissemination, energy audit or a practical demonstration concerning one or more conservation techniques and technologies.

"Small business" means an independently owned concern which together with its affiliates is not dominant in its field and either does not have average annual receipts for the last three years of more than $12 million or does not have more than 400 employees.

"Small energy users" mean residential consumers, individuals and groups of individuals, small businesses including agricultural and commercial establishments, and units of State and local governments.

"Special State project" means a unique or innovative activity which is likely to being about energy conservation in furtherance of the objectives of the Act, and which is not party of the State ►EES◄ plan.

["State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.] [11]

►"State EES plan" means a State Energy Extension Service plan including the requirements of § 420.115 and otherwise meeting the applicable provisions of this subpart.◄

"State ►EES◄ program" means a set of related services provided to a target audience which is used to implement a portion of a State ►EES◄ plan.

"Target audience" means the persons intended to receive services provided under a State ►EES◄ program.

"Technical assistance" means assistance ►provided by DOE◄, other than direct financial assistance, including instruction, expert advice, information dissemination and practical demonstrations.

"Technical support" means activities provided by a State, such as specialized analyses, preparation of materials, training or other activities, which are necessary to implement a State ►EES◄ plan effectively.

§ ►420.210◄[465.3] Comprehensive Energy Extension Service program.

(a) DOE has established the EES office [,administered by a Director,] to develop and carry out the comprehensive EES program established by this part.

(b) The comprehensive EES program shall identify, develop and demonstrate in a practical manner, opportunities for energy conservation. This program shall be developed and implemented with particular regard for increasing the capability of small energy users to make informed energy decisions.

(c) The Director shall implement the comprehensive EES program by—

(1) Carrying out activities, through technical assistance where appropriate, for the identification, development and practical demonstration of opportunities for energy conservation;

(2) Collecting information and undertaking actions to eliminate barriers to energy conservation identified by small energy users;

(3) Carrying out activities that shall encourage the sharing of information, experience and materials among the States regarding the comprehensive EES program;

(4) Providing financial assistance through the Regional Representative for the implementation of a State ►EES◄ plan, and

(5) Providing technical assistance for the development, implementation or modification of a State ►EES◄ plan.

(d) The Director shall take such steps as he or she may determine to be necessary to minimize conflict between existing services in the private sector that are similar to the services provided under the comprehensive EES program. For this purpose, the Director shall at least once a year—

(1) Consult with the National Advisory Board, referred to in ►§ 420.216◄ [465.5]; and

(2) After publishing a notice of inquiry and public meeting in the **Federal Register**, obtain written and oral comments from the public.

[§ 465.4 Comprehensive program and plan for Federal energy education, extension and information activities.] [12]

§ 465.5 National Advisory Board.

(a) The Secretary shall appoint a National Advisory Board which shall consist of not less than 15 nor more than 20 members. The members shall include persons representative of the interests of State, county, and local governments, State universities, community colleges, community action agencies, energy users, small businesses and agriculture.

(b) The Secretary shall designate one member of the Board to serve as Chairman and shall provide the Board with the services and facilities, as may be necessary to carry out its functions.

(c) The Board shall carry on a continuing review of the operation of the comprehensive EES program established by § 465.3 and the State plans approved by the Regional Representative according to § 465.9, for the purpose of evaluating their effectiveness in achieving the objectives of the Act and determining how their operation might

[8] "DOE" relocated in § 420.01.

[9] "Governor", "grantee", and "Regional Representative" relocated in § 420.01.

[10] "Secretary" relocated in § 420.01.

[11] "State" relocated in § 420.01.

[12] § 465.4 redesignated as § 420.215.

be improved in order to further these objectives.

(d) The Board shall report annually to the Congress, the Secretary, and the Director on the status of the comprehensive EES program, including any recommendations the Board may have for administrative or legislative changes needed to improve operation of the comprehensive EES program.

(e) The Secretary shall reimburse Board members for the full amount of any expenses necessarily incurred by them in the performance of their duties as such.] [13]

§ ►420.211◄[465.6] Financial assistance.

(a) The Regional Representative shall provide financial assistance [,] ►under this subpart◄ [on a calendar year basis,] from funds available ►to conduct a comprehensive EES program◄ for any fiscal year to each State having an [approved] annual ►coordinated State grant◄ application ►approved for carrying out a State EES plan, in accordance with § 420.14◄ [according to § 465.9].

[(b) Financial assistance shall be allocated among the States from funds available for any fiscal year based on the following formula—

(1) One-half shall be divided equally among all States; and

(2) One-half shall be divided on the basis of the State's population as reported by the Department of Commerce, Bureau of Census, in the most recent decennial census.

(c) If a State's allocation of financial assistance is not obligated by the Regional Representative during the fiscal year, the allocation shall be reallocated among the States for the next calendar year according to paragraph (b) of this section.

(d) Notwithstanding the provisions of paragraph (b) of this section, the Director may reserve from the funds appropriated for any fiscal year an amount to provide financial assistance to States for special State projects. This amount shall be determined by the Director, but in no event shall exceed 10 percent of the appropriated funds.] [14]

►(b) To be eligible for financial assistance under this subpart, a State shall submit a coordinated State grant application in accordance with § 420.12 and shall include with the application:

(1) A State EES plan as required by § 420.213, and◄

►(2) As part of the submission required by § 420.13(e), a written summary and chronology of the procedures which were used to provide organizations and individuals with opportunity to comment on the State EES plan prior to or during its development. The opportunity to comment shall be provided to representatives of energy users and producers, State, county, and local officials, State universities and community colleges, cooperative extension services, community action agencies and other public, private or non-profit organizations which are involved in active energy outreach activities. The written summary shall include—

(i) The name of the organizations afforded an opportunity to comment; and

(ii) How the comments received affected the contents of the State EES plan.◄

►(c) The Regional Representative shall provide financial assistance under this subpart if he or she determines in accordance with § 420.14 that—

(1) The State EES plan meets the objectives of the EES Act;

(2) The annual coordinated State grant application and the State EES plan meet the requirements of § 420.212 and § 420.213 respectively; and

(3) Implementation of the State EES plan by the State conforms to the requirements of this subpart.◄

►§ 420.212 Allocation of financial assistance.◄

►(a) Financial assistance under this subpart shall be allocated among the States from funds available to conduct a comprehensive EES program for any fiscal year based on the following formula—

(1) One-half shall be divided equally among all States; and

(2) One-half shall be divided on the basis of the State's population as reported by the Department of Commerce, Bureau of Census, in the most recent decennial census.◄

►(b) If a State's allocation of financial assistance is not obligated by the Regional Representative during the fiscal year, the allocation may be reallocated among the States for the next budget period according to paragraph (a) of this section.

(c) Notwithstanding the provisions of paragraph (a) of this section, the Director may reserve from the funds appropriated for any fiscal year under this subpart an amount to provide financial assistance to States for special State projects. This amount shall be determined by the Director, but in no event shall exceed ten percent of the appropriated funds.◄

[§ 465.7 Annual State applications.

(a) The Regional Representative shall send a copy of the regulation to the Governor of each State and invite him or her to submit the first annual State application.

(b) To be eligible for financial assistance under this part, a State shall submit an original and two copies to the Regional Representative of an annual State application executed by the Governor. The first annual State application shall be submitted not later than February 19, 1980. Subsequent annual State applications shall be submitted on or before September 30 of the following years.

(c) An annual State application shall contain—

(1) The name and address of the grantee;

(2) The State plan or modifications of it, as required by § 465.8 (a) and (b) respectively;

(3) A budget and listing of milestones for the activities to be carried out in each of the State programs contained in the State plan by calendar quarters for the year in which financial assistance will be provided;] [15]

[(4) A description of policies and procedures employed by the State which assure that financial assistance provided under this part does not supplant the expenditure of State or local funds for the same purposes, but rather supplements Federal, State or local funds, and increases the expenditure of the State or local funds to the maximum extent practicable;] [16]

[(5) A written summary and chronology of the procedures which were used to provide organizations and individuals with opportunity to comment on the State plan prior to or during its development. The opportunity to comment shall be provided to representatives of energy users and producers, State, county and local officials, State universities and community colleges, cooperative extension services, community action agencies and other public, private, or non-profit organizations which are involved in active energy outreach activities. The written summary shall include—

(i) The name of the organizations afforded an opportunity to comment; and

(ii) How the comments received affected the contents of the State plan.] [17]

[(6) A description of anticipated environmental impacts of any services

[13] § 465.5 redesignated as § 420.216.

[14] § 465.6(b)(1)(2)(c)(d) redesignated as § 420.212(a)(1)(2)(b)(c).

[15] See footnote 1.

[16] Ibid.

[17] Ibid.

which include the modification of buildings or structures to provide a practical demonstration of conservation techniques and technologies.] [18]

[(d) The Governor may request an extension of the annual submission date by submitting a written request to the Regional Representative not less than 15 days prior to the date referred to in paragraph (b) of this section. The extension shall only be granted if, in the Regional Representative's judgment, acceptable and substantial justification is shown and the extension would further the objectives of the Act.] [19]

§ ►420.213◄ [465.8] [Submission and] Contents of State ►EES◄ plans.

[(a) A State shall submit a State plan with—

(1) The first annual State application; and

(2) The annual State application submitted every three years thereafter.

(b) A State shall submit, with the annual State application, modifications to the State plan, if appropriate, for the years not referred to in paragraph (a) of this section.

(c) A State plan shall be developed for a three year period and contain—] [20]

►(a) A State EES plan shall contain—◄

(1) A description of ►approaches to EES◄ [the objectives to be achieved for the three year period by implementation of the State plan], which shall include–

[(i) Why the objectives were selected, with particular reference to potential energy savings, increased use of renewable resources and the types and numbers of people affected;

(ii) How the State programs included in the State plan, and the emphasis and funding given to each, together represent a strategy to achieve these objectives;

(iii) How implementation of the State plan shall supplement and be coordinated with other energy conservation programs being carried out in the State with Federal funds or under other Federal laws, with particular reference to university programs providing extension services and the State's SECP; and] [21]

►(i)◄ [(iv)] How existing organizations, including State, local, university or other organizations, will be used to the optimum extent to assist in the implementation of the State ►EES◄ plan.

►(ii)◄ [(v)] How the State ►EES◄ plan provides for information dissemination to small businesses and addresses organizations which influence the energy consumption of small energy users; ►and◄

►(iii)◄ [(vi)] How the State ►EES◄ plan makes energy audits available to small energy users, within personnel and funding limitations;

(2) A description for each State ►EES◄ program in the State ►EES◄ plan, which shall include—

(i) The target audience, why it was selected and the estimated number of persons which the State ►EES◄ program expects to reach,

(ii) The services to be provided, including—

(A) How the services will meet the needs of the target audience;

(B) The conservation techniques and technologies to be used in each service;

(C) The type and estimated number of any energy audits if any are included; and

(D) The geographic areas in which the services shall be delivered and why these areas were selected;

(iii) Any technical support which is necessary to provide the services, including the organization that will provide the technical support and why the organization was selected; and

(iv) The organization which shall implement the State ►EES◄ program and any other organization which shall provide a service to the target audience, why the selection was made and the approximate number of any new personnel to be employed to implement the State ►EES◄ program;

(3) A description of the organization which shall administer the overall development and implementation of the State ►EES◄ plan, which shall include—

(i) Why the administering organization was selected,

(ii) The provisions made for coordination between the administering organization and any other organizations assisting in the implementation of the State ►EES◄ plan; and

(iii) The relationship between the administering organization and the grantee if the two are not the same;

(4) A description of the methods and procedures which shall be used to—

(i) Identify barriers to energy conservation from responses which shall be obtained from target audiences;

(ii) Communicate information concerning the barriers to energy conservation to organizations within the State that have the capability or authority to remove or influence the barriers; and

(iii) Periodically report the results of such communication to the target audiences identified in subparagraph ►(a)(4)(i)◄ [(c)(4)(i)] of this section;

(5) A description of the administrative procedures to be used in the implementation of the State ►EES◄ plan which shall include—

(i) The procedures to be used to respond to suggestions and inquiries from the public regarding energy conservation;

(ii) The procedures to be used to publicize and disseminate up-to-date and easily understood information on the services available to small energy users under the State ►EES◄ plan and under other Federal programs and activities of the State regarding conservation techniques and technologies; and

(iii) The system to be used to review, for technical accuracy, any publication or other material which the State shall prepare or use in a State ►EES◄ program;

(6) A description of the purpose, methods and procedures of the independent evaluation activities, if any, that the State shall undertake regarding the State ►EES◄ programs or services;

(7) A description of any additional technical support not described in subparagraph ►(a)(2)(iii)◄ [(c)(2)(iii)] of this section which is required to facilitate implementation of the State ►EES◄ plan. If existing organizations are not available to provide this additional technical support or the technical support identified in subparagraph ►(a)(2)(iii)◄ [(c)(2)(iii)], the State may propose to establish a technical support institute, at one or more colleges or universities designated by the Governor. The purpose of the technical support institute shall be to assist in the implementation of the State ►EES◄ plan by providing analyses and technical support which is required for effective implementation of the State ►EES◄ plan. If such an institute is proposed, the State shall provide a detailed justification which shall describe—

(i) Why the institute is needed;

(ii) How the institute specifically relates to the implementation of the State ►EES◄ plan; and

(iii) The purpose, location, size, and specific activities of the institute; and

(8)(i) A description of the procedures that the grantee will use to achieve timely implementation of the State ►EES◄ plan; and

(ii) An assurance that the grantee will maintain or require other participating entities within the State to maintain, and make available upon request to the Regional Representative, such records as the Secretary may require, with respect to the use and expenditures of

[18] Ibid.

[19] Ibid.

[20] § 465.8(a), and (b) and (c) is deleted.

[21] § 465.8(c) (1) (i), (ii) and (iii) incorporated in § 420.13(b) (2), (3) and (c).

financial assistance provided to the grantee, or to entities within the State, under this ►sub◄ part ►, in accordance with § 420.17◄.

►(9)◄ A description of policies and procedures employed by the State which assure that financial assistance provided under this part does not supplant the expenditure of State or local funds for the same purposes, but rather supplements Federal, State or local funds, and increases the expenditures of the State or local funds to the maximum extent practicable;

►(10)◄ A description of anticipated environmental impacts of any services which include the modification of buildings or structures to provide a practical demonstration of conservation techniques and technologies.

[§ 465.9 Approval of annual State applications and State plans.]

[(a) The Regional Representative shall review each timely State annual application and provide financial assistance if he or she determines that—

(1) The State plan meets the objectives of the Act;

(2) The annual State application and the State plan meet the requirements of § 465.7 and § 465.8, respectively; and

(3) Implementation of the State plan by the State conforms to the requirements of this part.][22]

[(b) If the annual State application is not approved according to paragraph (a) of this section, the Regional Representative shall return it to the State together with a written statement describing why the annual State application fails to meet the requirements of this part. The State shall have a reasonable time period, as determined by the Regional Representative, to amend its annual State application and submit it for reconsideration according to paragraph (a) of this section.] [23]

§ ►420.214◄ [465.10] Development and implementation of a State ►EES◄ plan by the Director.

(a) The Director shall develop a State ►ESS◄ plan which meets the requirements of § ►420.213◄ [465.8] if—

(1) A State does not submit an annual► coordinated State grant application ►[State application]◄ for financial assistance under this subpart in accordance with § 420.12◄ [§ 465.7]; or

(2) The Regional Representative finally disapproves an annual ►coordinated State grant application◄ [State application] ►for financial assistance under this subpart◄ according to § ►420.15◄ [465.11].

(b) Prior to developing a State ►EES◄ plan under this section, the Director shall provide written notice and an opportunity for comment to the Governor.

(c) A State ►EES◄ plan developed by the Director shall be transmitted to the Governor of the State and shall not be implemented for 90 days after the date of transmittal. Notwithstanding any provisions of this section to the contrary, no State ►EES◄ plan developed by the Director according to paragraph (a) of this section shall be implemented if the Governor, within the 90-day period, notifies the Secretary in writing of his or her objection to the implementation of the State ►EES◄ plan.

(d) In implementing a State ►EES◄ plan developed according to this section to which the Governor has not objected during the 90-day period referred to in paragraph (c) of this section, the Director shall make maximum use of regional, State or local organizations which deliver services which are appropriate for purposes of this ►sub◄ part. The Director shall coordinate his or her activities in implementing the State ►EES◄ plan with all other regional, State or local organizations which deliver services which are related to, but not directly involved in, the implementation of the State ►EES◄ plan.

(e) A State ►EES◄ plan developed by the Director for a State whose financial assistance has been terminated according to § ►420.18(i)◄ [465.11], shall provide for the continuation of all activities under the State ►EES◄ plan which meet the requirements of this ►sub◄ part.

►(f) If financial assistance to a grantee has been terminated, the Regional Representative may continue to provide financial assistance to persons other than the grantee to implement any acceptable provision of the State plan for the remainder of the ►budget period◄ [calendar year].◄

§ [465.11 Administrative review.

(a) If the Regional Representative intends to deny an annual State application resubmitted by the Governor according to § 465.9(b) or refuses to accept an annual State application resubmitted by the Governor after the time period referred to in § 465.9(b) has expired, the Regional Representative shall give notice to the Governor.

(b) If the Regional Representative determines that implementation of a State plan approved according to § 465.9 fails to meet the requirements of this part, the Secretary shall give notice to the Governor of his or her intent to terminate or suspend financial assistance to the grantee.

(c) The notice required by paragraphs (a) or (b) of this section shall be issued in writing by registered mail with return receipt requested and include—

(1) A statement of the reasons for the intended denial, termination or suspension of financial assistance including an explanation of whether any amendments or other actions would result in compliance with this part.

(2) The date, place and time of a public hearing to be held by a review panel concerning the intended denial, termination or suspension of financial assistance. The hearing shall be held within 15 working days after the date of the receipt by the Governor of the notice; and

(3) The manner in which views may be presented.

(d) The Governor may submit written views with supporting data to the Regional Representative on or prior to the date of the public hearing and shall be offered an opportunity to make an oral presentation at the public hearing.

(e) No person who is a member of the EES office shall be a member of the review panel. The review panel shall be appointed by the Regional Representative and shall consist of—

(1) One person generally representative of State interests other than a person who represents the interests of the State whose application is being considered;

(2) One person representative of DOE; and

(3) One person representative of the EES target audiences in the State affected.

(f) The review panel shall consider all relevant views and data submitted on or prior to the date of the public hearing. The review panel shall submit a written report containing its findings and recommendations to the Regional Representative within 10 working days after the date of the public hearing.

(g) The Regional Representative shall submit the report, together with his or her recommendations, to the Director and to the Secretary within 5 working days after receipt of the report.

(h) The Secretary shall issue a final determination, accompanied by a statement of the reasons for the action taken, within 10 working days after receipt of the submission from the Regional Representative.

(i) Upon issuance of the notice referred to in paragraphs (a) or (b) of this section, the Secretary may suspend financial assistance to the grantee pending a final determination. If the

[22] See footnote 2.
[23] See footnote 2.

Secretary makes a final determination adverse to the grantee, the Regional Representative may terminate continued financial assistance to the grantee.] [24]

[(j) If financial assistance to a grantee has been terminated, the Regional Representative may continue to provide financial assistance to persons other than the grantee to implement any acceptable provision of the State plan for the remainder of the calendar year.] [25]

§ ►420.215◄ [465.4] Comprehensive program and plan for Federal energy education, extension and information activities.

►(a) The Secretary shall prepare and annually revise a Comprehensive Program and Plan which shall be submitted to the President and each House of Congress as part of the annual DOE budget submission and the report required by section 657 of the DOE Organization Act (P.L. 95–91, 42 U.S.C. 7101 *et seq*).

(b) The Comprehensive Program and Plan shall describe the activities conducted under this subpart and serve as a mechanism for Federal Government-wide management and coordination of the activities conducted under this subpart with the energy education, extension and information activities of other Federal agencies. The Comprehensive Program and Plan shall include—

(1) Specific delineation of responsibility of the Federal agencies listed in paragraph (c) of this section in the conduct of this subpart;

(2) The manner in which activities conducted under this subpart will be coordinated with the energy-related activities of the Federal agencies listed in paragraph (c) of this section with a view toward achieving maximum coordination with such other activities;

(3) A detailed summary of all Federal energy education, extension and information activities, which shall include for each activity, objectives, a description, a listing of delivery mechanisms and a budget;

(4) Procedures for measuring the effectiveness of the activities conducted under this subpart and those described according to paragraph (b)(2) of this section, with reference to increased energy efficiency, fuel savings, adoption of new energy technologies and other appropriate criteria;

(5) An assessment of existing energy-related Federal incentives and assistance other than energy education, extension and information activities and the relationship of the incentives and assistance to energy education extension and information activities in achieving the objectives of this subpart;

(6) Procedures, with regard to organizations described in § 420.313(a)(1)(i), to minimize conflict with existing services in the private sector of the economy that are similar to the activities described according to paragraph (b)(3) of this section;

(7) A comprehensive and integrated plan for all Federal energy conservation outreach programs, taking into account paragraphs (b)(1)–(b)(7) of this section.

(c) In the preparation of the Comprehensive Program and Plan the Secretary shall consult with the Secretary of Housing and Urban Development, the Secretary of Agriculture, the Administrator of the Environmental Protection Agency, the Secretary of HEW, the Administrator of the Community Services Administration, the Secretary of Commerce, the Administrator of the Small Business Administration and the heads of other Federal agencies administering energy-related programs.◄

§ ►420.216◄ [465.5] National Advisory Board.

(a) The Secretary shall appoint a National Advisory Board which shall consist of not less than 15 nor more than 20 members. The members shall include persons representative of the interests of State, county, and local governments, State universities, community colleges, community action agencies, energy users, small businesses and agriculture.

(b) The Secretary shall designate one member of the Board to serve as Chairman and shall provide the Board with the services and facilities, as may be necessary to carry out its functions.

(c) The Board shall carry on a continuing review of the operations of the comprehensive EES program established by § 420.110 and the State EES plans approved by the Regional Representative according to § 420.14, for the purpose of evaluating their effectiveness in achieving the objectives of the EES act and determining how their operation might be improved in order to further these objectives.

(d) The Board shall report annually to the Congress, the Secretary, and the Director on the status of the comprehensive EES program, including any recommendations the Board may have for administrative or legislative changes needed to improve operation of the comprehensive EES program.

(e) The Secretary shall reimburse Board members for the full amount of any expenses necessarily incurred by them in the performance of their duties as such.

§ ►420.117◄ [465.12] Prohibited expenditures.

(a) No financial assistance provided to a State under this ►sub◄ part shall be used to—

(1) Construct or repair a building or structure;

(2) Purchase land, a building or structure or any interest therein; or

(3) Conduct, or purchase equipment to conduct, research and development or demonstration of conservation techniques and Technologies not commercially available.

(b) No more than 20 percent of the financial assistance awarded to a State under this ►sub◄ part shall be used to purchase equipment, office supplies or library materials. ►Title to equipment, office supplies and library materials purchased under a grant awarded pursuant to this subpart shall vest on the grantee upon acquisition and shall be subject to the conditions set forth in sections 6 and 7, attachment N, OMB Circular A–102.◄

(c) No more than 10 percent of the financial assistance provided to a State under this ►sub◄ part shall be used to conduct the independent evaluation activities authorized in § ►420.215(a)(6)◄ [465.8(c)(6)].

[§ 465.13 Recordkeeping.

Each State or other entity within a State receiving financial assistance under this part shall make and retain records required by the Secretary, including records which fully disclose the amount and disposition of financial assistance received; the cost of administration; the total cost of all activities for which assistance is given or used; the source and amount of any funds not supplied by the Secretary; and any data and information which the Secretary determines are necessary to protect the interests of the United States and to facilities an effective financial audit and performance evaluation. The Secretary, or any of his or her duly authorized representatives, shall have access, until three years after the completion of the activities involved, to any books, documents, records or receipts which the Secretary determines are related or pertinent, either directly or indirectly, to any financial assistance provided under this part.] [26]

[§ 465.14 Reports.

Each State receiving financial assistance under this part shall submit to the Regional Representative a

[24] See footnote 2.
[25] See footnote 3.
[26] See footnote 4.

quarterly program performance report and a quarterly financial statement. The program performance report shall contain such information as the Director may prescribe in order to monitor effectively the implementation of the State plan. The reports shall be submitted to the Regional Representative within 30 days following the end of each calendar quarter.] [27]

[§ 465.15 Administration of financial assistance.

Grants provided under this part shall comply with the requirements of—

(a) Office of Management and Budget Circular A–102, entitled "Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments;"

(b) Office of Management and Budget Circular A–95, entitled "Evaluation, Review and Coordination of Federal and Federally Assisted Programs and Projects;"

(c) Federal Management Circular 73–2 (34 CFR 255), entitled "Audit on Federal Operations and Programs by Executive Branch Agencies;"

(d) Federal Management Circular 74–4 (34 CFR 255), entitled "Cost Principles Applicable to Grants and Contracts with State and Local Governments;"

(e) Office of Management and Budget Circular A–97, entitled "Rules and Regulations Permitting Federal Agencies to Provide Specialized or Technical Services to State and Local Units of Governments under Title III of the Intergovernmental Coordination Act of 1968;"

(f) Treasury Circular 1082 Revised, entitled "Notification to States of Grant-in-Aid Information;"

(g) Treasury Circular 1075, entitled "Treasury Fiscal Requirement Manual;" and

(h) Other procedures which DOE or the Director may from time to time prescribe for the administration of financial assistance provided under this part.] [28]

►Subpart D◄ [Part 440]—Weatherization Assistance for Low-Income Persons

Sec.

Authority: Energy Conservation in Existing Buildings Act of 1976, as amended. 42 U.S.C. 6851 *et seq.;* Department of Energy Orgainzation Act, 42 U.S.C. 1701 *et seq.*

§ ►420.300◄ [440.1] Purpose and scope.

This ►sub◄ part contains the regulations adopted by the Department of Energy to carry out a program of weatherization assistance for low-income persons established by Part A of the Energy Conservation in Existing Buildings Act of 1976, 42 U.S.C. 6861 *et seq.*, enacted as Title IV of the Energy Conservation and Production Act, Pub. L. 94–385, 90 Stat. 1125 *et seq.*, and amended by Title II, Part 2, of the National Energy Conservation Policy Act, Pub. L. 95619, 92 Stat. 3206 *et seq.*

§ 440.2 Administration of grants.

(a) Grant awards under this Part shall be administered in accordance with the following—

(1) Federal Management Circular 73–2, 34 CFR 251, entitled "Audit on Federal Operations and Programs by Executive Branch Agencies;"

(2) Federal Management Circular 74–4, 34 CFR 256 entitled "Cost Principles Applicable to Grants and Contracts with State and Local Governments;"

(3) Federal Management Circular 74–7, 34 CFR 256, entitled "Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments;"

(4) Office of Management and Budget Circular A–89, entitled "Catalog of Federal Domestic Assistance;"

(5) Office of Management and Budget Circular A–95, entitled "Evaluation, Review and Coordiantion of Federal and Federally Assisted Programs and Projects;"

(6) Office of Management and Budget Circular A–97, entitled "Rules and Regulations Permitting Federal Agencies to Provide Specialized or Technical Services to State and Local Units of Government under Title III of the Intergovernmental Coordination Act of 1968,"

(7) Treasury Circular 1082, entitled "Notification to States of Grant-in-Aid Information;"

(8) DOE Assistance Regulations (10 CFR 600); and

(9) Such procedures applicable to this part as DOE may from time to time prescribe for the administration of grants.

(b) Tools and equipment acquired with grant funds provided under this part shall be the property of the grantee, as more particularly provided for by subparagraph (a)(3) of this section.[5]

§ ►420.301◄ [440.3] Definitions.

As used in this part—

["Act" means the Energy Conservation in Existing Buildings Act of 1976, as amended, 42 U.S.C. 6851 *et seq.*] [6]

"CAA" means a Community Action Agency.

"CETA" means the Comprehensive Employment and Training Act of 1973, 29 U.S.C. 801 *et seq.* (Supp. 1980).

"Community Action Agency" means a private corporation or public agency established pursuant to the Economic Opportunity Act of 1964, Pub. L. 88–452, which is authorized to administer funds received from Federal, State, local or private funding entities to assess, design, operate, finance and oversee antipoverty programs.

"Cooling degree days" means a population-weighted annual average of the climatological cooling degree days for each weather station within a State, as determined by DOE.

"Director" means the Director of the Community Services Administration.

["DOE" means the Department of Energy.] [7]

"Dwelling unit" means a house, incuding a stationary mobile home, an apartment, a group of rooms, or a single room occupied as separate living quarters.

"Elderly person" means a person who is 60 years of age or older.

"Eligible State" means any of the forty-eight contiguous States, Alaska, or the District of Columbia.

"Family unit" means all persons living together in a dwelling unit.

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[27] See footnote 5.
[28] See footnote 6.
[1] § 440.2 incorporated in § 420.18 except § 440.2(b) which is redesignated as § 420.316(e).
[2] § 440.22 incorporated in § 420.17.
[3] § 440.23 redesignated as § 420.16.
[4] § 440.30 incorporated in § 420.15.
[5] See footnote 1. § 440.16(e).
[6] "Act" amended to read as "Weatherization Act" and realphabetized in § 420.301.
[7] "DOE" relocated in § 420.01.

[''Governor'' means the chief executive officer of a State, including the Mayor of the District of Columbia.

''Grantee'' means the State or other entity named in the Notification of Grant Award as the recipient.][8]

''Handicapped person'' means any individual—

(a) Who is a handicapped individual defined in section 7(6) of the Rehabilitation Act of 1973,

(b) Who is under a disability as defined in section 1614(a)(3)(A) or 223(d)(1) of the Social Security Act or in section 102(7) of the Developmental Disabilities Services and Facilities Construction Act, or

(c) Who is receiving benefits under chapter 11 or 15 of Title 38, United States Code.

''Heating degree days'' means a population-weighted seasonal average of the climatological heating degree days for each weather station within a State, as determined by DOE.

''Indian tribe'' means any tribe, band, nation or other organized group or community of Native Americans, including any Alaska native village, or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, Pub. L. 92–203, 85 Stat. 688, which—

(a) Is recognized as eligible for the special programs and services provided by the United States to Native Americans because of their status as Native Americans; or

(b) Is located on, or in proximity to a Federal or State reservation or rancheria.

''Local applicant'' means a CAA or unit of general purpose local government.

''Low income'' means that income relation to family size which—

(a) Is at or below 125 percent of the poverty level determined in accordance with criteria established by the Director of the Office of Management and Budget, except that the Secretary may establish a higher level if the Secretary, after consulting with the Secretary of Agriculture and the Director of the Community Services Administration, determines that such a higher level is necessary to carry out the purposes of this ►sub◄ part and is consistent with the eligibility criteria established for the weatherization program under section 222(a)(12) of the Economic Opportunity Act of 1964; or

(b) Is the basis on which cash assistance payments have been paid during the preceding 12-month period under Titles IV and XVI of the Social Security Act or applicable State or local law.

''Native American'' means a person who is a member of an Indian tribe.

''Number of low-income, renter-occupied dwelling units in the State'' means the number of such dwelling units in a State, as determined by DOE.

''Percentage of total residential energy used for space cooling'' means the national percentage of total energy used for space cooling, as determined by DOE.

''Percentage of total residential energy used for space heating'' means the national percentage of total energy used for space heating, as determined by DOE.

[''Regional Representative'' means a Regional Representative of DOE.][9]

''Rental dwelling unit'' means a dwelling unit occupied by a person who pays rent for the use of the dwelling unit.

''Repair materials'' means items necessary for the effective performance or preservation of weatherization materials. Repair materials include, but are not limited to lumber used to frame or repair windows and doors which could not otherwise be caulked or weatherstripped, and protective materials, such as paint, used to seal materials installed under this program.

[''Secretary'' means the Secretary of the Department of Energy.][10]

''Separate living quarters'' means living quarters in which the occupants do not live and eat with any other persons in the structure and which have either—

(a) Direct access from the outside of the building or through a common hall; or

(b) Complete kitchen facilities for the exclusive use of the occupants. The occupants may be a single family, one person living alone, two or more families living together, or any other group of related or unrelated persons who share living arrangements.

''Single-family dwelling unit'' means a structure containing no more than one dwelling unit.

''Skirting'' means material used to border the bottom of a dwelling unit to prevent infiltration.

[''State'' means each of the States and the District of Columbia.][11]

►''State Weatherization plan'' means a State Weatherization Assistance for Low-Income Persons plan including the requirements of § 420.314 and otherwise meeting the applicable provisions of this subpart.◄

''Sub-grantee'' means a weatherization project which receives a grant of funds awarded under this ►sub◄ part from a grantee.

''Tribal organization'' means the recognized governing body of any Indian tribe, or any legally established organization of Native Americans which is controlled, sanctioned, or chartered by such governing body.

''Unit of general purpose local government'' means any city, county, town, parish, village, or other general purpose political subdivision of a State.

►''Weatherization Act'' means the Energy Conservation in Existing Buildings Act of 1976, as amended, 42 U.S.C. 6851 *et seq.*◄

''Weatherization materials'' mean—

(a) Caulking and weatherstripping of doors and windows;

(b) Furnace efficiency modifications limited to—

(1) Replacement burners designed to substantially increase the energy efficiency of the heating system;

(2) Devices for modifying flue openings which will increase the energy efficiency of the heating system; and

(3) Electrical or mechanical furnace ignition systems which replace standing gas pilot lights;

(c) Clock thermostats;

(d) Ceiling, attic, wall, floor, and duct insulation;

(e) Water heater insulation;

(f) Storm windows and doors, multiglazed windows and doors, heat-absorbing or heat-reflective window and door materials; and

(g) The following insulating or energy conserving devices or technologies—

(1) Skirting;

(2) Items to improve attic ventilation;

(3) Vapor barriers;

(4) Materials used as a patch to reduce infiltration through the building envelope; and

(5) Water flow controllers.

§ ►420.310◄ [440.10] ►Financial assistance and allocation of financial assistance► [Allocation of funds].

(a) DOE shall allocate financial assistance for each State from sums appropriated for any fiscal year, only upon annual application.

(b) DOE shall determine the tentative allocation for each State from available funds as follows—

(1) The first five million dollars appropriated shall be divided equally among the eligible States; an additional one hundred thousand dollars shall be allocated to Alaska;

(2) The percentage of the remaining available funds allocated to each eligible State shall be determined by the following formula—

[8] ''Governor'' and ''grantee'' relocated in § 420.01.

[9] ''Regional Representative'' relocated in § 420.01.

[10] ''Secretary'' relocated in § 420.01.

[11] ''State'' relocated in § 420.01.

(i) The square of the number of heating degree-days in a State multiplied by the percentage of total residential energy used for space heating;

(ii) Plus the square of the number of cooling degree-days in the State multiplied by the percentage of total residential energy used for space cooling;

(iii) Multiplied by the sum of the number of low-income, owner-occupied dwelling units in the State and one-half of the number of low-income, renter-occupied dwelling units in the State;

(iv) Divided by the sum of the result produced for all States by the computation outlined in subparagraphs (i), (ii), and (iii) of this paragraph; and

(v) Multiplied by 100.

(c) DOE may reduce the tentative allocation for a State by the amount DOE determines cannot reasonably be expended by a grantee to weatherize dwelling units during the budget period for which financial assistance is to be awarded. In reaching this determination, DOE will consider the amount of unexpended financial assistance currently available to a grantee under this ►sub◄ part and the number of dwelling units which remain to be weatherized with the unexpended financial assistance.

(d) DOE may increase the tentative allocation of a State by the amount DOE determines the grantee can expend to weatherize additional dwelling units during the budget period for which financial assistance is to be awarded.

(e) The Regional Representative shall notify each eligible State of the tentative allocation for which that State is eligible to apply.

§►420.311◄[440.11] Native Americans.

(a) Notwithstanding any other provision of this ►sub◄ part, the Regional Representative may determine, after taking into account the amount of funds made available to a State to carry out the purposes of this ►sub◄ part, that—

(1) The low-income members of an Indian tribe are not receiving benefits under this part equivalent to the assistance provided to other low-income persons in the State under this ►sub◄ part; and

(2) The members of such tribe would be better served by means of a grant made directly to provide such assistance.

(b) In any State for which the Regional Representative shall have made the determination referred to in paragraph (a) of this section, the Regional Representative shall reserve from the sums that would otherwise be allocated to the State under this ►sub◄ part not less than 100 percent, nor more than 150 percent, of an amount which bears the same ratio to the State's allocation for the fiscal year involved as the population of all low-income Native Americans for whom a determination under paragraph (a) of this section has been made bears to the population of all low-income persons in the State.

(c) The Regional Representative shall make the determination prescribed in paragraph (a) of this section in the event a State shall—

(1) Not apply within the 90 day-time period prescribed in §►420.312◄ [440.12](a);

(2) Recommend that direct grants be made for low-income members of an Indian tribe as provided in §►420.312◄ [440.12](b)(10);

(3) File an application which DOE determines, in accordance with the procedures in §►420.15◄ [440.30], not to make adequate provision for the low-income members of an Indian tribe residing in the State, or

(4) Have received grant funds, and DOE determines, in accordance with the procedures in §►420.15◄ [440.30], that the State has failed to implement the procedures required by §►420.315(a)(7)◄ [440.15(a)(7)].

(d) Any sums reserved by the Regional Representative pursuant to paragraph (b) of this section shall be granted to the tribal organization serving the individuals for whom the determination has been made, or where there is no tribal organization, to such other entity as the Regional Representative determines is able to provide adequate weatherization assistance pursuant to this ►sub◄ part. Where the Regional Representative intends to make a grant to an organization to perform services benefiting more than one Indian tribe, the approval of each Indian tribe shall be a prerequisite for the issuance of a notice of grant award.

(e) Within 30 days after the Regional Representative has reserved funds pursuant to paragraph (b) of this section, the Regional Representative shall give written notice to the tribal organization or other qualified entity of the amount of funds reserved and its eligibility to apply therefor.

(f) Such tribal organization or other qualified entity shall thereafter be treated as a unit of general purpose to local government eligible to apply for funds here under, pursuant to the provisions of §►420.313◄ [440.13].

§►420.312◄ [440.12] Weatherization requirements for coordinated State grant applications [State applications].

(a) To be eligible for financial assistance under this ►sub◄ part, a State shall submit ►a coordinated State grant application in accordance with with § 420.12◄ [an application to DOE in conformity with the requirements of § 440.15 not later than 90 days after the date of notice to apply is received from the Regional Representative]. The Regional Representative shall review each timely ►coordinated State grant application in accordance with §420.14◄ [State application] and, if the submission otherwise complies with the applicable provisions of ►subpart A and of◄ this ►sub◄ part, ►provide financial assistance◄ [approve a final budget and issue a notice of grant award].

(b) Each ►coordinated State grant◄ application shall include—

[(1) The name and address of the State agency or office responsible for administering the program;]

►(1)◄ [(2)] A copy of the final State ►Weatherization◄ plan prepared after notice and a public hearing in accordance with §►420.314(a)◄ [440.14(a)], except that an application by a local applicant need not include a copy of the final State ►Weatherization◄ plan;

►(2)◄ [(3)] A detailed description of the manner in which the minimum program requirements of §►420.315◄ [440.15] will be met;

►(3)◄ [(4)] The budget for total funds applied for under ►this subpart◄ [The Act] which shall include a justification and explanation of any amounts requested for expenditure pursuant to § ►420.316 ◄[440.16];

►(4)◄ [(5)] the total number of dwelling units proposed to be weatherized with grant funds during the budget period for which assistance is to be awarded—

(i) With financial assistance previously obligated under this ►sub◄ part; and

(ii) With the tentative allocation to the State;

►(5)◄ [(6)] A production schedule ► to be shown as milestones required in § 420.12(d)(3)(i) ◄ which shall indicate the number of dwelling units which are expected to be weatherized for each month during the budget period,

►(6)◄ [(7)] An estimate of the number of single-family and multi-family dwelling units to be weatherized;

►(7)◄ [(8)] An estimate of the minimum number of dwelling units to be weatherized where elderly persons reside;

►(8)◄ [(9)] An estimate of the minimum number of dwelling units to be weatherized where handicapped persons reside;

►(9)◄ [(10)] An estimate of the minimum number of dwelling units to be weatherized where Native Americans reside, or a recommendation that a tribal organization be treated as a local applicant eligible to submit an application pursuant to § ► 420.313(b)◄ [440.13(b)];

►(10)◄ [(11)] A management plan showing how labor, program support and materials will be provided in a timely manner to achieve the production schedule provided in accordance with subparagraph ►(b)(5)◄ [(b)(6)] of this section;

►(11)◄ [(12)] Any determination made in accordance with § ►420.314(d) ◄[440.14(d)] not to provide funds and the reasons for such determination, except that an application by a local applicant need not include this information; and

►(12) ◄[(13)] Any further information which the Secretary finds necessary to determine whether an application meets the requirements of this part.

►§ 420.313◄ [440.13] Local applications.

(a) The Regional Representative shall give written notice to all local applicants throughout a State of their eligibility to apply for financial assistance under this ►sub◄ part in the event—

(1) A State, within which a local applicant is situated, fails to submit an ►annual coordinated State grant◄ application ►for financial assistance under this subpart◄ [within 90 days after notice] in accordance with § ►420.312(a)]◄ [440.12(a)]; or

(2) The Regional Representative finally disapproves the application of a State pursuant to § ►420.15◄ [440.30 of this part].

(b) To be eligible for financial assistance, a local applicant shall submit an application pursuant to § ►420.312(b), and §§ 420.14(c) through 420.19◄ [440.12(b)] to the Regional Representative within 30 days after receiving the notice referred to in paragraph (a) of this section.

(c) In the event one or more local applicants submit a timely application, the Regional Representative shall combine the hearing on the proposed plan pursuant to § ► 420.314(a)◄ [440.14(a)] with a hearing on the intention to deny the timely application of one or more local applicants, as provided in § ► 420.15 ◄ [440.30], to the maximum extent practicable. Based upon the final plan developed by the Regional Representative, the hearing and information submitted by a local applicant and other interested persons, the Regional Representative shall determine whether or not to award a grant to a local applicant and the amount thereof. The Regional Representative may provide financial assistance to a local applicant to carry out one or more weatherization projects.

§ ►4209.314◄ [440.14] Administrative requirements.

(a) Before submitting an ► annual coordinated State grant ◄ application ►for financial assistance under this subpart◄, a State shall give not less than 10 days notice of hearing, reasonably calculated to inform prospective sub-grantees, and shall conduct one or more public hearings for the purpose of receiving comments on a proposed State ► Weatherization ◄ plan. The proposed State ► Weatherization ◄ plan, which shall identify the describe proposed weatherization projects including a statement of proposed sub-grantees and the amount each will receive, shall be published and made available throughout the State prior to the hearing. The notice for the hearing shall specify that copies of the ► State Weatherization ◄ plan are available and how they may be obtained. A transcript of the hearings shall be prepared and written submission of views and data shall be accepted for the record.

(b) Subsequent to the hearing, the State shall prepare a final ►State Weatherization ◄ plan which ► in addition to the information required in paragraph (a) of this section, ◄ shall identify and describe—

(1) Each area to be served by a weatherization project within the State and shall include for each area—

(i) The number of dwelling units to be weatherized;

(ii) The climatic conditions;

(iii) The type of weatherization work to be done;

(iv) The need for weatherization assistance among low-income persons;

(v) The amount of energy to be conserved;

(vi) Mechanisms for providing sources of labor;

(vii) An estimate of the number of eligible dwelling units in which the elderly reside; and

(viii) An estimate of the number of eligible dwelling units in which the handicapped reside;

(2) The manner in which the ► State Weatherization ◄ plan is to be implemented and shall include—

(i) An analysis of the existence and effectiveness of any weatherization project being carried out by a CAA;

(ii) An explanation of the method used to select each area to be served by a weatherization project;

(iii) The extent to which priority will be given to weatherization of single-family dwelling units for the elderly and handicapped.

(iv) The amount of non-Federal resources to be applied to the program;

(v) The amount of Federal resources, other than DOE weatherization grant funds, to be applied to the program;

(vi) The amount of weatherization grant funds allocated to the State under this ►sub◄ part;

(vii) The expected average cost per dwelling to be weatherized, taking into account the total number of dwellings to be weatherized and the total amount of funds, Federal and non-Federal, expected to be applied to program; and

(viii) The number of rental dwelling units to be weatherized by project, if any;

(3) The approach, including a list of measures to weatherize a dwelling unit, developed by the State in accordance with Project Retro-Tech, Conservation Paper Number 28, as revised July 1979, which shall be applied to each dwelling unit by a sub-grantee to determine the optimum set of cost-effective measures, within the allowable expenditures prescribed in § ►420.316◄ [440.16], to be installed in such dwelling unit.

(c) The ►State Weatherization◄ plan shall insure that funds received under the ►Weatherization◄ Act will be allocated to a CAA carrying out a program under Title II of the Economic Opportunity Act of 1964, 42 U.S.C. 2809, as amended, or to other appropriate and qualified entities in the State or geographical are so that—

(1) Funds will be allocated to areas on the basis of the relative need for a weatherization project by low-income persons, taking into account the factors referred to in paragraph (b)(1) of this section; and

(2) (i) Funds allocated to a geographical area served by an emergency energy conservation program carried out by a CAA under section 222(a)(12) of the Economic Opportunity Act of 1964, shall be allocated to the CAA; and

(ii) priority in the allocation of funds will be given to the CAA in so much of the geographical area served by it as is not served by the emergency energy conservation program.

(d) Paragraph (c)(2) of this section shall not apply if the Governor, or the Regional Representative acting pursuant to § ►420.313(c)◄ [440.13(c)], determines on the basis of a public hearing which may be part of the hearing provided under paragraph (a) of

this section that an emergency energy conservation program carried out by a CAA—

(1) Has been ineffective in meeting the purpose of the ►Weatherization◄ Act; or

(2) Is clearly not of sufficient size and cannot in timely fashion develop the capacity to support the scope of the project to be carried out in the area with funds to be granted under this ►sub◄ part.

(e) In making a determination pursuant to paragraph (d) of this section, the Governor, or the Regional Representative acting on behalf of the Governor pursuant to § ►420.313(c)◄ [440.13(c)], shall evaluate the performance of the CAA and shall consider—

(1) The extent to which the emergency energy conservation program being carried out achieves the goals of the program in a timely fashion;

(2) The quality of work performed;

(3) The number, qualifications and experience of staff members; and

(4) The ability to secure volunteers, training participants and public service employment workers, pursuant to CETA.

(f) Any eligible local applicant may request in its application that the Regional Representative determine that the allocation requirement and priority set forth in paragraph (c)(2) of this section shall not be applied. In this event, the Regional Representative shall decide whether to make the determination as part of the notice and public hearing procedure required by § ►420.15◄ [440.30], which hearing may be consolidated by the Regional Representative with the public hearing required by paragraph (a) of this section.

§ ►420.315◄ [440.15] Minimum program requirements.

(a) Prior to the expenditure of any grant funds each grantee shall develop, publish and implement procedures to insure that—

(1) No dwelling unit may be weatherized without documentation that the dwelling unit is an eligible dwelling unit as provided in § ►420.320◄ [440.20];

(2) Priority is given to identifying, and providing weatherization assistance to elderly and handicapped low-income persons and such priority as the applicant determines is appropriate is given to single-family or other, high energy-consuming dwelling units;

(3) Financial assistance provided under this ►sub◄ part will be used to supplement, and not supplant, State or local funds, and, to the maximum extent practicable as determined by DOE, to increase the amounts of these funds that would be made available in the absence of Federal funds provided under this ►sub◄ part;

(4) To the maximum extent practicable, the grantee will secure the services of volunteers, training participants and public service employment workers, pursuant to CETA, to work under the supervision of qualified supervisors and foremen;

(5) The limitations set forth in § ►420.314(c)◄ [440.14(c)] shall be complied with;

(6) To the maximum extent practicable, the use of weatherization assistance shall be coordinated with other Federal, State, local or privately funded programs in order to improve thermal efficiency and to conserve energy;

(7) The low-income members of an Indian tribe shall receive benefits equivalent to the assistance provided to other low-income persons within a State unless the grantee has made the recommendation provided in § ►420.312(b)(9)◄ [440.12(b)(10)]; and

(8) The list of measures to weatherize a dwelling unit, developed by the State in accordance with § ►420.314(b)(3)◄ [440.14(b)(3)], after approval by the Regional Representative, is included in copies of Project Retro-Tech which are furnished by the State to sub-grantees.

(b) A sub-grantee may weatherize a building containing rental dwelling units using financial assistance for dwelling units eligible for weatherization assistance under § ►420.320◄ [440.20], where—

(1) The sub-grantee has obtained the written permission of the owner or his agent;

(2) Not less than 66 percent of the dwelling units in the building—

(i) Are eligible dwelling units; or

(ii) Will become eligible dwelling units within 180 days, under a Federal program for rehabilitating the building or making similar improvments to the building; and

(3) The grantee has established procedures approved by the Regional Representative, to insure that—

(i) Rents shall not be raised because of the increased value of dwelling units due solely to weatherization assistance provided under this ►sub◄ part; and

(ii) No undue or excessive enhancement shall occur to the value of the dwelling units.

(c) Prior to the expenditure of any grant funds, a State policy advisory council shall be established by a State, or by the Regional Representative if a State does not participate in the program, which—

(1) Has special qualifications and sensitivity with respect to solving the problems of low-income persons, including the weatherization and energy conservation problems of these persons;

(2) Is broadly representative of organizations and agencies, including consumer groups, that represent low-income persons, particularly elderly and handicapped low-income persons and low-income Native Americans, in the State or geographical area in question; and

(3) Has responsibility for advising the appropriate official or agency administering the allocation of financial assistance in the State or area with respect to the development and implementation of a weatherization assistance program.

[(d) Recipients of DOE financial assistance awards which are provided under DOE Federal Assistance programs shall comply with Part 1040, Chapter X, Title 10 of the Code of Federal Regulations "Nondiscrimination in Federally assisted Programs" (proposed rule) (10 CFR Part 1040) as published in the Federal Register Volume 43, Number 222, Thursday, November 16, 1978 (pages 53658 through 53676) and when published, as a final rule. 10 CFR Part 1040 provides that no person shall on the ground of race, color, national origin, sex, handicap, or age be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment, where the main purpose of the program or activity is to provide employment or when the delivery of program services is affected by the recipient's employment practices, in connection with any program or activity receiving Federal assistance from the DOE.][12]

§ ►420.316◄[440.16] Allowable expenditures.

(a) To the maximum extent practicable, the grant funds provided under this ►sub◄ part shall be used for the purchase of weatherization materials and related matter described in subparagraph (1). Allowable expenditures under this ►sub◄ part include only—

(1) A maximum of $1,000 for any dwelling unit, except as provided in paragraph (d) of this section, for—

(i) The cost of purchase and delivery of weatherization materials;

(ii) The amount per dwelling unit, determined by a grantee and approved by the Regional Representative, for the cost of program support and labor consisting of—

[12] § 440.15(d) redesignated as § 420.19.

(A) Transportation of weatherization materials, tools, equipment, and work crews to a storage site and to the site of weatherization work;

(B) Maintenance, operation, and insurance of vehicles used to transport weatherization materials;

(C) Maintenance of tools and equipment;

(D) Purchase or annual lease of tools, equipment, and vehicles, except that any purchase of vehicles shall be referred to DOE for prior approval in every instance;

(E) Employment of on-site supervisory personnel;

(F) Labor costs, in accordance with §►420.317◄ [440.17]; and

(G) Storage of weatherization materials;

(iii) The cost, not to exceed $100 per dwelling unit, of incidental repairs, including repair materials and repairs to the heating source necessary to make the installation of weatherization materials effective;

(2) The cost of liability insurance for weatherization projects for personal injury and for property damage;

(3) Allowable administrative expenses under paragraph (b) of this section; and

(4) The cost of carrying out low cost/no cost weatherization activities in accordance with §►420.318◄ [440.18].

(b) Not more than 5 percent of each grant made pursuant to this ►sub◄ part may be used for the administrative expenses of the grantee, and not more than 5 percent of each amount allocated to a sub-grantee under this ►sub◄ part may be used for administrative expenses of the sub-grantee. Allowable administrative expenses shall include any labor costs other than labor costs in accordance with subparagraphs (a)(1)(ii)(E) and (F) of this section.

(c) No grant funds awarded under this ►sub◄ part shall be used for any of the following purposes—

(1) To install or otherwise provide weatherization materials for a dwelling unit weatherized previously with grant funds under subparagraph (a)(1) of this section unless such dwelling unit has been damaged by fire, flood, or act of God and repair of the damage to weatherization materials is not paid for by insurance; or

(2) To weatherize a dwelling unit which is designated for acquisition or clearance by a Federal, State, or local program within twelve months from the date weatherization of the dwelling unit would be scheduled to be completed.

(d) The limitation of $1,000 described in paragraph (a) of this section—

(1) Shall not apply if the State policy advisory council requests a greater amount be provided for specific categories of units or materials in the State, and the Regional Representative approves the requests; and

(2) Shall be deemed to have been requested and approved under §415(c)(2) of the ►Weatherization◄ Act, unless the State policy advisory council notifies the Regional Representative to the contrary in writing within 30 days of submission of the annual State application.

►(e) Tools and equipment acquired with grant funds provided under this subpart shall be the property of the grantee, as more particularly provided for by § 420.18(a)(2).◄

§►420.317◄[440.17] Labor.

(a) Payments for labor costs under §►420.316(a)(1)(ii)(F)◄[440.16(a)(1)(ii)(F)] shall consist of—

(1) Payments permitted by the Department of Labor to supplement wages paid to training participants and public service employment workers pursuant to CETA; and

(2) Payments to employ labor (particularly persons eligible for training under CETA) or engage a contractor (particularly a non-profit organization or a business owned by disadvantaged individuals which performs weatherization services), to install weatherization materials, provided a grantee has determined an adequate number of volunteers and training participants and public service employment workers, assisted pursuant to CETA, are not available to weatherize dwellings units for a sub-grantee under the supervision of qualified supervisors.

(b) The Regional Representative may increase the limitation of $1,000 per dwelling unit described in §►420.316(a)◄[440.16(a)] to not more than $1,600 per dwelling unit to cover costs referred to in paragraph (a) of this section in an area where the Regional Representative, based upon satisfactory documentation, determines that there are an insufficient number of volunteers and training participants and public service employment workers, assisted pursuant to CETA, available to weatherize dwelling units for a sub-grantee under the supervision of qualified supervisors.

§►420.318◄[440.18] Low cost/no cost weatherization activities.

(a) An eligible dwelling unit may be weatherized without regard to the limitations contained in §►420.316(c)(1)◄[440.16(c)(1)]or §►420.319(b)◄[440.19(b)] from funds designated by the grantee for carrying out low cost/no cost weatherization activities, provided—

(1) Inexpensive weatherization materials are used such as water flow controllers or items which are primarily directed towards reducing infiltration, including weatherstripping, caulking, glass patching and insulation for plugging; an

(2) No labor paid with funds provided under this ►sub◄ part is used to install weatherization materials referred to in paragraph (a)(1) of this section.

(b) A maximum of 10 percent of the amount allocated to a sub-grantee and not to exceed $50 per dwelling unit may be expended to carry out low cost/no cost weatherization activities, unless the Regional Representative approves a higher expenditure per dwelling unit.

§►420.319◄[440.19] Standards and techniques for weatherization.

(a) Only weatherization materials which meet or exceed standards prescribed in Appendix A shall be purchased with funds provided under this ►sub◄ part.

(b) A weatherization project shall utilize the approaches to weatherization contained in Project Retro-Tech, Conservation Paper Number 28, as revised July 1979, including the energy conservation techniques therein.

§►420.320◄[440.20] Eligible dwelling units.

No dwelling unit shall be eligible for weatherization assistance under this ►sub◄ part unless it will be occupied in accordance with the provisions of §►420.315(b)(2)(ii)◄[440.15(b)(2)(ii)] or is occupied by a family unit—

(a) Whose income is at or below 125 percent of the poverty level determined in accordance with criteria established by the Director of the Office of Management and Budget, or

(b) Which contains a member who has received cash assistance payments under Title IV or XVI of the Social Security Act or applicable State or local law during the 12-month period preceding the determination of eligibility for weatherization assistance.

§►420.321◄[440.21] Oversight, training, and technical assistance.

(a) The Secretary and the appropriate Regional Representative, in coordination with the Director, shall monitor and evaluate the operation of projects carried out by CAA's receiving financial assistance under this ►sub◄ part through on-site inspections, or through other means, in order to insure the effective provision of weatherization assistance for the dwelling units of low-income persons.

(b) DOE shall also carry out periodic evaluations of a program and weatherization projects that are not

carried out by a CAA, and that are receiving financial assistance under this ►sub◄ part.

(c) The Secretary and the appropriate Regional Representative, the Comptroller General of the United States, and for a weatherization project carried out by a CAA, the Director or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, information, and records of any weatherization project receiving financial assistance under the ►Weatherization◄ Act.

(d) Each grantee shall conduct, on an annual basis, an audit of the pertinent records of any sub-grantee receiving financial assistance under this ►sub◄ part.

(e) The Secretary may reserve from the funds appropriated for any fiscal year an amount, not to exceed 10 percent, to provide, directly or indirectly training and technical assistance to any grantee or sub-grantee.

[§ 440.22 Recordkeeping.

Each grantee or sub-grantee receiving Federal financial assistance under this part shall keep such records as DOE shall require, including records which fully disclose the amount and disposition by each grantee and sub-grantee of the funds received, the total cost of a weatherization project of the total expenditure to implement the State plan for which such assistance was given or used, the source and amount of funds for such project or program not supplied by DOE and such other records as DOE deems necessary for an effective audit and performance evaluation. Such recordkeeping shall be in accordance with Federal Management Circular 74–7 and any further requirements of this regulation or which DOE may otherwise establish under the terms and conditions of a grant.] [13]

[§ 440.23 Reports.

DOE may require any recipient of financial assistance under this part to provide, in such form as may be prescribed, such reports or answers in writing to specific questions, surveys or questionnaires as DOE determines to be necessary to carry out its responsibilities or the responsibilities of the Director under this part.] [14]

[§ 440.39 Administrative review.

(a) If a timely application submitted by a State fails to meet the requirements of this part and the Regional Representative intends to deny the application, the Regional Representative shall return the application to the State together with a written statement of reasons therefore.

(b) The State will have a reasonable period, as determined by the Regional Representative, to amend its application and to resubmit it by a specified date for reconsideration.

(c) The Regional Representative shall give notice to the applicant in the event that the Regional Representative determines that—

(1) Any application resubmitted by a State in accordance with paragraph (b) of this section fails to comply with this regulation;

(2) Any application returned to a State pursuant to paragraph (a) of this section is not timely resubmitted as provided in paragraph (b); or

(3) The Regional Representative intends to deny the application of a local applicant.

(d) The Regional Representative shall give notice to a grantee in the event the Regional Representative finds there is a failure by the grantee to comply substantially with the provisions of the Act or this part.

(e) The Regional Representative shall issue such notice in the form of written notice mailed by registered mail, return receipt requested, to the State, local applicant grantee and other interested parties, including—

(1) A statement of reasons for a determination referred to in paragraph (c) or (d) of this section which the Regional Representative intends to make including an explanation whether any amendments or other actions would result in compliance with the regulation;

(2) The date, place, and time of public hearing to be held by the Regional Representative one subject of which shall be the proposed determination, which hearing shall in no event be later than 15 working days after the receipt of such notice; and

(3) The manner in which views may be presented.

(f) A party which has received notice under paragraph (e) of this section—

(1) May make a written submission of its views with supporting data and arguments to the Regional Representative on or prior to the date of the public hearing; and

(2) Shall be afforded an opportunity to make an oral presentation at the public hearing.

(g) The Regional Representative shall consider all relevant views and data including arguments and other submissions made at the public hearing. The Regional Representative shall make, not later than 5 working days after the public hearing, a final determination in writing stating the reasons for the determination.

(h) A State or local applicant or grantee may appeal in writing from an adverse final determination made by the Regional Representative under paragraph (g) of this section to the Secretary not later than 10 working days after receipt of the Regional Representative's determination. The Secretary shall have 21 working days to consider the appeal and take any action with respect thereto which he deems appropriate. Any action taken by the Secretary shall be the final determination of DOE.

If no action has been taken by the Secretary after the expiration of the 21-working-day period, the Secretary shall be deemed to have approved the determination of the Regional Representative.

(i) Anything herein to the contrary notwithstanding, the public hearing referred to in subparagraph (e)(2) of this section may be combined, at the discretion of the Regional Representative, with any other public hearing in the State conducted pursuant to this part.

(j) Upon issuance of the notice provided in paragraph (d), the Regional Representative may suspend payments to any grantee pending a final determination. If the Regional Representative makes a final determination of failure to comply, the grantee will be ineligible to participate in the program under this part unless and until the Regional Representative is satisfied that there is no longer a failure to comply.] [15]

[13] See footnote 2.

[14] See footnote 3.

[15] See footnote 4.

Appendix A.—Standards for Weatherization Materials

Material or product	Standards
Insulation—Mineral fiber:	
Blanket/batt	Conformance to F.S.[1] HH-I-521E and ASTM C665-70.
Board	Conformance to F.S. HH-I-526C and ASTM C612-70 or C726-72.
Duct material	Conformance to F.S. HH-I-558B.
Loose fill	Conformance to F.S. HH-I-1030A and ASTM C764-73.
Insulation—Mineral cellular:	
Aggregate board	Conformance to F.S. HH-I-529B.
Cellular glass	Conformance to F.S. HH-I-551E and ASTM C552-73.
Perlite	Conformance to F.S. HH-I-574A and ASTM C549-73.
Vermiculite	Conformance to F.S. HH-I-585B and ASTM C516-67.
Insulation—Organic fiber:	
Cellulose—Type I	Conformance to F.S. HH-I-515C and ASTM C739-73 (loose fill).
Cellulose—Type II	Conformance to ASTM C739-73 (loose fill) and fire safety requirements.[2]
Vegetable	Conformance to F.S. HH-I-528B and fire safety requirements.
Board and block	Conformance to F.S. LLL-I-535A and ASTM C208-72 and fire safety requirements.
Insulation—Organic cellular:	
Polystyrene board	Conformance to F.S. HH-I-524B and ASTM C578-69 and fire safety requirements.
Urethane board	Conformance to F.S. HH-I-530A and ASTM C591-69 and fire safety requirements.
Flexible unicellular	Conformance to F.S. HH-I-573B and ASTM C534-70 and fire safety requirements.
Insulation—Air spaces: Reflective	Conformance to F.S. HH-I-1252A.
Storm windows:	
Aluminum frame	Equivalent to ANSI A134.3-1972.
Wood frame	Conformance to Sec. 3 of NWMA Industry Standard I.S.2-73.
Rigid vinyl frame	Conformance to NBS Product Standard PS26-70 and performance guarantee.
Frameless plastic glazing	Required minimum thickness 6 mil (0.006 in).
Storm doors:	
Aluminum	Equivalent to ANSI A134.4-1972.
Wood:	
Pine	Conformance to Sec. 3 of NWMA I.S.5-73.
Fir, hemlock, spruce	Conformance to Sec. 3 of FHDA/5-75.
Hardwood veneered	Conformance to Sec. 3 of NWMA I.S.1-73.
Rigid vinyl	Conformance to NBS Product Standard PS26-70 and performance guarantee.
Caulks and sealants	Commercial availability.
Weatherstipping	Commercial availability.
Vapor barriers	Commercial availability.
Clock thermostats	Commercial availability.
Skirting	Commercial availability.
Items to improve attic ventilation	Commercial availability.
Materials used as a patch to reduce infiltration through the building envelope.	Commercial availability.
Water flow controller	Commercial availability, but not to exceed $5.00.
Replacement oil burners	UL 296/ANSI Z 96.2—1974 "Oil Burners" and ANSI Z 91.2—1976, entitled "Performance Requirements for Automatic Pressure Oil Burners of the Mechanical-Draft Type."

NOTES

[1] F.S. means Federal specifications as cited, copies of which may be obtained from Specifications Sales, Building 197, Washington Naval Yard, General Services Administration, Washington, D.C. 20407.

[2] For fire safety requirements, see Sec. 2.1.3.1 of NBSIR 75-795 which may be obtained from DOE.

Subpart E—Emergency Energy Conservation Program

Sec.

§ 420.400 Purpose and scope.

This subpart establishes procedures to enable a State to obtain financial assistance to develop, modify or implement the State's emergency conservation plan in accordance with 10 CFR Part 477.

§ 420.401 Definitions.

For purposes of this subpart—

"EECA Act" means the Emergency Energy Conservation Act of 1979, Pub. L. 96-102, 93 Stat. 749, 42 U.S.C. 8501 *et. seq.*

"State emergency conservation plan" means a plan containing emergency energy conservation measures (whether mandatory or voluntary) that is submitted by a State to the Secretary of Energy for approval in accordance with Subpart B of 10 CFR Part 477.

"Target" means the monthly emergency energy conservation target for a State for an energy source or sources established by the President pursuant to § 211 of the EECA Act.

§ 420.410 Financial assistance and allocation of financial assistance.

(a) The Regional Representative shall provide financial assistance under this subpart to States for developing or modifying emergency conservation plans in accordance with 10 CFR 477.13 or for implementing such a plan. The Regional Representative shall provide financial assistance for this program from funds made available for this purpose for any fiscal year. To receive financial assistance under this subpart, a State must have an approved annual coordinated State grant application in accordance with § 420.411.

(b) Financial assistance under this subpart shall be allocated among the States either for the development and modification or for the implementation of a State emergency conservation plan, or both, from funds made available for any fiscal year, using the formula prescribed in § 420.110(c).

(c) A State receiving financial assistance under this subpart shall provide matching funds from non-Federal sources in an amount prescribed by DOE which shall be not less than 20 percent of the amount awarded under this subpart. DOE may prescribe individual cost sharing requirements by emergency energy conservation measure.

(d) DOE may reallocate financial assistance from a State which is unable to meet the cost sharing percentage prescribed for it by the Regional Representative to those States which can meet their cost sharing percentages.

§ 420.411 Financial assistance applications.

(a) To receive financial assistance under this subpart to develop or modify a State emergency conservation plan—

(1) Before the President establishes emergency energy conservation targets under § 211 of the EECA Act, a State shall submit a coordinated State grant application in accordance with § 420.12, and shall include with the application a proposal for the development or modification of a State emergency conservation plan in accordance with § 477.13; or

(2) After the President establishes emergency energy conservation targets under § 211 of the EECA Act, a State shall submit an amendment to its coordinated State grant application within 15 days after receipt of the notice from the Regional Representative of the availability of financial assistance. This amendment shall include a proposal for the development or modification of a State emergency conservation plan in accordance with § 477.13;

(b) Financial assistance under this subpart for implementation of State emergency conservation plans shall be available only after such time as the President has established emergency energy conservation targets pursuant to § 211 of the EECA Act, and while such targets are in effect. To receive financial assistance under this subpart to implement a State emergency conservation plan, a State shall submit an amendment to its coordinated State grant application within 15 days after receipt of the notice from the Regional Representative of the availability of financial assistance or within 15 days after approval of its State emergency

conservation plan in accordance with § 477.14, whichever is later. The amendment shall include a copy of the approved State emergency conservation plan and a proposal for implementation of such plan.

(c) The Regional Representative shall review each timely State application for financial assistance under paragraphs (a) and (b) of this section and, if the submission otherwise complies with the applicable provisions of Subpart A and this subpart, provide financial assistance.

PART 440 [DELETED]

2. Part 440 is deleted.

PART 455—GRANT PROGRAMS FOR SCHOOLS AND HOSPITALS AND FOR BUILDINGS OWNED BY UNITS OF LOCAL GOVERNMENT AND PUBLIC CARE INSTITUTIONS

3. Part 455, Grant Programs for Schools and Hospitals and for Buildings Owned by Units of Local Government and Public Care Institutions, of Chapter II of Title 10, Code of Federal Regulations, is amended as follows:

a. Section 455.2 is amended by revising the definition for "Grantee" and by adding, in the appropriate alphabetical order, definitions for "Coordinated State grant application" and "Regional Representative." These three definitions read as follows:

§ 455.2 Definitions.

* * * * *

"Coordinated State grant application" means an application for financial assistance submitted by a State in accordance with 10 CFR Part 420.12.

* * * * *

"Grantee" means a State or other entity named in the Notification of Grant Award as the recipient of financial assistance provided under this part.

* * * * *

"Regional Representative" means the Regional Representative of the Department of Energy.

* * * * *

b. Section 455.3(a) is amended by deleting subparagraphs (1), (5), (6) and (7); by redesignating subparagraphs (2), (3), (4) and (8) as subparagraphs (1), (2), (3) and (7) and by adding new subparagraps (4), (5) and (6) to read as follows:

§ 455.3 Administration of grants.

* * * * *

(4) Office of Management and Budget Circular A–95, entitled "Evaluation, Review and Coordination of Federal and Federally Assisted Programs and Projects";

(5) Treasury Circular 1075, entitled "Treasury and Fiscal Requirements Manual";

(6) DOE Assistance Regulations (10 CFR Part 600); and

* * * * *

c. Section 455.5 is amended by deleting the last sentence, reading "Suspension and termination procedures shall be as set forth in OMB Circulars A–102 and A–110 as applicable," and adding the following sentence in its place:

§ 455.5 Suspension and termination of grants.

* * * * *

A grant to a State made pursant to § 455.62 and § 455.83 shall be accorded the procedures prescribed in 10 CFR 420.15 regarding termination and suspension.

* * * * *

d. Section 455.62 is amended by revising the title and paragraphs (a) and (b) to read as follows:

§ 455.62 Coordinated State grant applications for State administrative expenses.

(a) A State desiring to receive grants to help defray State administrative expenses in accordance with § 455.83 shall file a coordinated State grant application in accordance with the provisions of this section and § 420.12. A State may apply for an amount not exceeding 5 percent of its total allocation for technical assistance and energy conservation measures, and not exceeding 50 percent of its total projected administrative expenses for a grant program cycle. DOE shall, pursuant to § 455.83, award each State an initial grant for 2 percent of its total allocation for technical assistance and energy conservation measures. Each State after it makes the submittal to DOE required under § 455.72 may submit an amendment to its coordinated State grant application to receive a further grant for an amount not exceeding 5 percent of the total of all grant awards for technical assistance and energy conservation measures within that State in that grant program cycle, less any amounts previously awarded the State for administrative expenses in the same grant program cycle, and not exceeding 50 percent of its total projected administrative expenses for that grant program cycle.

(b) A coordinated State grant application for financial assistance to defray State administrative expenses shall include—

(1) As part of the budget, an identification of the intended use of all Federal and non-Federal funds, for only those State administrative expenses listed in § 455.83(c), and a list of the sources and amounts of the required matching non-Federal funds, including in-kind contributions (limited to the goods and services described in OMB Circular A–102, "Uniform Requirements for Grants-in-aid to State and Local Governments", which are directly related to the project and do not include funds derived from revenue sharing or other Federal sources), to be used to meet the cost-sharing requirements described in Subpart G of this part; and

(2) Any other information as required by DOE.

* * * * *

e. Section 455.63 is amended by revising paragraph (b) to read as follows:

§ 455.63 Grantee records and reports.

* * * * *

(b) Each grantee shall, until the grantee's program has been concluded, submit a quarterly report to the State which shall detail and discuss—

(1) Milestones accomplished, those not accomplished, status of in-progress activities, problems encountered, and remedial action, if any, planned; and

(2) Financial status reports completed in accordance with the documents listed in § 455.3. Financial status reports must be submitted simultaneously to both the State and the Secretary.

* * * * *

f. Section 455.73 is amended by revising paragraphs (b) and (c) to read as follows:

§ 455.73 State duties.

* * * * *

(b) Each State shall submit a quarterly report to the Secretary, following State Plan approval for the duration of the grant program, providing—

(1) A narrative of the program, including objectives accomplished, problems encountered and recommended solutions;

(2) A detailed report on program related financial expenditures by all grantees and by the State;

(3) A summary of the most recent reports received by the State pursuant to § 455.63.

(4) Such other information as the Secretary may, from time to time, request.

(c) Each State shall include in the second quarterly report required by paragraph (b) of this section, an estimate of annual energy use reductions in the State, by energy source, attributable to implementation

of energy conservation maintenance and operating procedures and installation of energy conservation measures under this program. Such estimates shall be based upon a sampling of institutions participating in the technical assistance phase of this program and upon the reports submitted to the State pursuant to § 455.63(f).

* * * * *

g. Section 455.83 is amended by revising paragraph (a); by redesignating paragraph (b) as paragraph (c); and by adding a new paragraph (b). Paragraphs (a) and (b) read as follows:

§ 455.83 Grant awards for State administrative expenses.

(a) For the purpose of defraying State expenses in the administration of technical assistance programs and energy conservation measures, the Regional Representative may make grant awards to a State—

(1) Immediately following public notice of the amounts allocated to a State for a grant program cycle, and upon approval of the coordinated State for a grant program cycle, and upon approval of the coordinated State grant application submitted in accordance with § 455.62. in an amount not exceeding 2 percent of that State's total allocation for a given grant program cycle for technical assistance and energy conservation measures. Grants under this section may be made for no more than 50 percent of a State's projected administrative expenses, for each grant program cycle, which have been approved by the Regional Representative; and

(2) Concurrently with grant awards for approved applications for technical assistance or energy conservation measures for institutions in that State, and upon approval of a coordinated State grant application modified in accordance with § 455.62(a) for an amount not exceeding 5 percent of the total of all grant awards for technical assistance and energy conservation measures within that State in that grant program cycle, less any amounts previously awarded the State for administrative expenses in the same grant program cycle. Grants under this section may be made for not more than 50 percent of a State's projected administrative expenses, for each grant program cycle, which have been approved by the Regional Representative. The total of all grants for State administrative costs, technial assistance programs and energy conservation mesures in that State shall not exceed the total amount allocated for that State for any grant program cycle.

(b) The Regional Representative shall review each timely annual State coordinated grant application regarding State administrative expenses in accordance with the procedures prescribed by 10 CFR 420.14, and when appropriate provide administrative review in accordance with 10 CFR 420.15.

PART 465 [DELETED]

4. Part 465 is deleted.

PART 477—STANDBY FEDERAL EMERGENCY ENERGY CONSERVATION PLAN

(5) Part 477, Standby Federal Emergency Energy Conservation Plan, of Chapter II of Title 10, Code of Federal Regulations, is amended by adding a new § 477.15 to read as follows:

§ § 477.15 Financial assistance.

Financial assistance made available for the purpose of enabling a State to develop, modify or implement the State Plan may be obtained in accordance with the procedures set forth in 10 CFR Part 420, Subpart E.

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Part IV

Environmental Protection Agency

Standards of Performance for New Stationary Sources: Graphic Arts Industry; Publication Rotogravure Printing; Proposed Rule and Notice of Public Hearing

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[1579-1]

Standards of Performance for New Stationary Sources; Graphic Arts Industry: Publication Rotogravure Printing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: Standards of performance are proposed to limit emissions of volatile organic compounds (VOC) from new, modified, and reconstructed publication rotogravure printing presses. Emissions would be limited to 16 percent of the total VOC solvent volume used at the press. Reference Method 29 is also proposed for determination of the VOC volume content of solvent-borne inks and related coatings.

The proposed standards implement Section 111 of the Clean Air Act and are based on the Administrator's determination that the graphic arts industry contributes significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. The intent is to insure that new, modified, and reconstructed publication rotogravure printing facilities use the best demonstrated system of continuous emission reduction, considering costs, nonair quality health and evnironmental impacts, and energy requirements.

A public hearing will be held to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the proposed standards.

DATES: *Comments.* Comments must be received on or before December 29, 1980.

Public Hearing. A public hearing will be held on November 25 (about 30 days after proposal) beginning at 9:00 a.m.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact EPA by November 18 (1 week before hearing).

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Central Docket Section (A-130), Attention: Docket Number A-79-50, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

Public Hearing. The public hearing will be held at Environmental Research Center Auditorium RTP, NC. Persons wishing to present oral testimony should notify Ms. Deanna Tilley, Standards Development Branch (MD-13) U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5477.

Background Information Document. The Background Information Document (BID) for the proposed standards may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone number (919) 541-2777. Please refer to "Publication Rotogravure Printing—Background Information for Proposed Standards," EPA-450/3-80-031a.

Docket. Docket No. OAQPS-79-50, containing supporting information used in developing the proposed standards, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street, S.W., Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Gene W. Smith, Section Chief, Standards Development Branch, Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5421.

SUPPLEMENTARY INFORMATION:

Proposed Standards

The proposed standards would apply to new publication rotogravure production presses. Existing presses would not be subject to the proposed standards unless they undergo a modification or a reconstruction as defined in 40 CFR 60.14 and 40 CFR 60.15, respectively. The smaller four-unit proof presses, used only to check the quality of the image formation of newly etched or engraved printing cylinders, would not be affected by the proposed standards. Emissions of volatile organic compounds (VOC) from publication rotogravure presses would be limited to 16 percent of the total VOC solvent volume used at the press. Total VOC solvent used would include all VOC solvent in the purchased raw inks and related coatings used at the press, all VOC solvent added to the inks and coatings, and all VOC solvent used as a cleaning agent at the press. For compliance purposes, the emission percentage could be reported as rounded-off to the nearest whole number.

The proposed standards are based on the use of solvent-borne ink systems, with a solvent vapor cpture system and a fixed-bed carbon adsorption/solvent recovery system for VOC emission control. For the use of waterborne ink systems, the proposed emission limit is expressed as a maximum allowed VOC volume to solids volume ratio of 0.64 in the purchased raw inks and related coatings, with only water addition allowed for dilution. Emission control equipment and metering devices would be required with waterborne ink systems only if the specified waterborne conditions are not met.

Initial compliance with the proposed emission limit would have to be demonstrated in a long-term performance test. This initial test would cover normal operations over 30 calendar days instead of an average of three runs as prescribed under 40 CFR 60.8. Actual press emissions and the average control system performance over the 30 days would be determined by an overall VOC solvent volume balance. The total volume amount of recovered solvent would be compared to the total volume amount of solvent used at the press. The amount of recovered solvent would include all VOC solvent recovered by the emission control system, all waste VOC solvent, and all waste inks removed from the affected facility. VOC volume analyses of raw solvent-borne inks and related coatings, as purchased, would be obtained from the ink manufacturer or determined by the proposed Reference Method 29. VOC analyses of air streams from the facility or the control system, and any waste water streams would not be required.

Once the initial performance test is completed, the affected facility would be required to monitor and calculate the amount of VOC emissions as a percentage of the VOC solvent volume used each month at the press. Emissions would be determined using the same procedures used in the initial performance test. These monthly test records of emissions would serve to determine compliance on a continuing basis, but would be reported only for the months during which non-compliance is determined. Compliance with the proposed standards would thus be determined for 12 periods each year from monthly performance test records. As an alternative, four-week performance test averaging periods could be chosen in order to coincide with the plant's normal accounting procedures. This alternative would require 13 compliance periods per year.

Affected facilities using waterborne ink systems would also be subject to continual compliance after completion of the initial performance test. Determination of compliance procedures would be the same as previously described, except that the VOC volume

analyses of raw waterborne inks and related coatings, as purchased, would be from only the ink manufacturer's data. A reference test method for verification of the VOC content of waterborne ink systems is not being proposed.

The proposed emission limits can also be met through the use of solvent destruction (i.e. oxidation) control systems. However, specific procedures for determination of compliance with solvent destruction are not being proposed since this control technique is not expected to be used on any new, modified, or reconstructed press. The Administrator will welcome comments on whether this expectation and the exclusion of compliance provisions for solvent destruction devices are reasonable.

Summary of Environmental, Energy, and Economic Impacts

The environmental, energy, and economic impacts of the proposed standards are expressed as incremental differences relative to a baseline level. A 75 percent overall VOC reduction efficiency, or 25 percent emission level, was chosen as the baseline for the impact analyses. This baseline level corresponds to the recommendation in EPA's control techniques guideline (CTG) document, "Control of Volatile Organic Emissions from Existing Stationary Sources—Volume VIII: Graphic Arts—Rotogravure and Flexography" (EPA–450/2–78–033 [CTG]). The states are expected to use this document in developing their revised State Implementation Plans (SIP) for existing publication rotogravure printing facilities. The impact analyses are based on the use of fixed-bed carbon adsorption/solvent recovery systems for control of VOC emissions from both existing and affected facilities. All existing facilities installed before the year 1980 are assumed to be controlled at the 75 percent baseline level.

The projected impacts are based on the expectation that, most of the time, only 15 percent (85 percent overall control) of the total VOC solvent used at affected facilities would be emitted. Emissions are expected to increase to the 16 percent level (84 percent overall control) during only one or two months per year.

Compared to the baseline control level, the proposed standards would further reduce VOC air pollutant emissions from typical affected facilities by 40 percent. A typical sized new plant in this industry would have four production presses, each consisting of eight printing units, and would have the capacity for a total annual solvent usage of about 6,400 megagrams. The potential reduction in VOC emissions from a typical sized plant controlled under the proposed standards would be about 700 megagrams per year more than that for control at the baseline level. The proposed standards would reduce the industrywide VOC emissions from both affected and existing facilities by about 7,900 megagrams per year in the year 1985, the fifth year after the appliable date of the standards. This would represent about 13 percent less industry emissions than with control of affected facilities at the baseline level. This projection is based on the expectation of 7 percent annual real growth rate in this industry.

Potential water pollution from a facility controlled under the proposed standards would be 3 percent greater than that from one controlled at the baseline level. The incremental potential wastewater discharges from a typical four-press plant would be about 2.6 million liters per year more than for baseline control. Dissolved organic compounds in this effluent would amount to an incremental increase of about 0.5 megagram per year. Projected national discharges for 1985 would be increased by about 32 million liters above that for control at the baseline level. In the year 1985, dissolved organic solvents in the nationwide effluent would potentially amount to about 6 megagrams per year more than for control at the baseline level. This would represent about a five percent incremental increase. The dissolved solvent content could be virtually eliminated on-site by demonstrated, inexpensive removal systems. The resultant solvent-free water could be recycled as make-up feed water to the plant steam boiler. Alternatively, the waste water could be discharged to a conventional biological waste treatment system.

The solid waste impact resulting from the proposed standards would increase proportionally over those for baseline control because of additional amounts of spent carbon, carbon fines, and used solvent laden air (SLA) filters. In 1985, the amount of nationwide waste carbon would be increased by about 85 megagrams above that for control at the baseline level. An estimate of the incremental bulk quantity of waste filters was not attempted, but should be a very small impact.

The only significant source of noise would be from the large SLA fans. However, these are normally installed in an enclosed housing, and should not affect the surrounding environment.

In the Administrator's opinion, the proposed standards' environmental impacts as just described are reasonable.

The energy impact of the proposed standards is not unreasonable on an industry basis and is entirely favorable when viewed from a national perspective. The direct energy consumption by a facility controlled under the proposed standards would be about 18 percent higher than if controlled at the baseline level. The direct annual energy consumption for a typical four-press plant would be increased by about the equivalent of 2,200 barrels of fuel oil. The industry's total direct energy consumption for the year 1985 would be about 40,200 barrels of fuel oil above that required for baseline control. This would represent an energy consumption increase of about 9 percent more than with control of affected facilities at the baseline level.

The national energy impact of the proposed standards would result in net national energy savings when the fuel energy value of the recovered solvent is considered. Under the proposed standards, nationwide energy consumption for the year 1985 would be actually decreased by about the equivalent of 21,800 barrels of fuel oil from that required for baseline control. The Administrator believes that the direct energy impact on the industry is reasonable, particularly in view of the net national energy savings which would result from decreased solvent demand.

The proposed standards would increase the required total plant capital investment and annualized operating costs over that for emission control at the baseline level. However, the high cost value of the recovered solvent would enable the installation of solvent recovery control systems to provide a net profit (negative annualized costs) and positive return on investments for emission controls under the proposed standards. The capital investment for a typical four-press plant would be increased by about $650,000, or about two percent more than for control at the baseline level. Industry's cumulative five-year capital investments, through the year 1985, would be increased by about $17 million. For the typical plant, the annualized control cost with solvent recovery credit would be about −$345,000 at baseline level and −$271,000 under the proposed standards, for an incremental cost increase of about $74,000. In the year 1985, the industrywide total annualized control cost with solvent recovery credit would be an estimated −$4.2 million at baseline control level and −$1.7 million

under the proposed standards, for an incremental cost increase of about $2.5 million.

The increase in capital requirements and annualized control cost under the proposed standards would have a negligible impact on industry growth, profitability, and product prices. First, the two percent incremental increase in initial capital costs is not large enough to reduce capital availability and, therefore, would not restrict industry growth. Secondly, the industry's average pre-tax profit of eight percent at the baseline control level would not be reduced below 7.8 percent under the proposed standards. Finally, there would be no significant price increases for publication gravure products. The Administrator, therefore, believes that the economic impacts of the proposed standards are reasonable.

Rationale—Selection of Source

The publication rotogravure printing industry is a significant source of volatile organic compound (VOC) emissions. The EPA has ranked the graphic arts industry, of which publication rotogravure is a part, sixth out of 59 on the "Priority List and Additions to the List of Categories of Stationary Sources". This list for New Source Performance Standards was promulgated at 44 FR 49222 on August 21, 1979. This priority list ranks the emission sources on a nationwide basis in terms of quantities of air pollutant emissions from the source category, the mobility and competitive nature of each source category, and the extent to which each pollutant endangers public health and welfare.

The publication rotogravure printing industry is a rapidly growing segment of the graphic arts industry, and a rapidly increasing source of potential VOC air pollutants. In the year 1977, the entire graphic arts industry was responsible for about 380,000 megagrams of organic solvent vapor emissions in the United States. Although in sales, publication rotogravure constituted only about five percent of the graphic arts industry, it was responsible for almost 15 percent of the total graphic arts VOC emissions in 1977. Growth projections show that the publication rotogravure industry will experience about a seven percent annual real growth rate through the year 1985. Potential uncontrolled emissions from a typical four-press plant amount to about 6,400 megagrams per year. In the year 1985, the cumulative potential uncontrolled VOC emissions from this industry are projected to be about 236,000 megagrams.

Selection of Pollutants and Affected Facilities

Volatile organic compounds (VOC) are the only air pollutants emitted from publication rotogravure printing facilities. The sources of the VOC emissions are the solvent components in the inks and related coatings used at the printing presses, as well as solvent added for printing and cleaning. The gravure printing method usually involves only four colors of inks—yellow, red, blue, and black. The related coatings are usually referred to as extenders or varnishes. There are two general types of solvents used by the publication rotogravure industry. In a few cases only toluene is used, but the more common solvent is a toluene-xylene-lactol spirits (naphtha) mixture. The various solvent components exhibit a range of moderate to high photochemical reactivity. VOC along with nitrogen oxides are precursors to the formation of ozone and other oxidants. Photochemical oxidants result in a variety of adverse impacts on health and welfare, including impaired respiratory function, eye irritation, necrosis of plant tissue, and deterioration of selected sysnthetic materials, such as rubber. Further information on these effects can be found in the U.S. Environmental Protection Agency (EPA) document entitled "Air Quality Criteria for Ozone and Other Photochemical Oxidants" (EPA–600/8–78–004).

At present, this industry uses only solvent-borne ink systems. The proposed standards would also allow the use of waterborne inks, but none have been successfully developed yet for the rotogravure printing method. Current research is being directed toward development of low-VOC, waterborne inks so that the proposed emission limit could be met without the use of emission control systems. The industry expects to develop waterborne inks in the next five to ten years.

All new web-fed (roll-fed) rotogravure presses used to print salable products, described under SIC Code numbers 27541 and 27543, would be the "affected facilities." These presses typically consist of 8 to 12 printing units. They are used to print magazines, catalogs, newspaper supplements, and advertising products, as well as other products. Existing rotogravure production presses in this industry which are determined to have been modified or reconstructed in accordance with 40 CFR.14 or 40 CFR.15 would also be subject to the proposed standards. There are expected to be very few, if any, such facilities. Installation of the higher speed, more efficient, and better electronically controlled newer presses will be more attractive than upgrading existing presses because of the highly competitive and fast growing nature of this industry. In addition, it would be easier to control VOC emissions from newer pressses than from older presses because modern presses are designed, for economic reasons, to minimize fugitive solvent vapor losses.

VOC emissions from ink and solvent storage and transfer facilities, as well as emissions from other printing operations would not be affected by the proposed standards. The emissions from storage and transfer facilities should normally be negligible compared to the printing press emissions. Additional presses that print other gravure products and different types of printing processes are sometimes housed within the same plant. The other sectors of gravure printing are slightly smaller and are not growing as rapidly as the publication sector. In addition, each gravure printing sector and other printing processes have different operating and emissions control characteristics. An attempt to cover entire printing plants would have, therefore, dramatically increased the complexity of the proposed standards. Air pollutant emissions from these other gravure presses and other printing processes may be regulated under future standards.

The smaller four-unit proof presses, used only to check the quality of the image formation of newly engraved or etched printing cylinders, would not be affected. These proof presses are operated intermittently and at much slower speeds compared to the production presses. The inks and solvents used at the proof presses are normally not metered, but are handled out of drums. The total solvent usage by proof presses in this industry is estimated to be about only one percent of the usage by production presses.

Selection of the Basis of the Proposed Standards

VOC emissions from publication rotogravure printing facilities could be controlled by either emission control systems, or by using low-VOC, waterborne ink systems. Emission control devices in this industry presently involve only solvent recovery, although solvent destruction (i.e. oxidation) could be used. The overall performance of control devices can be enhanced by installation of well-designed fugitive VOC vapor capture systems.

Control Technologies

The complete emission control system in a modern publication rotogravure

printing plant consists of two sections: the capture system and the emission control device system. The capture system is designed to gather the VOC vapors emitted from the presses. The captured vapors are then directed to a control device where they are either recovered or destroyed.

Most of the solvent used in the rotogravure printing process is driven off in the drying operation after the ink has been applied to the paper web. All new and existing presses have dryer enclosures and ductwork to capture and convey dryer exhaust vapors away from the press (e.g., to a control device). Vapors that are not captured by the dryers are called fugitive emissions. Of the total amount of solvent used at the press, 80 to 90 percent is captured by the dryers and the rest is fugitive. Fugitive emission capture systems can be designed to capture part of all of the fugitive vapors in the pressroom.

The capture efficiency of the dryers is limited by their temperature and the operating speed of the newer presses. Dryer temperatures range from ambient to about 120°C (250°F). The higher temperatures in this range can only be used on the units printing with black ink. Higher temperatures impair product quality and increase the frequency of web breaks. The increasing operating speeds of modern presses of over 10 m/s (2,000 fpm) limit the web's residence time in the dryers. Thus, significant amounts of fugitive vapors are emitted from the presses because of the limited dryer capture efficiency.

Facilities that capture only the dryer exhausts must install some type of ventilation to remove the fugitive solvent vapors from the pressroom. The solvent vapor concentration in the pressroom air must be kept below the level of OHSA regulations (29 CFR 1910.1000). The present OSHA time-weighted average (TWA), 8-hour exposure limit for toluene vapors is 200 ppmv. The allowable vapor concentration limits for the components of the naphtha-based mixed solvents range from 100 ppmv up to 500 ppmv. OSHA has a proration formula for determining compliance with vapor component mixtures.

A highly efficient capture system is necessary to achieve high overall emission reduction efficiencies. Fugitive solvent vapors, as well as the concentrated dryer exhausts must be captured. Some of the fugitive solvent vapors result from evaporated solvent in the ink fountains, from the exposed part of the gravure printing cylinder, and from exposed portions of the paper web before entering the dryers. Enclosed ink fountains and extended enclosed dryer designs of newer presses help to minimize the escape of fugitive vapors from these locations during press operation. However, these areas must be uncovered to obtain access to the press during shutdowns for web breaks, cylinder changes, or maintenance items. The major source of fugitive vapors from newer presses during operation is the paper web after exiting the dryers. Fugitive vapors are emitted from this source even during press shutdowns. In addition, the final printed product retains some of the solvent used at the press, and continues to be a source of fugitive vapors from the cutting and folding areas after leaving the press.

All of the products printed in this industry retain a small amount of solvent. The amount of retained solvent appears to vary from about one to seven percent of the total solvent used at the press, depending on the finished product. Product solvent retention is apparently influenced by the ink coverage, the use of varnish and other coatings, and the type of paper and inks used. The ultimate efficiency of any capture system is, therefore, limited by the amount of solvent retained in the printed product.

Three types of capture systems were evaluated. The first type, demonstrated at the facilities of Texas Color Printers, Inc., captured only dryer exhaust vapors while pressroom ventilation air was discharged to the atmosphere. Naphtha-based mixed solvents were used at these tested facilities. Test data for this capture system showed that the amount of ventilation air required represented about 30 percent of the total dryer exhaust and ventilation air removed from the pressroom. In addition, the solvent vapor content in the ventilation air accounted for about eight percent of the total solvent volume used at the press. The test results showed that the dryers alone captured as must as 85 to 89 percent of the total solvents used at the press. Calculated addition of the discharged fugitive solvent vapors to the dryer exhausts showed potential total capture effciencies of 93 to 97 percent. The remaining 3 to 7 percent represents solvent retained in the product.

A second type capture system was demonstrated at the newest facilities of Meredith/Burda, Inc. Cabin enclosures were installed over the top portion of the printing presses. Fugitive solvent vapors (toluene only at these tested facilities) from the paper web and from around the printing presses were pulled up through the cabin enclosures and then directed along with the dryer exhausts to a carbon adsorption system. Pressroom ventilation fans were not installed at these facilities. Test data showed capture efficiencies ranging from 94 to 97 percent. Solvent retained in the printed product thus represented the remaining 3 to 6 percent of the solvent used at the presses.

Application of the demonstrated Meredith/Burda cabin enclosure design may, however, present difficulties in meeting some OSHA regulations. Toluene vapor concentrations inside the enclosures were measured to be as high as 200 to 300 ppmv, during press shutdowns. These vapor concentration levels are within the ceiling limits of OSHA regulations; however, repeated exposure to these high concentrations, combined with pressroom ambient vapor concentration levels, measured at 40 to 200 ppmv, may cause some press operators to be exposed in excess of the 8-hour TWA limit. In addition, Meredith/Burda handles larger volume print orders than some printers in this industry. Some of the shorter-run products not handled by Meredith/Burda may cause more frequent web breaks and press shutdowns. The printing of these more troublesome products could require the press operators to enter a cabin enclosure more often than required at Meredith/Burda, thereby increasing their potential for exposure to solvent vapors. Press operating data supporting this reasoning were obtained for two types of products printed during tests conducted at both the Merdith/Burda and Texas Color facilities. The test results showed a wide range of actual press printing times of about 62 to 86 percent of the total test time, with shutdown frequencies averaging about 10 to 12 press shutdowns per equivalent 24 hour period. The magazine product printed at Meredith/Burda caused twice as many press shutdowns and a lower percentage printing time than the advertising product. At Texas Color, the advertising product caused more press shutdowns, but resulted in a slightly higher percentage printing time than the magazine product. Press shutdown data for other products printed in this industry were not available; however, these test results were consistent with general information provided by industry on typical operations.

The Administrator believes that for most facilities in this industry cabin enclosures could be designed to very effectively capture fugitive solvent vapors without violating OSHA regulations. As explained in Chapter 4 of the BID (Section 4.2.1), the Meredith/Burda capture system design could be improved to easily meet OSHA regulations by (1) modifications of the

cabin enclosure design, (2) modification of the pressroom air handling system, and (3) increasing the ventilation air flow rate through the cabin. The required increase in air flow rate would cause a decrease of less than 0.5 percent in the carbon adsorber efficiency. In addition, the use of naphtha-based mixed solvents rather than toluene would pose fewer problems in meeting OSHA regulations because of the higher allowable vapor concentration limits. On the other hand, the Administrator acknowledges that printing of some products handled by this industry might cause more press down time than other products, and thus a cabin enclosure design may not be a suitable capture system for some facilities.

A third type control system which captures all the pressroom air was demonstrated at the facilities of Standard Gravure, Inc. Naphtha-based mixed solvents are used at these facilities. This capture system is similar to what the potential Texas Color capture system would be with the fugitive ventilation air directed to the control device system. In addition, ventilation air from the cutting, folding, and product storage areas are captured at this plant and sent to a carbon adsorption system. EPA testing was not conducted at this plant because its control system was assumed to be less cost effective than the other systems just described. The amount of captured air needed to be treated with this design is much greater than for the other systems, causing it to be less economical. Plant data was obtained from Standard Gravure, however, and the Administrator believes these are of sufficient accuracy to be used in support of the proposed standards.

There are three alternative emission control devices which can effectively reduce the VOC emissions from a publication rotogravure press: solvent destruction (i.e. oxidation), fixed-bed carbon adsorption, and fluidized-bed carbon adsorption. Any of these systems can control 95–99 percent of the vapors they receive, but fixed-bed carbon adsorption is currently used almost exclusively in this industry.

Some modern solvent destruction devices could possibly be economical in certain cases. Conventional thermal oxidation would require large amounts of supplemental fuel. The operating costs could be reduced somewhat by utilizing waste heat recovery designs. Catalytic oxidation permits lower oxidation reaction temperatures, and therefore, requires about 50 percent less energy than thermal oxidation. A third technique involves regenerative thermal combustion. This method would probably be the most energy efficient, and thus most economical solvent destruction device. However, as the solvents used in this industry are refined from crude oil, they are expected to become increasingly expensive in the future. Recovery rather than destruction of captured solvent vapors is, therefore, expected to be the only economically justifiable control alterative for new publication rotogravure printing presses.

Fixed-bed carbon adsorption has undergone considerable research, development, and modification in recent years. Most of the corrosion problems of the past have been solved. Energy requirements, and thus operating costs for the fixed-bed system are greater than that of a fluidized-bed carbon adsorber system, but capital costs are less. Problems associated with the use of a fluidized-bed carbon adsorption system to control VOC emissions from publication rotogravure presses cannot be adequately assessed because available data is very limited.

The average operating efficiencies of fixed-bed carbon adsorption systems were determined during the two plant tests. The newest Meredith/Burda adsorbers operated at 97 to 98+ percent efficiency. The Texas Color plant adsorbers operated at 94 to 96 percent efficiency. The difference in performance results from higher inlet SLA vapor concentrations, lower outlet vapor concentrations, and better instrumentation controls at Meredith/Burda. The total VOC vapor concentrations at Meredith/Burda ranged from about 300 to 1,800 ppmv at the adsorber inlet and about only 10 to 30 ppmv at the outlet. The vapor concentrations at Texas Color ranged from about 70 to 1,000 ppmv at the inlet and about 20 to 300 ppmv at the adsorber outlet.

The average operating efficiency of the better designed carbon adsorption systems available to this industry should remain at or above the 97 percent level, when printing most products. Several carbon adsorption systems installed in this industry provide evidence that the carbon bed maintains the design "activity" for more than five years. Bed blockages from high molecular weight reaction products have not occurred with existing adsorption systems and solvent blends used in the publication rotogravure printing industry. Routine maintenance requires periodic filtering out of carbon fines, addition of makeup carbon, and repairing valve leaks. However, the capture system design affects the air handling requirements, as previously mentioned, and thus could result in lower adsorber efficiencies. Moreover, adsorber efficiencies may be somewhat lower when more troublesome, shorter run products are printed.

In summary, the standards as proposed are based on the use of fixed-bed carbon adsorption with a solvent vapor capture system. As previously explained, the facilities at both tested plant sites demonstrated that at least a 90 percent average capture efficiency can be expected when fugitive solvent vapors are captured along with the dryer exhausts from new presses. This conservative average efficiency allows for printing of products that retain larger amounts of solvent or that cause more fluctuations in the printing operations than were experienced during the two short-term plant tests. If only dryer exhausts are directed to the control device, then the average capture efficiency can be expected to be only about 85 percent, as demonstrated during tests at Texas Color. Older facilities treating only the dryer exhausts can be expected to achieve an average capture efficiency of about 84 percent. This lowest capture efficiency reflects an estimate of slightly more fugitive solvent vapor losses from the more exposed areas of older press designs. Modern carbon adsorber/solvent recovery control devices can be expected to achieve a long-term average performance of about 95 percent efficiency. Short-term efficiencies of the best demonstrated adsorbers may be higher at times, but this average efficiency accounts for the wide fluctuations of vapor concentrations in the solvent laden air (SLA) inlet to the adsorber. In comparison, older adsorber systems were designed to perform at about only a 90 percent average efficiency.

As an alternative emission control technique, this industry is researching the possibilities of using low-VOC, waterborne ink systems to reduce their VOC emissions. At present, waterborne inks have not been developed for publication rotogravure printing. In order not to discourage future development of waterborne inks, the proposed standards would allow printing of publication rotogravure products without air pollution control equipment if waterborne inks containing sufficiently low amounts of VOC are used. To qualify for this allowance, the VOC content would be limited to not more than 16 volume percent of the total volatile portion of the waterborne ink mixture as applied to the gravure printing cylinder.

Regulatory Alternatives

The overall reduction efficiency for VOC emission control systems is equal to the capture system efficiency times the control device efficiency. The expected average efficiencies for capture systems and control devices applicable to this industry were combined to develop three regulatory alternatives. The alternatives considered call for an overall VOC reduction at 75, 80, and 85 percent levels. Fixed-bed carbon adsorption systems were assumed as the control devices for all alternatives. Alternatives were not developed to represent VOC reduction by low-VOC, waterborne ink system usage without emission controls since waterborne inks have not been developed yet for this industry.

The first regulatory alternative is a 75 percent overall control level that represents capturing the dryer exhausts from older presses—baseline level. This corresponds to the CTG recommendation for existing facilities. This control level is achievable by capturing about 84 percent of the potential solvent vapors from the press, with a 90 percent adsorber efficiency.

The second regulatory alternative is an 80 percent overall control level that represents capturing the dryer exhausts from new, well-designed presses. In this case 85 percent capture would be required with a 95 percent efficient adsorber. This corresponds to a typical, modern facility. Overall emission reduction in the 80 to 84 percent range were determined from short-term test data and five months of plant data at Texas Color Printers. In addition, over four months of plant data from World Color Press showed four-week average overall control efficiencies ranging from 78 to 84 percent.

The third regulatory alternative is an 85 percent overall control level that represents capturing the dryer exhausts from newer presses, as well as some of the fugitive solvent vapors. This is intended to correspond to a 90 percent efficient capture system with a 95 percent efficient adsorber. This alternative represents application of the best demonstrated control technology. The fugitive vapors would be captured by—

- A partial enclosure fugitive vapor capture system that is vented to the control device; or
- A system of multiple fugitive vapor capture vents that are located around the press and collectively ducted to the control device; or
- Total pressroom ventilation air that is directed to the control device.

Overall control efficiency data for the three best demonstrated VOC emission reduction systems support the long-term average achievability of an 85 percent regulatory level. Four-week average overall control efficiencies reported by Standard Gravure range from 85 to 90 percent for over a year of typical operations. Corrected overall control efficiencies of 89 to 92 percent were demonstrated in short-term tests at the Meredith-Burda plant. In addition, data were obtained from this plant for normal operations over ten separate months indicating corrected overall control efficiencies ranging from 84 to 91 percent. Calculations using short-term test data combined with five months of plant data indicated that the Texas Color facilities might potentially achieve about 88 percent overall recovery by directing their existing floor sweep vents to the adsorber system, rather than to the atmosphere. these data show that considerable variation occurs in the long-term control performance; however, an average 85 percent overall control level is achievable, with performance dropping to a low point of about 84 percent for one or two months a year.

Environmental, Energy, and Economic Impacts

The incremental potential environmental, energy, and economic impacts of the two higher regulatory alternatives relative to the baseline alternative were determined through development of model plants, representing new facilities. Projections of these impacts were based on analyses of two model plant sizes, resulting in a total of six model plant cases. The small model plant consisted to two eight-unit presses; the large model plant consisted to four eight-unit presses. Only one press width of 1.83 meters (72 inches) with an operating speed of 10.16 m/s (2,000 fpm) was considered. There are some smaller and some larger existing presses; however, the press size chosen is the most common. Most modern rotogravure presses are designed to operate at about the speed chosen for study, although older presses operate at only about half that speed.

The control of VOC emissions from each model plant was based on solvent vapor capture systems combined with fixed-bed carbon adsorption/solvent recovery devices. Model plants were not developed for emission control by any other solvent recovery devices, such as fluidized-bed carbon adsorption, because sufficient operating information for use in this industry was not available. Also, model plants were not developed for analysis of VOC emissions control by solvent destruction devices (i.e., oxidation) since these devices are not presently used and not expected to be employed in the future by this industry. Furthermore, model plants representing the use of low-VOC, waterborne ink systems without emission control systems were not analyzed since waterborne inks are not expected to be developed for this industry for another five to 10 years. Since modified and reconstructed existing facilities are also subject to standards proposed under Section III of the Clean Air Act, model plants representing these affected existing facilities are typically developed. However, model plants representing these affected facilities were not developed because neither modification nor reconstruction is expected in this industry, as explained in a later section. The environmental, energy, and economic impacts on modified and reconstructed facilities to comply with the proposed standards would be essentially equivalent to those impacts on new facilities.

The seven percent annual real growth rate projected for this industry corresponds to about 75 new presses to be installed by the year 1985. Most of these new facilities will provide expansion capabilities; however, some of these new presses will simply replace old, worn-out existing presses, with no production expansion intended. Also, since modern presses operate at higher speeds with increased efficiency compared to older presses, the required utilization of new presses would be less than that for older presses to meet customer demands. No modifications or reconstructions are expected during this period. the annual total solvent usage in this industry will increase to about 236,000 megagrams by 1985. New Source Performance Standards (NSPS) set at the 80 percent control level would further reduce 1985 nationwide VOC emissions by about 4,000 megagrams per year over control at the 75 percent baseline level. An 85 percent regulatory control level would result in an additional reduction of 1985 VOC emissions by about 7,900 megagrams per year over that for baseline control.

Emissions of air pollutants from two secondary sources result form the energy required for operation of the carbon adsorption/solvent recovery control systems. First, required electrical power was assumed to be generated by coal/fired utilities (worst cast). Fuel combustion emissions from these power generation facilities are regulated under MSPS promulgated at 44 FR 33580 on June 11, 1979. Secondly, required steam

production or regeneration of the carbon beds results in fuel combustion emissions from the uncontrolled plant steam boilers. Total resultant secondary flue gas emissions from these two sources was estimated to represent about 0.5 percent of the corresponding VOC emission reduction from the publication rotogravure presses. Control ov VOC emissions from a typical four-press printing plant at the 80 and 85 percent levels would result in total secondary emissions of about two and five megagrams per year more than for control at the baseline level, respectively. In 1985, the nationwide total secondary emissions for control at the 80 and 85 percent levels would be about 25 and 100 megagrams more than for control at the baseline level, respectively. Corresponding incremental VOC reductions would be 4,000 and 7,900 megagrams for the 80 and 85 percent levels. Therefore, the resulting total air pollutants emitted from secondary sources only slightly offset the primary impact of reducing VOC emissions.

There are three potential sources of water pollution associated with carbon adsorption/solvent recovery systems. The largest source would be the dissolved solvent in the condensate discharged from the decanter section of the adsorber system. This condensate typically contains from 130 to 200 ppm solvent, but can be as high as 1.900 ppm solvent, depending on the solvent used and the temperature. Control of VOC emissions at the 80 and 85 percent levels would result in increased potential wastewater discharges of about seven and thirteen percent over that for baseline control, respectively. The VOC content in the condensate respresents less than 0.1 percent of the respective VOC emission reductions from the presses. Also, this potential water pollution source could be virtually elimiated by air-stripping the condensate and recycling the resultant solvent-free water as make-up feed water to the plant steam boiler. The solvent laden air from the stripping tower could be recycled to the adsorption beds. Alternatively, the condensate could be discharged to a conventional biological waste treatment system. A small amount of the dissolved VOC solvent would naturally evaporate out of the waste water during biological treatment, but these vapor emissions would be part of the 16 percent emission limit allowed under the proposed standards, and would not constitute any additional primary VOC emissions or any secondary air pollutant emissions. Dissolved organics and solids in the plant cooling tower and steam boiler blowdowns represent two minor sources of water pollution. The cooling tower water and steam usages increase in direct proportion to the amount of solvent recovered. The respective blowdown rates would thus increase correspondingly. All three waste water sources are subject to State and local effluent regulations for five-day biochemical oxygen demand (BOD_5), chemical oxygen demand (COD), and some specific compound contents.

There are two potential sources of solid waste material resulting from VOC emissions control by carbon adsorption/solvent recovery systems. Activated carbon used in the absorbers should last at least five years for service in this industry before replacement is required. The total amount of activated carbon used for control at the 80 to 85 percent overall recovery levels would be larger by about seven and thirteen percent over that for baseline control, respectively. In 1985, the amount of nationwide waste carbon for control at the 80 and 85 percent levels would be, respectively, about 42 and 85 megagrams more than for control at the baseline level. The second source of solid waste is the SLA filters, which are usually made of fiberglass material. Usage of the filters increases proportionately to the SLA flow rate. The amount of waste filters for control at the 80 to 85 percent levels would, thus, increase by about nine and 40 percent over that for baseline control, respectively. Some of the spent carbon can be regenerated and recycled. Likewise, some of the air filters can be cleaned and reused. The solid waste impact from emissions control at any of the three regulatory levels is not expected to cause any significant handling problems.

In the Administrator's opinion, these incremental environmental impacts for the two higher regulatory alternatives are reasonable.

There would be direct energy consumption increases for plants with affected facilities controlled at either of the alternative regulatory levels above 75 percent baseline control. Control of VOC emissions at the 80 percent level would require about seven percent more direct energy than at the 75 percent level. Similarly, control at the 85 percent level would increase energy consumption by about 18 percent over that for baseline control.

On the national level, there would be net energy savings for VOC emissions control at all of the regulatory alternative levels considered when the fuel energy value of the recovered solvent is included. Fuels and organic solvents can both be derived from a common source of crude oil. A decrease in the demand for solvents will thus increase the potential for fuel availability. The net energy savings in the year 1985, compared with baseline control, would be increased by about the equivalent of 15,600 and 21,800 barrels of fuel oil per year for controlling new press emissions at the 80 and 85 percent levels, respectively.

The Administrator believes that the direct incremental energy impacts on the industry for the 80 and 85 percent control levels are reasonable, particularly in view of the net national energy savings which would result from decreased solvent demand.

The economic impacts of the regulatory alternatives were analyzed in terms of capital investment requirements, total annualized costs, and affects on product price and profitability. VOC emissions control equipment would represent a significant fraction of total plant capital investment at any level of control, although the incremental capital costs required for either plant size to attain higher levels of control would be very small compared to control at the baseline level. The installed capital investment for a baseline level VOC emissions control system for a four-press plant would represent about 5.5 percent of the controlled plant's total cost; VOC controls for a two-press plant would represent about seven percent of the total costs. The total plant installed capital cost for control at the 80 and 85 percent levels, relative to the cost for baseline control, would increase by about 0.5 and two percent, respectively.

The capital investment in the model plant carbon adsorption systems were mainly influenced by the air flow handling requirements. Model plant characteristics, representing current practice in this industry, included usage of naphtha-based solvents with dryer exhaust vapor concentrations at the 19 to 20 percent of the Lower Explosive Limit (LEL) level. The LEL is the lowest vapor concentration in air, expressed as volume percent, at which the mixture could support a flame or explosion at temperatures below 121°C (250°F). Insurance safety regulations require normal operation at less than about 25 percent of the LEL. Operation up to 50 to 60 percent of the LEL is permitted when continuous vapor monitoring systems are employed to control the vapor concentration in the air.

The cost value of the recovered solvent would provide for annualized cost savings and positive return on investments (ROI) for emissions control for all six model plant cases studies.

Annualized cost savings and ROI for the emission controls increase in going from 75 to 80 percent overall control as a result of the additional solvent recovered from dryer exhausts. However, the savings and positive ROI decrease in going from 80 to 85 percent control because of the added costs of capturing and treating fugitive vapors. A profit-maximizing operation would therefore practice about 80 percent overall control. ROI for emission controls with the large model plant is about ten percentage points higher at all three control levels than that for the small plant. These analyses are based on the cost value of recovered solvent at the early 1979 market price of $0.17 per liter ($0.65/gallon). The increment in cost savings are much more favorable for both the 80 and 85 percent control levels when projected late 1979 conditions are assumed (i.e. solvent cost value at $0.24 per liter ($0.90/gallon) with 10 percent increased operating and capital costs). The late 1979 conditions reflect inflationary price increases in the cost of solvent and yield more favorable economic impacts for solvent recovery.

An 85 percent solvent recovery requirement would not pose any problems of capital availability and thus, would not restrict industry growth. The average pre-tax profit for this industry with baseline controls is about eight percent of the total sales. For control at the 85 percent level, small sized plants' profitability would only decrease by about 0.2 percentage points at both the early and late 1979 economic conditions; profitability for larger sized plants would decrease by an estimated 0.1 percentage point. No measurable price increases for gravure products would occur with VOC control at any of the three regulatory alternatives considered. The Administrator believes that the incremental economic impacts for the 80 and 85 percent regulatory alternatives are reasonable.

In summary, the model plant analyses show that the impacts associated with 85 percent overall control are the most reasonable of the three regulatory alternatives considered. The environmental impacts of the 85 percent alternative would not pose any major wastewater or solid waste problems, while providing a significant increase in the primary benefit of VOC reduction. National energy consumption would decrease compared with that for baseline control because of the fuel energy value of the extra recovered solvent. Finally, the cost value of the recovered solvent would provide for annualized control cost savings for the 85 percent alternative. While this cost savings is less than the savings that could be achieved at the 75 to 80 percent regulatory levels, the economic impact would not adversely affect profit margin and thus industry growth. Moreover, publication gravure product prices are not expected to increase noticeably.

Selection of Format for Proposed Standards

Three formats were considered for the proposed standard: (1) a mass emission rate related to unit production, (2) a concentration limitation and (3) a percentage overall reduction or emission limit.

A fixed emission percentage limit format, or overall percentage reduction, is selected because it provides the only adequate measure of actual VOC emissions control. A variable emission percentage limit corresponding to a fixed VOC emission rate allowance per unit of applied solids is not necessary for this industry. A characteristic of rotogravure printing is that the solvent to solids ratio of the applied ink mixture can only vary within a narrow range and still have the correct fluid properties for high quality printing. For solvent recovery control systems, the average emission percentage can be determined over long-term periods by simple comparison of the total liquid volume amount of recovered solvent to the total liquid volume amount of solvent used at the facility. This format allows for determination of compliance without the necessity for monitoring of any gas streams, and inherently indicates whether or not VOC vapors are being adequately captured. Also, the VOC retained by the printed product is accounted for with this format. Finally, an emission limit format is simple to use and insensitive to the many process fluctuations, upsets, variations in product types, and variations in the captured SLA VOC vapor concentration.

An allowable VOC vapor concentration in the gas streams vented to the atmosphere would appear to be the easiest format for standards enforcement. However, a typical printing facility may have numerous direct atmospheric vents, as well as, the exhaust stream out of the control device. Short-term monitoring of all the vents may be feasible, but continuous on-line monitoring of all vents would be very expensive. Moreover, monitoring of just the control device exhaust stream would not provide for sufficient indication of effective capture of VOC vapors emitted from the facility. In addition, the amount of VOC retained by the printed products can not be determined by monitoring just the VOC vapor concentration of the gas stream vents. Furthermore, concentration limitation formats are susceptible to dilution problems, which can cause poor indication of true emission rates. Thus, a concentration limitation would not be a suitable standards format for this industry.

The printing of rotogravure products is characterized by the variable amounts of solvent usage and ink coverage on the paper web. There is no fixed relationship between the amount of solvent used, or VOC emitted, and the bulk quantity of printed products. Therefore, a mass emission rate per unit of product format is inappropriate for this industry.

For solvent recovery control systems, an overall solvent volume balance around the affected facility is selected to be used with the emission percentage limit format. Most new rotogravure printing plants install liquid volume meters for process monitoring and control, and for customer billing purposes. Meters are used to measure the amount of ink and related coatings, and solvent used for printing and cleaning at the facilities. A meter also measures the amount of liquid solvent recovered by the adsorption system. The total amount of solvent used would be determined by the liquid meter readings combined with the VOC content analyses of the purchased raw inks and related coatings. The total amount of recovered solvent would be determined by the liquid meter readings combined with miscellaneous liquid volume amounts of unmetered waste solvent and waste inks from the affected facility. Subtracting the total amount of solvent recovered from the total amount of solvent used and then dividing that result by the total amount of solvent used would complete an overall solvent balance, and determine the VOC emissions percentage for the affected facility.

The same overall solvent volume balance and emission percentage limit format would be used when more than one affected facility is controlled by a common solvent recovery system. For these cases, the total amount of solvent used would be the collective volume amounts for all associated affected facilities.

The VOC emissions from some existing and affected facilities could be controlled in common by the same solvent recovery system. Some existing control systems were originally oversized in order to handle future press installations. In addition, new carbon adsorption systems could be installed to control emissions from affected presses, as well as some uncontrolled existing presses. For these combination cases, the same overall solvent volume balance

and emission percentage limit format would be used. The proposed standards would still apply to only the affected facilities. Determination of compliance for the affected facilities in these combination cases is explained in the Compliance Provisions section.

Some plants may decide to capture and recover the relative small amount of solvent vapors from existing or new proof presses. Captured VOC vapors from either of these operations could be sent to the emissions control systems for affected facilities; however, the proposed standards would still apply to only the affected facilities. The ink and solvent usage at the proof press would not have to be accounted for in determining compliance with the proposed standards.

In principle, the same emission percentage format could be used with solvent destruction emission control devices. Procedures for determination of the emission percentage with these control devices are not being proposed, however, because these control devices are not presently employed by this industry, and are not expected to be used in the future. The Administrator will welcome comments on whether this expectation is a reasonable assumption.

The emission percentage format would also be used for affected facilities using low-VOC, waterborne ink systems without emission controls. The actual emission percentage would not be determined for these cases, however. Instead, the affected facility would be determined to be in compliance with the proposed emission percentage limit if the VOC content is not more than 16 volume percent of the total volatile portion of the waterborne ink mixture as applied to the gravure printing cylinder. Since there are no waterborne inks presently used in this industry, a suitable analysis method could not be developed for determination of the VOC content in the ink mixture as applied. Therefore, in the absence of test data a allowable VOC to solids volume ratio for purchased inks and coatings was developed on a theoretical basis to correspond to the proposed 16 percent emission limit. A general material balance for typical solvent-borne ink systems usage showed that the ink mixture as applied contains an average of 20 volume percent solids and 80 volume percent VOC. An allowable 16 percent emission of the VOC content shows that an equivalent waterborne ink mixture would have to have a VOC to solids volume ratio of less than or equal to 0.64. Thus, if only water were added to dilute the raw inks and related coatings, the ink manufacturer's analysis data on the purchased inks and coatings could be used to determine compliance with the proposed emission limit.

Liquid metering devices would not be required with waterborne ink systems provided that only water is added for ink dilution. If VOC solvent were added for ink dilution, liquid meters would be required to facilitate calculation of the VOC content in the applied ink mixture. The Administrator believes that the stipulation for water dilution only is reasonable for two reasons: (1) Not having to install liquid meters should provide an extra incentive for using waterborne ink systems, and (2) If ink formulation technology advances far enough to develop useable low-VOC, waterborne inks, there should be no need nor desire to dilute the ink with VOC solvent.

Selection of Numerical Emission Limits

The proposed 16 percent emission limit, or 84 percent overall reduction, is the maximum control level judged by the Administrator to be achievable on a continual basis by the best demonstrated system of emission reduction. The most stringent regulatory alternative considered, requiring 85 percent overall control or a 15 percent emission limit, is achievable most of the time and has, in the Administrator's judgment, acceptable environmental, energy, and economic impacts. However, long-term plant data showed that a 15 percent emission limit might not be achievable during one or two months over a year's operation. Therefore, the emission limit has been set at 16 percent to accommodate this expected variation in overall control efficiency. As noted previously in the control technologies and regulatory alternatives sections, the proposed overall emission control level of 85 percent has been demonstrated by existing facilities employing VOC vapor capture systems of greater than 90 percent efficiency combined with solvent recovery devices of greater than 95 percent efficiency. These efficiencies were first of all achieved during tests at the newest Meredith/Burda facilities. Secondly, tests conducted at Texas Color Printers showed that those facilities could potentially achieve the 85 percent overall control level. Thirdly, more than a year of data reflecting normal operation at Standard Gravure showed long-term achievement of the 85 percent level. Finally, evaluation of more data from Meredith/Burda covering ten months of normal plant operation caused the Administrator to select 84 instead of 85 percent overall control as the correct basis for the proposed emission limit.

The newest facilities at Meredith/Burda were tested after observation revealed that these modern facilities employed the best continuous fugitive VOC vapor capture system combined with a thoroughly instrumented, modern carbon adsorption/solvent recovery system. The two presses involved in the tests consisted of eight printing units each and were printing a magazine and an advertising product at average press speeds of 4.6 to 9.6 m/s (900 to 1,900 f/m), while using toluene as solvent. Overall liquid solvent volume balances were conducted during three separate nine-hour runs, and over 50 hours of normal printing operations. The normal operations involved numerous press shutdowns and startups for web breaks and other typical problems. Liquid meter readings and manufacturers data on the VOC content of the purchased raw inks and related coatings were used as first calculations of the overall solvent volume material balances. As explained in Chapter 4 of the BID (Section 4.1.2), the apparent overall VOC control efficiency results were then reduced by five percent to compensate for two unique characteristics at these facilities. A two percent factor was required for the density variation of the higher metered temperature of the recovered solvent over the assumed metered temperature of the raw inks and toluene used at the presses. An additional three percent factor was required for infiltration of toluene vapors from neighboring pressrooms. The results of supplemental measurements showed that some air containing 60 to 70 ppmv toluene vapors was drawn into the newest pressroom from other pressrooms and plant areas. The final adjusted tests results showed overall solvent recovery efficiencies ranging from about 89 to 92 percent. In addition to the short-term test results, ten individual months of plant material balance data were compensated for the temperature and infiltration factors resulting in adjusted overall VOC control efficiencies ranging from about 84 to 91 percent.

The test results and reported plant data on the overall VOC control efficiency by liquid meter readings are believed to be based on the most accurate measurements that continuous modern instrumentation can provide. The meters were not calibrated before testing, however the tests were conducted within six months after the new meters were installed and should still have been within the original factory calibrations. Also, the meter

readings were not cross-checked with storage tank level readings, but the Administrator believes that the liquid meters should be more accurate than solvent inventory by tank level readings.

The capture system demonstrated at Meredith/Burda consisted of dryer exhaust collection combined with fugitive vapor cabin enclosures around the top portion of each press. The cabin enclosures represent the most effective VOC vapor capture system, requiring the least amount of SLA handling to capture essentially all fugitive vapors from the presses. However, as explained in the "Control Technologies" section, application of this type enclosure may require some modifications to alleviate potential OSHA violations.

The product mix handled at Meredith/Burda is somewhat specialized and is therefore not fully representative of the entire publication rotogravure printing industry. Meredith/Burda handles special long run products, while most other plants print shorter run products. The shorter run products cause more frequent web breaks and press shutdowns during printing, as well as more press downtime between job runs. In addition, some of the industry's products may retain more solvent than the products printed at Meredith/Burda, although there is no known satisfactory method for this determination. Therefore, the high VOC vapor capture efficiencies demonstrated at Meredith/Burda may not be representative of that achievable by the rest of the industry.

It was realized that the Meredith/Burda facilities had several unique features so facilities at a second plant site were tested. The two Texas Color Printers facilities were tested because they were modern printing facilities which use the more common mixed, naphtha-based solvent. Unfortunately, the facilities did not employ a fugitive vapor capture system and the solvent recovery system was not as well instrumented as that at Meredith/Burda. The tested presses consisted of eight and twelve printing units each and were printing a magazine and advertising products at average press speeds of 4.6 to 9.1 m/s (900 to 1,800 f/m). Overall liquid solvent volume balances and gas phase monitoring of pressroom ventilation air streams were conducted during three four and one-half hour runs. In addition, a solvent volume balance was conducted over a 27 hour period of normal operation. The test results from direct liquid meter readings, ink manufacturers data, and the gas phase monitoring showed that overall solvent recovery efficiencies ranging from about 91 to 93 percent could potentially be achieved if the pressroom ventilation air streams were directed to the control device rather than to the atmosphere. However, combination of the test data with five months of plant data indicated potential overall solvent recovery efficiencies of only about 88 to 90 percent. The lowest calculated potential efficiency, in each case, was based on a one percent decrease in adsorber efficiency which would result from the 30 percent increase in the captured SLA flowrate. The highest calculated potential efficiencies would correspond to increased adsorber efficiencies from modification and better instrument controls comparable with those at Meredith/Burda.

A third data source considered in setting the proposed emission limit level consists of over a year of plant data from Standard Gravure. This plant is regarded as having the most thorough capture system; however, the average adsorber efficiency is probably lower than Meredith/Burda's because of the lower solvent vapor concentration in the inlet SLA. At this plant, the VOC emission control system performance is determined by overall liquid solvent mass balances, instead of volume balances. Converted recovered solvent meter readings are compared to total amount of solvent used, determined from converted solvent addition meter readings plus tank truck weighings of purchased raw inks combined with ink manufacturers VOC analysis data. Six rotogravure production presses, consisting of eight to 16 printing units each, are used to print only newspaper supplements at average press speeds of 6.6 to 7.6 m/s (1300 to 1500 fpm). The mixed, naphtha-based type solvents are used at these printing facilities. The long-term plant data showed individual four-week averaged overall recovery efficiencies ranging from 85 to 90 percent. The plant suggested that the inlet SLA vapor concentration, and thus the adsorber efficiency, is lower during periods of less solvent usage because the SLA capture system has no turndown or valve diverting mechanisms. The overall recovery versus solvent usage data, however, does not show any definite correlation.

The Administrator believes that the Standard Gravure plant data should be included as part of the data base for setting the proposed emission limit level, even though EPA testing was not conducted at this plant. These plant data serve as additional sources of long-term performance data, which have been shown to be more realistic than short-term tests for evaluating the achievable overall emission control performance. The Standard Gravure plant data show overall efficiencies continually above the proposed standard 84 percent level (16 percent emission limit). The normal plant procedure for determining the emission control system performance does not follow the exact format for the proposed standards, but the Administrator believes that the method used should provide sufficient accuracy for supporting the proposed emission limit.

The variations in press widths, press operating speeds, and number of printing units per press can significantly affect the overall efficiency of a carbon adsorption/solvent recovery system. Operating conditions such as a narrow web being printed on a wide press, decreased ink coverage, and technological advancements allowing press speeds of over 10.2 m/s (2,000 fpm) could cause decreased capture efficiency and excessive dryer exhaust SLA dilution. These effects were shown during the two plant tests while printing both narrow and full width webs with several different products and ink coverages.

The Administrator acknowledges these potential effects and believes that they can be minimized by careful design of new presses and the SLA capture system. A VOC vapor monitor could be installed in the dryer exhausts streams to control the amount of internal air recirculation; this would maximize the VOC vapor concentration in the SLA stream treated by the control device. Adjustable width openings for the dryer inlets and outlets could be designed to help minimize the amount of dilution air drawn into the dryer. These adjustments could be made when the printing cylinders are changed between job runs. More thorough dryer designs will need to be utilized to handle the higher press speeds. In addition, fugitive vapor capture-air systems incorporating valve-diverting or turndown mechanisms could be installed for periods of low production and press shutdowns. The Administrator believes that the proposed standards allow for these effects, since the emission limit is based on long-term, typical operations while printing various types of products at three different plants.

In conclusion, the Administrator selected the proposed 16 percent emission limit after a thorough evaluation of the data base and a careful consideration of factors which influence control system performance. The data base consists of short-term test data and long-term plant data for facilities at the Meredith/Burda and Texas Color plant sites, along with long-

term plant data from Standard Gravure. The data base shows that 90 percent overall control is achievable under some conditions; however, the Administrator realized that 90 percent control is not representative of all conditions for the entire affected industry. The Administrator believes that the proposed 16 percent emission limit (84 percent overall control) is reasonable and is continually achievable. The proposed emission limit level allows for control efficiency variations resulting from such factors as low solvent usage, solvent retention in the product, and printing products that cause frequent production delays.

Selection of Compliance Provisions

Performance Averaging and Reporting

After the required initial performance test is completed, continual compliance with the proposed standards would be determined on a calendar month averaging basis. Each calendar month would be considered a performance test. The results of the monthly compliance determinations would have to be reported within ten calendar days following the end of any calendar month for which non-compliance is determined. Reporting of performance test results showing compliance with the standards would not be required. As an alternative, four-week averaging compliance periods may be chosen by an owner or operator in order to coincide with the plant's normal accounting procedures. Affected facilities would be subject to potential enforcement action for any compliance period in which a violation of the proposed standards is determined.

The variability of rotogravure printing requires a long-term averaging period to adequately assess the true performance of fixed-bed carbon adsorption/solvent recovery systems. Several different types of publication and advertising products are printed with a wide range of coverage of ink and related coatings. Operating parameters such as press speed, web width, production run length (number of printed copies), press shutdown frequency, product solvent retention, liquid hold-up volume of printing unit ink fountains, and solvent hold-up volume in carbon adsorbers vary substantially within this industry on a daily basis. The combination of these factors influences the amount of solvent vapors generated and the performance of the emission control system. The Administrator believes that calendar monthly or four-week period averaging would allow enough time for printing operation fluctuations to average out.

The necessity for longer-term averaging periods, such as over several months, was considered. The emission limit increase from 15 to 16 percent on a calendar month averaging basis was selected for proposal instead of an option for allowing performance averaging over several months with the 15 percent emission limit alternative. The long-term adjusted Meredith/Burda data showed that a minimum averaging time of four calendar months would have been required on a rolling calendar month basis to meet continual achievability of the 85 percent regulatory alternative.

Initial Performance Test

For affected facilities controlled by solvent recovery systems, the initial performance test would cover 30 consecutive calendar days. The long-term test period was chosen to allow sufficient time for averaging of process variations. A certain number of test days is specified rather than a calendar month so that the initial test could begin as soon as the facility is ready without having to wait until the first day of a month. Determination of compliance during the initial performance tests during the succeeding months or four-week periods, as described in the FORMAT section.

The apparent overall solvent volume balance calculation would have to be density corrected to a base temperature to compensate for the temperature differences between the recovered solvent and the ink/solvent used at the press. This requirement is necessary because of the volumetric expansion of liquid solvent with temperature. Temperature indicators would have to be installed by each meter for the inks, coatings, and solvent used at the press. An automatic temperature compensator would have to be installed for the recovered solvent meter. The temperature of the metered liquids used at the press would probably represent a constant and uniform base temperature at about 20°C (69°F) since the liquids should be at ambient temperature and the meters would be located inside the pressroom. The temperature of the metered recovered solvent can vary from ambient to over 40°C (104°F), depending on the condenser and cooler designs and performance. Since automatic temperature compensators are employed, only direct meter readings would be required.

For affected facilities controlled in common with existing facilities by the same solvent recovery system, the initial performance test would also cover 30 consecutive calendar days. The existing facilities involved would have to install liquid meters and temperature monitoring devices just as required of affected facilities. Raw ink and related costing supplies used at the subject existing facilities would have to be analyzed for VOC content just as for affected facilities. The initial performance test would be performed with both affected and existing facilities simultaneously connected to the solvent recovery system, although only the affected facility would be subject to the proposed standards. For these combination cases, one of two options may be chosen for the initial determination of compliance for the affected facilities.

The first compliance determination option would require a separated initial emission test for the controlled existing facilities involved before the initial performance test is conducted. To determine the true control performance for the affected facilities involved, the amount of VOC emissions from the existing facilities would first need to be subtracted from the total emissions for the combined facilities controlled in common. The separate emission test would determine the average operating emission percentage for the controlled existing facilities by using the overall solvent volume balance procedures developed for affected facilities. The emission test would be performed on the controlled existing facilities without the affected facilities being connected to the emission control system. The emission test would cover 30 consecutive calendar days. Only on existing facilities sharing control systems with affected facilities would emission testing be required. Initial compliance of the affected facilities would then be determined by the initial performance test after being connected to the emission control system with the existing facilities. The existing facilities' tested average emission percentage would then be multiplied by the 30-day total volume of solvent used at only the existing facilities during the initial performance test to determine the amount of VOC emissions from only the existing facilities. The performance of the affected facilities would finally be determined by subtracting the VOC emissions of the existing facilities from the total solvent volume balance for the combined affected and existing controlled facilities.

The second compliance determination option for the combination cases would not require separate testing of existing facilities, but would require more thorough control of emissions from existing facilities.The combined performance of the affected and existing

controlled facilities would have to show compliance with the proposed 16 percent emission limit. Fugitive emissions would have to be captured at the existing facilities to meet the emission limit. From an environmental impact view, this option would be the more favorable choice.

Initial performance test compliance provisions for affected facilities controlled by solvent destruction devices (i.e. oxidation) are not being proposed. These control devices are not presently used by this industry and are not expected to be employed in the future.

For affected facilities using low-VOC, waterborne ink systems without emission control systems, the initial performance test would cover 30 calendar days. Determination of compliance during the initial test would be by VOC analysis data of the purchased raw inks and related coatings used at the affected facility. The affected facility would be in compliance with the proposed 16 percent emission limit provided that the VOC to solids volume ratio is less than or equal to 0.64 for each shipment of all purchased raw inks and related coatings, and only water addition is used as dilution.

Subsequent Performance Tests

For solvent recovery controlled facilities, the second performance test would start with the first day of the next calendar month following completion of the initial performance test or the following Monday for facilities using the four-week averaging period. The period between completion of the initial performance test and the start of the second performance test would not constitute a performance test.

Determination of compliance with solvent recovery systems would be by liquid meters and analysis of all solvent-borne inks and related coatings used at the press. Non-resettable totalizer meters would have to be permanently installed to determine the volume quantities of solvent addition and inks and related coatings used at the press. In addition, a non-resettalbe totalizer meter would be required for the recovered solvent stream from the solvent recovery decanter. Meter readings would have to be taken and recorded during each day of press operation. Daily meter readings would also serve to detect meter malfunctions, and account for the times when the totalizer's reading turns over to zero. Volumetric quantities of any waste inks and waste solvent from the tested facility would be determined using any suitable means approved by the Administrator and recorded as they occur. The VOC volume content analysis of each shipment of ink and related coatings could be obtained from the ink manufacturers. Alternatively, a routine weekly average VOC content could be determined by analysis of the liquid mixtures in the respective storage tanks.

The overall solvent volume balance format, previously described, would then be applied at the end of each performance test averaging period to determine the actual averaged emission percentage and compliance. The total volume amount of solvent in the inks and related coatings would be determined from a summation of several calculated quantities. The VOC volume fraction of each purchased liquid mixture would be multiplied by the respective volume amount of liquid used. This proration is required to compensate for liquid mixture analyses which may change somewhat with each shipment. Alternatively, a weekly average VOC volume fraction for each liquid used could be multiplied by the volume amount of the respective liquid mixture used that week. In either case, the volume amounts of each liquid mixture used at the press would be determined directly from meter readings. The amount of solvent added for printing and cleaning at the press, and metered recovered solvent would be determined directly from meter readings. The quantities of waste inks and waste solvent would be included directly as recovered solvent. Analyses of these two sources of solvent would not be required since they should normally represent relatively insignificant quantities.

The proposed standards would require that the liquid meters necessary for determining compliance be calibrated at least every six months. This requirement is in accordance with maintenance recommendations by most meter manufacturers. This calibration would be done onsite, or the meter could be removed for calibration while a calibrated spare meter is used in its place. The confidence limits of each calibration must be determined and kept on record. Manufacturer's data on some of the liquid meters currently installed in this industry were used to set meter accuracy requirements. Meters used for the inks and related coatings would have to show an accuracy of within ± 1.5 percent. Meters used for solvent added at the press and recovered solvent would have to show an accuracy of within ± 0.5 percent, since solvent doesn't contain any solids and is an easier metering service.

For affected facilities controlled in common with existing facilities by the same solvent recovery system, the subsequent performance tests would follow the same procedures used during the initial performance test. If prior to the initial performance test the option to test the existing facilities separately was chosen, the averaged performance of the affected facility during each month or four-week performance averaging period would be calculated considering the existing facilities' tested emission percentage. Each existing facility's tested emission percentage would be assumed to remain constant for each performance average period until the Administrator requests another emission test for that existing facility. If the option to not test the existing facilities prior to the initial performance test was chosen, the combined performance of the affected and existing controlled facilities would have to show compliance with the proposed 16 percent emission limit during each month or four-week averaging period.

Procedures for determination of compliance with solvent destruction devices are not being proposed, as previously explained.

The affected facility must be in compliance with the proposed emission limit during all periods of normal operations. Non-compliance would be allowed during periods of startups, shutdowns, and malfunctions of the emission control system as provided for under 40 CFR 60.8(c). However, the startups and shutdowns caused by web breaks and other typical operations upsets would be considered normal operation of printing presses.

Determination of compliance for affected facilities using waterborne ink systems, without emission controls, would be by VOC analysis data from the ink manufacturer, as explained for the initial performance test. Liquid meters would not be required, provided that only water is added for ink dilution.

Selection of Performance Test Methods

Reference methods, equivalent methods, alternative methods, or procedures specified in a regulation must be used for performance tests. This section describes the methods and procedures proposed for this standard.

The proposed Reference Method 29, "Determination of Volatile Matter Content and Density of Printing Inks and Related Coatings", would be employed to determine the VOC volume content of all solvent-borne inks and related coatings used at presses controlled by solvent recovery systems. As an alternative, an owner or operator may obtain analysis data on the VOC

content of the purchased inks used from the ink manufacturer. Reference Method 29 could be used for verification of the ink manufacturer's data, if needed. Reference Method 29 would be applicable for analysis of only solvent-borne inks and related coatings. The proposed method could not be used for verification of ink manufacturer's data on the VOC content of waterborne inks.

The proposed Reference Method 29 determines the total amount of volatile matter content in solvent-borne inks and related coatings. Employment of this method for determination of VOC content requires that the volatile portion of the solvent-borne coating must be assumed to consist of essentially all organic compounds. That is, as proposed, the method does not provide procedures for determination of any water content (e.g. by Karl Fischer titration) and subsequent correction for the actual VOC content. It is the Administrator's understanding that all present and future solvent-borne inks and related coatings will usually contain much less than one percent water in the volatile portion, but, at most, up to about five weight percent water. The Administrator will welcome comments on the proposed Reference Method, especially regarding (1) the assumed range of water content in solvent-borne inks and related coatings, (2) the necessity for correcting the Reference Method analysis for water content, and (3) any recommended analytical procedures for accurately determining the water content.

The VOC content data supplied by the ink manufacturer for the purchased raw inks and related coatings should be based on the best method available to the manufacturer. Calculated compositions from liquid meter readings or weigh-tank outages used for measuring the amounts of the individual components that go into making up the product ink mixture may be considered. An analysis method similar to the proposed Reference Method 29 may be used. In general, however, formulation guidelines data are not regarded as the most reliable method since the actual composition of the ink mixture shipment can vary somewhat from the formulation recipe.

For affected facilities using low-VOC, waterborne ink systems without air pollution control equipment, no Reference Methods would be applicable. The owner or operator could determine the VOC content analysis of the purchased inks and coatings by any method acceptable to the Administrator. A reference method for verification of waterborne ink analysis is not being proposed.

Modification/Reconstruction Considerations

Any number of printing units is considered a single press if all the units are capable of printing simultaneously on the same continuous substrate. Since additional units could be added to an existing press to increase its versatility, it is highly unlikely that other units of the same press would be shutdown. Each unit is potentially an equal source of emissions; therefore, the addition of units would cause an incremental increase in emissions and would be considered a modification as defined in 40 CFR 60.14.

A major renovation in which substantial portions of an existing press are replaced is considered a reconstruction according to the provisions under 40 CFR 60.15. If the capital cost of the new components exceeds 50 percent of the total replacement capital cost of a new printing press, the existing press would be considered reconstructed and subject to the proposed standards. This could be achieved by replacement of more than half the units of a press. It is unlikely that only a portion of the units of a press would be replaced, since all the units receive the same use and care. If extensive replacement is indicated, it is more likely that all units will be replaced at once.

As previously mentioned, model plants representing modified and reconstructed existing facilities were not developed because these cases are not expected in this industry. Advanced technological designs of modern printing presses and associated equipment makes the installation of newer presses much more attractive over attempts to upgrade older presses. However, the Administrator believes that both modified and reconstructed existing facilities could achieve the proposed emission limit with reasonable environmental, energy, and economic impacts. These impacts would be essentially equivalent to those impacts for new facilities. Installation of a fugitive vapor capture system would be necessary for each subject facility or for the entire associated pressroom, if fugitive vapors are not already captured. In addition, improvements or modernization of older emission control devices and associated instrumentation may be necessary. Alternatively, low-VOC, waterborne ink systems could be employed to comply with the proposed standards.

Impacts of Reporting Requirements

The "Reports Impact Analysis of New Source Performance Standards for the Publication Rotogravure Printing Industry" is located in Docket No. A-79-50, category 77/8-II-A-11. The results of the analysis are summarized in this section.

The authority for the reporting requirements necessitated by the proposed standards is provided in Section 114 of the Clean Air Act. Several types of reports would be required. The industry would be required to submit notifications of the following: construction, anticipated start-up, actual initial startup, physical or operational changes, and initial performance tests. A report of the initial performance test results would be required. Monthly non-compliance reports would be required; the industry would not be required to submit monthly performance test results when compliance with the standards is determined. Records of startups, shutdowns, and malfunctions of the air pollution control systems, and monthly performance test results would have to be maintained for two years. The industry would also be required to maintain records of daily meter readings, ink analyses, and liquid meter calibrations.

The reporting requirements would necessitate the industry to hire about five additional personnel to cover about 22 person-years over the five years of applicability of the standard. There are presently 17 parent companies in this industry. Thus, less than one-third of an extra person's time would be required per company. This estimate was based on the projection of 7 percent annual real growth in the publication rotogravure industry. Seventy-five new presses would be affected over the five-year period, for an average of 15 presses per year.

Public Hearing

A public hearing will be held to discuss the proposed standards in accordance with Section 307(d)(5) of the Clean Air Act. Persons wishing to make oral presentations should contact EPA at the address given in the ADDRESSES section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement before, during, or within 30 days after the hearing. Written statements should be addressed to the Central Docket Section address given in the Addresses section of this preamble.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during

normal working hours at EPA's Central Docket Section in Washington, D.C. (see Addresses section of this preamble).

Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered in the development of this proposed rulemaking. The principal purposes of the docket are (1) to allow interested parties to readily identify and locate documents so that they can intelligently and effectively participate in the rulemaking process, and (2) to serve as the record in case of judicial review.

Miscellaneous

As prescribed by Section 111, establishment of standards of performance for publication of rotogravure printing presses in the graphic arts industry was preceded by the Administrator's determination (40 CFR 60.16, 44 FR 49222, dated August 21, 1979), that the graphic arts industry contributes significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. In accordance with Section 117 of the Act, publication of this proposal was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies. The Administrator will welcome comments on all aspects of the proposed regulation, including economic and technological issues, and on the proposed test methods. Comments are especially welcomed concerning the exclusion of compliance procedures for solvent destruction devices.

It should be noted that standards of performance for new sources established under Section 111 of the Clean Air Act reflect:

> . . . application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emissions reduction, any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated [Section 111(a)(1)].

Although there may be emission control technology available that can reduce emissions below those levels required to comply with standards of performance, this technology might not be selected as the basis of standards of performance due to costs associated with its use. Accordingly, standards of performance should not be viewed as the ultimate in achievable emission control. In fact, the Act required (or has the potential for requiring) the imposition of a more stringent emission standard in several situations.

For example, applicable costs do not necessarily play as prominent a role in determining the "lowest achievable emission rate" for new or modified sources locating in nonattainment areas, i.e., those areas where statutorily-mandated health and welfare standards are being violated. In this respect, Section 173 of the Act requires that new or modified sources constructed in an area where ambient pollutant concentrations exceed the National Ambient Air Quality Standard (NAAQS) must reduce emissions to the level that reflects the "lowest achievable emission rate" (LAER), as defined in Section 171(3) for such category of source. The statute defines LAER as that rate of emissions based on the following, whichever is more stringent:

> (A) the most stringent emission limitation which is contained in the implementation plan of any State for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable, or
>
> (B) the most stringent emission limitation which is achieved in practice by such class or category of source.

In no event can the emission rate exceed any applicable new source performance standard [Section 171(3)].

A similar situation may arise under the prevention of significant deterioration of air quality provisions of the Act (Part C). These provisions require that certain sources [referred to in Section 169(1)] employ "best available control technology" (BACT) as defined in Section 169(3) for all pollutants regulated under the Act. Best available control technology must be determined on a case-by-case basis, taking energy, environmental and economic impacts and other costs into account. In no event may the application of BACT result in emissions of any pollutants which will exceed the emissions allowed by any applicable standard established pursuant to Section 111 (or 112) of the Act.

In all events, State Implementation Plans (SIP's) approved or promulgated under Section 110 of the Act must provide for the attainment and maintenance of NAAQS designed to protect public health and welfare. For this purpose, SIP's must in some cases require greater emission reduction than those required by standards of performance for new sources.

Finally, States are free under Section 116 of the Act to establish even more stringent emission limits than those established under Section 111 or those necessary to attain or maintain the NAAQPS under Section 1110. Accordingly, new sources may in some cases by subject to limitations more stringent than standards of performance under Section 111, and prospective owners and operators of new sources should be aware of this possibility in planning for such facilities.

This regulation will be reviewed four years from the date of promulgation as required by the Clean Air Act. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, improvements in emission control technology, and reporting requirements. The reporting requirements in this regulation will be reviewed as required under EPA's sunset policy for reporting requirements in regulations.

Section 317 of the Clean Air Act requires the Administrator to prepare an economic impact assessment for any new source standard of performance promulgated under Section 111(b) of the Act. An economic impact assessment was prepared for the proposed regulations and for other regulatory alternatives. All aspects of the assessment were considered in the formulation of the proposed standards to insure that the proposed standards would represent the best system of emission reduction considering costs. The economic impact assessment is included in the Background Information Document.

Dated: October 16, 1980.

Douglas M. Costle,

Administrator.

It is proposed that 40 CFR Part 60 be amended as follows:

1. A new Subpart QQ is added as follows:

Subpart QQ—Standards of Performance for the Graphic Arts Industry: Publication Rotogravure Printing

Sec.

Authority: Sec. 111 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7411, 7601(a)), and additional authority as noted below.

Subpart QQ—Standards of Performance for the Graphic Arts Industry: Publication Rotogravure Printing

§ 60.430 Applicability and designation of affected facility.

(a) The affected facility to which the provisions of this subpart apply is each publication rotogravure printing press.

(b) Any facility under paragraph (a) of this section which commences construction, modification, or reconstruction after [date of publication in the **Federal Register**] is subject to the requirements of this subpart.

§ 60.431 Definitions and notations.

(a) All terms used in this subpart that are not defined below have the meaning given to them in the Act and in Subpart A of this part.

"Automatic temperature compensator" means a device which continuously senses the temperature of the fluid flowing through a metering device and automatically adjusts the registration of the measured volume amount to the corrected equivalent volume amount at a base temperature.

"Base temperature" means the average temperature of the total amount of VOC solvent as metered at a publication rotogravure printing press.

"Density" means the mass of a unit volume of liquid, expressed as the weight in grams per cubic centimeter, at a specified temperature.

"Gravure cylinder" means a plated cylinder with a printing image consisting of minute cells or indentations, specially engraved or etched into the cylinder's surface to hold ink when continuously revolved through a fountain of ink.

"Performance averaging period" means 30 calendar days, one calendar month, or four consecutive weeks as specified in the sections of this subpart.

"Publication rotogravure printing press" means any number of publication rotogravure printing units used to print saleable products described under SIC code numbers 27541 and 27543, and capable of printing simultaneously on the same continuous web or substrate, which is fed from a continuous roll, but does not include proof presses which are used to check the quality of the image formation of newly engraved or etched gravure cylinders.

"Publication rotogravure printing unit" means any device designed to print one color ink on one side of a continuous web or substrate using the intaglio printing process with a gravure cylinder.

"Raw ink" means all purchased ink.

"Related coatings" means all non-ink purchased liquids and liquid-solid mixtures containing VOC solvent, usually referred to as extenders or varnishes, that are used at publication rotogravure printing presses.

"Solvent-borne ink systems" means raw ink and related coatings whose volatile portion consists essentially of VOC solvent with not more than five weight percent water.

"Solvent recovery system" means an air pollution control system by which VOC solvent vapors in air are captured and directed through a control device containing beds of activated carbon or other adsorbents. The vapors are adsorbed, then desorbed by steam or other media, and finally condensed and recovered.

"Total amount of VOC solvent used" means all VOC solvent added to the ink used at the subject facility, all VOC solvent included by the ink manufacturers in the inks and related coatings used at the facility, and all VOC solvent used as a cleaning agent at the facility.

"VOC" means volatile organic compound as defined in § 60.2(dd).

"VOC solvent" means an organic liquid mixture consisting of VOC components.

"Waterborne ink systems" means raw ink and related coatings whose volatile portion consists of a mixture of VOC solvent and more than five weight percent water.

(b) Symbols used in this subpart are defined as follows:

B_c = the average metered temperature of each respective color or raw ink and each related coating used at the subject facility (or facilities).

B_d = the average temperature of the metered VOC solvent added to dilute the ink used at the subject facility (or facilities) over one performance averaging period.

B_g = the average temperature of the metered VOC solvent used as a cleaning agent at the subject facility (or facilities) over one performance averaging period.

B_t = the calculated base temperature for the subject facility (or facilities) over one performance averaging period.

L_c = the liquid volume amount of each respective color of raw ink and each related coating used at the facility of a corresponding VOC content, V_o.

L_d = the total liquid volume amount of VOC solvent added to dilute the ink used at the subject facility (or facilities) over one performance averaging period.

L_g = the total liquid volume amount of VOC solvent used as a cleaning agent at the subject facility (or facilities) over one performance averaging period.

L_m = the liquid volume amount of recovered VOC solvent registered by meter devices from the subject facility (or facilities) over one performance averaging period.

L_o = the total liquid volume amount of VOC solvent contained in the raw inks and related coatings used at the subject facility over one performance averging period.

L_r = the total liquid volume amount of VOC solvent recovered from the subject facility (or facilities) over one performance averging period.

L_t = the total liquid volume amount of VOC solvent used at the subject facility (or facilities) over one performance averaging perod.

L_u = the liquid volume amount of miscellaneous unmetered recovered VOC solvent from the subject facility (or facilities) over one performance averaging period.

P = the average VOC emission percentage for the subject facility (or facilities) over one performance averaging period.

V_o = the liquid VOC content, expressed as a volume fraction, of such respective color of raw ink and each related coating stream used at the facility.

(c) The following subscripts are used in this subpart with the above symbols to denote the applicable facility:

a = affected facility

b = both affected and existing facilities controlled in common by the same air pollution control equipment.

e = existing facility.

§ 60.432 Standards for volatile organic compounds.

(a) Over the period of the initial performance test required to be conducted by § 60.8 and on and after the first day of the next performance averaging period following completion of the initial test, no owner or operator subject to the provisions of this subpart and using solvent-borne ink systems shall cause to be discharged into the atmosphere from any affected facility more than 16 percent of the total amount of VOC solvent volume used at that facility over any one performance averaging period. The averaging period for the initial performance test is 30 calendar days. The averaging period for subsequent performance tests is a calendar month or four consecutive weeks, at the option of the owner or operator.

(b) No owner or operator subject to the provisions of this subpart and using waterborne ink systems shall use a raw ink or related coating with a ratio of VOC volume content to solids volume content which is greater than 0.64, nor

shall that raw ink or related coating be diluted with anything other than water addition.

§ 60.433 Compliance provisions.

(a) The owner or operator subject to the provisions of this subpart shall show compliance with the standards set forth in § 60.432 at all times, except as provided under § 60.8(c) and paragraph (b) of this section. The startup, shutdown, and malfunction provisions in § 60.8(c) apply only to the air pollution control equipment and not to the process equipment.

(b) After the initial performance test required for all affected facilities under § 60.8, compliance with the VOC emission limitation under § 60.432 is based on the emissions for one calendar month or one four-week averaging period. A separate performance test is completed at the end of each calendar month or each four-week averaging period after completion of the initial performance test. A new calendar month or a four-week averaging period VOC emission percentage is then calculated to show compliance with § 60.432(a) or new VOC volume to solids volume ratios for waterborne ink systems are calculated to show compliance with § 60.432(b).

(c) The owner or operator of an effected facility controlled by a solvent recovery system shall use the following procedures to determine compliance with the emission limit in § 60.432(a) for each performance averaging period:

(1) the total liquid volume amount of VOC solvent in all the raw inks and related coating used at the effected facility is determined by the following equation:

$$(L_o)_a = \sum_{i=1}^{k} (V_{oi})_a (L_{ci})_a$$

The indexing subscript, i, designates the "ith" coating for the number of coatings with different VOC contents ranging from 1 to k. V_o is determined in accordance with § 60.437(a). L_c is determined from direct readings of the metering devices required under § 60.435(a)(2).

(2) The total liquid volume amount of VOC solvent used at the affected facility is determined by the following equation;

$(L_t)_a = (L_o)_a + (L_d)_a + (L_g)_a$

L_d and L_g are determined from direct readings of the respective metering devices required under § 60.435(a)(1) and § 60.435(a)(3).

(3) The total liquid volume amount of VOC solvent recovered from the affected facility is determined by the following equation:

$(L_r)_a = (L_m)_a + (L_u)_a$

L_u is determined as stipulated in § 60.435(j). L_m is determined from direct readings of the metering devices required under § 60.435(a)(4).

(4) The average VOC emission percentage for the affected facility is determined by the following equation:

$$P_a = \left[\frac{(L_t)_a - (L_r)_a}{(L_t)_a}\right] \times 100$$

(d) The owner or operator of two or more affected facilities that are controlled by same solvent recovery system shall use the procedures specified in paragraph (c) of this section to determine compliance, except that $(L_t)_a$ and $(L_r)_a$ are the collective VOC solvent amounts corresponding to all the affected facilities controlled by that solvent recovery system. The average VOC emission percentage for each of the affected facilities controlled by that same solvent recovery system is assumed to be equivalent.

(e) The owner or operator of an existing facility (or facilities) and an affected facility (or facilities) that are controlled in common by the same solvent recovery system shall use one of the following procedures to determine compliance with § 60.432(a):

(1) The owner or operator shall determine compliance for the affected facility (or facilities) by first conducting an emission test on only the controlled existing facility (or facilities) and then conducting a performance test on the combined controlled facilities as follows:

(i) The average VOC emission percentage for the existing facility (or facilities) is first determined separately by using the following equation in accordance with the conditions stipulated in § 60.434(c):

$$P_e = \left[\frac{(L_t)_e - (L_r)_e}{(L_t)_e}\right] \times 100$$

$(L_t)_e$ and $(L_r)_e$ are determined by the procedures specified in articles (c)(1), (2), and (3) of this section for one facility or by paragraph (d) of this section for more than one facility, except that the VOC solvent amounts pertain only to the existing facility (or facilities).

(ii) The average VOC emission percentage for the affected facility (or facilities) is then determined by using the following equation with both existing and affected facilities connected to the solvent recovery system:

$$P_a = \left[\frac{(L_t)_b - (L_r)_b - (L_t)_e\left(\frac{P_e}{100}\right)}{(L_t)_a}\right] \times 100$$

$(L_t)_b$ and $(L_r)_b$ are determined by the procedures specified in articles (c)(1), (2), and (3) of this section, except that the VOC solvent amounts pertain to all the facilities controlled in common by the solvent recovery system over one performance averaging period. $(L_t)_a$ and $(L_t)_e$ pertain to the VOC solvent amounts used at the affected facility (or facilities) and the existing facility (or facilities), respectively, over one performance averaging period, as determined by the procedures specified in articles (c)(1), (2), and (3) of this section. P_e is assumed to be constant during each performance averaging period and is equivalent to the VOC emission percentage determined in the latest emission test in accordance with article (1)(i) of this paragraph.

(2) The owner or operator shall show compliance of the combined performance of existing and affected

facilities controlled in common. A separate emission test for existing facilities is not required. The average VOC emission percentage for the combined facilities with both existing and affected facilities connected to the solvent recovery system is determined by the procedures specified in paragraph (c) of this section with the following equation:

$$P_b = \left[\frac{(L_t)_b - (L_r)_b}{(L_t)_b}\right] \times 100$$

(f) The owner or operator of an affected facility using waterborne ink systems shall install air pollution control equipment to comply with the emission limit in § 60.432(a) if the standard in § 60.432(b) cannot be met. Compliance with the standard in § 60.432(b) for each performance averaging period is determined by—

(1) Obtaining from the ink manufacturer analyses of the VOC volume and solids volume contents of each purchased shipment of all color raw inks and all related coatings used at the affected facility (or facilities); and

(2) Calculating the ratio of VOC volume content to solids volume content from the ink manufacturer's analsyses data for each shipment of raw ink and related coatings used at the affected facility during each performance averaging period.

§ 60.434 Performance test procedures.

(a) Before start of the initial performance test required under § 60.8, the owner or operator subject to the provisions of this subpart shall notify the Administrator in writing as to whether a calendar month or a four-week averaging period basis will be used for determination of compliance with the standards under § 60.432.

(b) The owner or operator of an affected facility (or facilities) controlled by a solvent recovery system shall conduct an initial performance test to determine compliance with § 60.432(a) as follows:

(1) The initial performance test required under § 60.8 is based on 30 consecutive calendar days and not on an average of three runs as prescribed under § 60.8(f).

(2) The average VOC emission percentage for the affected facility (or facilities) over the 30 day test period is determined as specified in § 60.433(c), (d), or (e), whichever applies.

(c) If the procedures in § 60.433 (e)(1) are used to determine compliance of an affected facility (or facilities) controlled by a solvent recovery system which handles VOC emissions from both affected and existing facilities, the owner or operator shall conduct a separate emission test on the existing facility (or facilities) as follows:

(1) The emission test is based on 30 consecutive calendar days.

(2) The emission test is to be conducted without connection of the affected facility (or facilities) to the air pollution system.

(3) The emission test is to be conducted before both the affected and existing facilities are initially connected to the same control system, and at any other time as requested by the Administrator.

(4) § 60.435(h) applies to the existing facility (or facilities) during the emission test.

(5) The average VOC emission percentage for the existing facility (or facilities) over the 30 day test period is determined as described in § 60.433(e)(1)(i).

(6) The emission test is to be conducted under conditions that the Administrator will specify to the plant operator.

(7) The owner or operator of the existing facility (or facilities) shall provide the Administrator 30 days prior notice of the emission test to afford the Administrator the opportunity to have an observer present.

(8) The owner or operator of the existing facility (or facilities) shall furnish the Administrator a written report of the results of the emission test.

(9) After completion of this separate emission test on the existing facility (or facilities), the affected facility (or facilities) is then connected to the air pollution control system with the existing facility (or facilities). During emission tests on the existing facilities, the affected facilities are still subject to the standards stipulated in § 60.432—neither the owner nor operator shall operate affected facilities uncontrolled.

(d) The owner or operator of an affected facility (or facilities) using waterborne ink systems shall conduct an initial performance test to determine compliance with § 60.432(b) as follows:

(1) The initial performance test required under § 60.8 is based on 30 consecutive calendar days and not on an average of three runs as prescribed under § 60.8(f).

(2) The VOC volume to solids volume ratio for each shipment of raw inks and related coatings used at the affected facility (or facilities) over the 30 day test period is determined as specified in § 60.433(f).

(e) After the initial performance test, the owner or operator shall conduct successive performance tests during each calendar month or four-week averaging period as described in § 60.433(b).

§ 60.435 Emission monitoring and recordkeeping.

(a) The owner or operator of any affected facility controlled by a solvent recovery system shall install, calibrate, maintain, and continuously operate—

(1) One or more non-resettable totalizer metering device(s), accurate to within ±0.5 percent, for continuously indicating the cumulative liquid volume amount of VOC solvent added to the ink used at the affected facility;

(2) One or more non-resettable totalizer metering device(s), accurate to within ±1.5 percent, for continuously indicating the cumulative liquid volume amount of each color or raw ink and each related coating used at the affected facility;

(3) One or more non-resettable totalizer metering device(s), accurate to within ±0.5 percent, for continuously indicating the cumulative liquid volume amount of VOC solvent used as a cleaning agent at the affected facility, if the cleaning solvent used is not registered by the metering devices required in article (a)(1);

(4) One or more non-resettable totalizer metering device(s), accurate to within ±0.5 percent, for continuously indicating the cumulative liquid volume amount of VOC solvent recovered by the solvent recovery system which serves the affected facility; and

(5) an automatic temperature compensator, calibrated in accordance with paragraph (i) of this section, to adjust the totalizer volume readings of each recovered solvent metering device required by article (4) of this paragraph.

(b) The owner or operator shall install all metering devices described in articles (a)(1), (2), (3) and (4) of this section with no taps upstream and no unmetered bypasses.

(c) The owner or operator shall install, maintain, and continuously operate an air eliminator and strainer upstream of each metering device required in paragaph (a) of this section in accordance with the meter manufacturer's recommendations to maintain meter calibration accuracy.

(d) The owner or operator shall install and maintain a monitoring device,

accurate to within ±2° C (±4° F), for continuously indicating the temperature of the fluid metered by each device required in articles (a)(1), (2), and (3) of this section.

(e) The metering devices described in articles (a)(1), (2) and (3) of this section shall not serve an affected facility and any existing facilities simultaneously.

(f) The owner or operator shall recalibrate all metering devices at least semi-annually, and at other times as the Administrator may require in accordance with the procedures under § 60.13(b)(3). The requirements of articles (a)(1), (2), (3), and (4) must be met before the metering device can be returned to service. The owner or operator shall record the actual calibrated accuracy of each metering device and shall maintain these records for two years.

(g) When the facility is in operation, the owner or operator shall take daily readings of each temperature monitoring device and of the totalizer of each metering device specified in this section, shall record the readings for each performance averaging period, and shall maintain these records for two years.

(h) The owner or operator of an affected facility controlled by a solvent recovery system shall record the VOC volume content analyses as determined under § 60.437(a) for all color raw inks and all related coatings used at the affected facility, and shall maintain these records for two years.

(i) The owner or operator shall calibrate annually the automatic temperature compensators required by article (a)(5) of this section and shall adjust the base temperature setting after each performance averaging period, if needed, according to the following procedures:

(1) The density variation with temperature of the metered recovered VOC solvent is determined by the methods stipulated in § 60.437(d). The recovered VOC solvent density is determined in temperature increments of 10° C, from 15° C to 45° C, or the maximum expected recovered VOC solvent metered temperature.

(2) Calibration is then carried out in accordance with the manufacturer's recommended procedures using the density-temperature profile determined in article (1).

(3) The base temperature for each performance averaging period is derived by the following equation on a weighted average, by volume, basis:

$$B_t = \left[\frac{(B_d)(L_d) + (B_g)(L_g) + \sum_{i=1}^{k} (B_{ci})(V_{oi})(L_{ci})}{L_t} \right]$$

The indexing subscripts, i and k, are defined under § 60.433(c)(1).

(4) If the base temperature calculated by article (3) deviates by more than 5° C (9° F) from the base temperature setting of the associated automatic temperature compensator, that base temperature setting is then adjusted to the newly calculated value.

(5) The base temperature calculated by article (3) and the corresponding base temperature setting of each automatic temperature compensator is recorded for each performance averaging period and the records maintained for two years.

(j) The owner or operator of an affected facility controlled by a solvent recovery system shall determine, using any suitable means approved by the Administrator, the liquid volume amounts of all unmetered solvent-borne waste inks and waste VOC solvents recovered from the facility. The owner or operator shall record these unmetered volume amounts for each performance averaging period and shall maintain these records for two years.

(k) If the air pollution control device which serves the affected facility (or facilities) also serves an existing facility (or facilities), the exisiting as well as the affected facility are subject to the requirements of paragraph (a) through (j) of this section.

(l) Affected facilities using waterborne ink systems and in compliance with § 60.432(b) are not subject to the requirements of paragraphs (a) through (k) of this section.

(m) The owner or operator of an affected facility using waterborne ink systems which comply with § 60.432(b) shall record for each performance averaging period the ink manufacturer's analysis data for—

(1) Each purchased shipment of raw inks;

(2) Each purchased shipment of related coatings; and

(3) The corresponding calculated ratios required in § 60.433(f). The owner or operator shall maintain these records for two years.

[Sec. 114 of the Clean Air Act as amended (42 U.S.C. 7414)]

§ 60.436 Reporting requirements.

(a) The owner or operator of any affected facility shall prepare a written non-compliance report for each calendar month or each four-week averaging period in which non-compliance with § 60.432 is determined. Each report shall state—

(1) The identification of whether continual compliance is determined based on calendar month or four-week averaging periods;

(2) The identification of the calendar month or four-week averaging period covered by the report;

(3) The type of air pollution control system used;

(4) The average VOC emission percentage calculated in accordance with § 60.433(c), (d), or (e), whichever applies, for the calendar month or four-week averaging period;

(5) Which procedure and equation from § 60.433 was used to calculate the emission percentage;

(6) The total liquid volume amounts of VOC solvent used and recovered at the equivalent base temperature for the affected facility during the performance averaging period;

(7) How many and which affected facilities are served together by the same air pollution control device;

(8) What existing facilities are served by an air pollution control system in common with an affected facility;

(9) The measured average VOC emission percentage for the existing facility (or facilities) when § 60.433(e)(1) is used to determine compliance for the affected facility;

(10) The date and time identifying any periods during which the required metering devices described under § 60.435(a) were inoperative and the nature of the system repairs or adjustments;

(11) Specific identification of each period of excess emissions resulting from the startup, shutdown, or malfunction of the air pollution control equipment;

(12) The nature and causes of any malfunctions of the air pollution control equipment (if known) and the corrective action taken or preventative measures adopted;

(13) For affected facilities using waterborne ink systems without air pollution control equipment, a copy of the record of ink manufacturer's data and calculated ratios required by § 60.435(m); and

(14) Affected facilities using waterborne ink systems which comply with § 60.432(b) are not subject to the requirements of articles (4) through (12) of this paragraph.

(b) The owner or operator of any affected facility shall submit to the Administrator the non-compliance reports required under paragraph (a) of

this section postmarked by the 10th calendar day following the end of—

(1) The calendar month when compliance with the standards in § 60.432 is determined for each calendar month; or

(2) The four-week period when compliance with the standards in § 60.432 is determined for each four-week period.

[Sec. 114 of the Clean Air Act as amended (42 U.S.C. 7414)]

§ 60.437 Test methods and procedures.

(a) The owner or operator of an affected facility (or facilities) controlled by a solvent recovery system shall determine the VOC volume content of raw solvent-borne inks and related coatings used at the affected facility through one of the following procedures:

(1) Routine weekly samples of raw ink and related coatings in each respective storage tank are analyzed using Reference Method 29.

(2) Samples of each shipment of all purchased raw inks and related coatings are analyzed using Reference Method 29, or analysis of each shipment of all purchased raw inks and related coatings may be obtained from the ink manufacturer.

(3) The results of verification analyses by Reference Method 29 is used for determination of compliance when discrepancies with ink manufacturer's analysis data occur.

(b) The owner or operator of an affected facility (or facilities) controlled by a solvent recovery system in common with any existing facilities shall determine the VOC volume content of raw solvent-borne inks and related coatings used at the existing facility (or facilities) by following one of the procedures specified in paragraph (a) of this section.

(c) The owner or operator of any affected facility using water borne ink systems shall determine, using any suitable method approved by the Administrator, the VOC volume content of raw inks and related coatings used at the affected facility.

(d) The owner or operator of an affected facility (or facilities) controlled by a solvent recovery system shall determine the density of liquid solvents according to—

(1) The procedure outlined in ASTM D 1475–60 by making a total of three determinations for each solvent sample at a specified temperature, and recording the density as the arithmetic average of the three determinations; or

(2) Other values acceptable to the Administrator.

[Sec. 114 of the Clean Air Act as amended (42 U.S.C. 7414)].

2. Method 29 is added to Appendix A as follows:

Appendix A—Reference Methods

* * * * *

Method 29—Determination of Volatile Matter Content and Density of Printing Inks and Related Coatings

1. Applicability and Principle

1.1 Applicability. This method applies to the determination of the volatile organic compound (VOC) content and density of solvent-borne (solvent reducible) printing inks or related coatings as defined in § 60.431.

1.2 Principle. Separate procedures are used to determine the VOC weight fraction and density of the coating and the density of the solvent in the coating. The BOC weight fraction is determined by measuring the weight loss of a known sample quantity which has been heated for a specified length of time at a specified temperature. The density of both the coating and solvent are measured by a standard procedure. From this information, the VOC volume fraction is calculated.

2. Procedure

2.1 Weight Fraction VOC.

2.1.1 Apparatus.

2.1.1.1 Weighing Dishes. Aluminum foil, 58 mm in diameter by 18 mm high, with a flat bottom. There must be at least three weighing dishes per sample.

2.1.1.2 Disposable syringe, 5 ml.

2.1.1.3 Analytical Balance. To measure to within 0.1 mg.

2.1.1.4 Oven. Vacuum oven capable of maintaining a temperature of 120 ±2°C and an obsolute pressure of 510 ±51 mm Hg for 4 hours. Alternatively, a forced draft oven capable of maintaining a temperature of 120 ±2°C for 24 hours.

2.1.1.5 Analysis. Shake or mix the sample thoroughly to assure that all the solids are completely suspended. Label and weigh to the nearest 0.1 mg a weighing dish and record this weight (M_{x1}).

Using a 5-ml syringe without a needle remove a sample of the coating. Weigh the syringe and sample to the nearest 0.1 mg and record this weight (M_{cY1}). Transfer 1 to 3 g of the sample to the tared weighing dish. Reweigh the syringe and sample to the nearest 0.1 mg and record this weight (M_{cY2}). Heat the weighing dish and sample in a vacuum oven at an absolute pressure of 510 ±51 mm Hg and a temperature of 120±2°C for 4 hours. Alternatively, heat the weighing dish and sample in a forced draft oven at a temperature of 120 ±2° C for 24 hours. After the weighing dish has cooled, reweigh it to the nearest 0.1 mg and record the weight (M_{x2}). Repeat this procedure for a total of three determinations for each sample.

2.2 Coating Density. Determine the density of the ink or related coating according to the procedure outlined in ASTM D 1475–60. Make a total of three determinations for each coating. Report the density D_c as the arithmetic average of the three determinations.

2.3 Solvent Density. Determine the density of the solvent according to the procedure outlined in ASTM D 1475–60. Make a total of three determinations for each coating. Report the density D_v as the arithmetic average of the three determinations.

3. Calculations

3.1 Weight Fraction VOC. Calculate the weight fraction volatile organic content W_o using the following equation:

$$W_o = \left[\frac{M_{x1} + M_{cY1} - M_{cY2} - M_{x2}}{M_{cY1} - M_{cY2}}\right] \quad \text{Eq. 29-1}$$

Report the weight fraction VOC W_o as the arithmetic average of the three determinations.

3.2 Volume Fraction VOC. Calculate the volume fraction volatile organic content V_o using the following equation:

$$V_o = \frac{\overline{W}_o\,\overline{D}_c}{\overline{D}_v} \quad \text{Eq. 29-2}$$

4. Bibliography

4.1 Standard Method of Test for Density of Paint, Varnish, Lacquer, and Related Products. In: 1974 Book of ASTM Standards. Part 25, Philadelphia, Pennsylvania, ASTM Designation D 1475–60. 1974. p. 231–233.

4.2 Telecon. Wright, Chuck, Inmont Corporation with Reich, R.A., Radian Corporation. September 25, 1979. Gravure Ink Analysis.

4.3 Telecon. Oppenheimer, Robert, Gravure Research Institute with Burt, Rick, Radian Corporation. November 5, 1979. Gravure Ink Analysis.

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Part V

Department of Energy

Economic Regulatory Administration

Electric Power System Permits and Reports; Applications; Administrative Procedures and Sanctions

DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Part 205

[Docket No. ERA-R-80-03]

Electric Power System Permits and Reports; Applications; Administrative Procedures and Sanctions

AGENCY: Economic Regulatory Administration.

ACTION: Final rule.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby issues rules (Subpart W to Part 205) to implement the provisions of Section 202(e) of the Federal Power Act and Executive Order 10485, as amended. Section 202(e) of the Federal Power Act specifies that the export of electric energy shall be authorized provided that the proposed transmission will not impair the sufficiency of electric supply within the United States or impede or tend to impede the coordination in the public interest of facilities subject to the jurisdiction of the DOE. Executive Order 10485, as amended by Executive Order 12038, establishes the procedures and standards for issuance of a Presidential Permit authorizing the construction, connection, operation and maintenance of electrical transmission facilities at international boundaries.

DATES: Effective: November 1, 1980.

Applications received by the ERA on or before 5:00 p.m. EST October 31, 1980, can be filed in accordance with the current rules in 18 CFR 32.20 *et seq.*, and 32.50 *et seq.*

FOR FURTHER INFORMATION CONTACT:

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Lise Courtney Howe, Office of General Counsel, Department of Energy, Room 5E064, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585 (202) 252-2900.

SUPPLEMENTARY INFORMATION:

I. Background

On April 15, 1980, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) issued proposed regulations relating to applications for authorization to transmit electric energy to a foreign country and regulations relating to applications for construction, connection, operation, or maintenance of facilities for the transmission of electric energy at an international boundary (45 FR 25780).

The authority to regulate exports of electricity was transferred from the Federal Power Commission (FPC) and vested in the Secretary of Energy (Secretary) pursuant to Sections 301 and 402(f) of the DOE Organization Act. The authority to license the construction, connection, operation, and maintenance of international electric transmission facilities was transferred from the Chairman of the Federal Power Commission to the Secretary by Executive Order 12038 which amended Executive Order 10485. Responsibility for the review and consideration of such applications to export electricity and of Presidential Permits has been delegated by the Secretary to the Administrator of the Economic Regulatory Administration by DOE Delegation Order No. 0204-4 (42 FR 60726).

A public hearing on the proposed regulations was held in Washington, D.C., on April 29, 1980. The DOE received four written comments on the proposed regulations. The commenting parties made several suggestions, resulting in some changes in the regulations issued today.

II. Discussion of Comments and DOE Response

The following is a discussion of comments received and the DOE's response to the comments. This discussion is organized according to the sections of the regulations.

A. Application for Authorization to Transmit Electric Energy

1. Who Shall Apply § 205.300.

The DOE received a comment requesting clarification of how an exchange transaction "import" was to be handled. Section 202(e) of the Federal Power Act specifies that an export shall be authorized provided that the proposed transmission will not impair the sufficiency of electric supply within the U.S. or impede or tend to impede the coordination in the public interest of facilities subject to the jurisdiction of the DOE. Thus, the DOE exercises direct jurisdiction only over the export portion of an electricity exchange. However, the import may be considered as a factor in the overall adequacy of supply and/or coordination review.

2. Time of Filing § 205.301.

Some comments were received requesting the DOE to review the requirement that an application be filed at least six months in advance of initiation of a proposed electricity export and to provide for a waiver of the limit for good cause shown. The DOE is persuaded by these comments and the final rule is changed to provide for such waivers.

3. Contents of the Application § 205.302.

A comment was received on paragraph (g) suggesting that the ERA, and not the applicant, should bear the burden of proof that the export will not impair the sufficiency of the electric supply.

Section 202(e) of the Federal Power Act requires the ERA to determine whether a proposed export would impair or tend to impair the electric supply or the coordination of utility planning within the U.S. The ERA recognizes its responsibility under Section 202(e) but the proponent of the proposed transfer has access to system data which is unique to that system. Therefore, the ERA believes the applicant should explain why the proposed transfer will not impair or tend to impair the adequacy of its system. The ERA's role is to perform a technical evaluation of the power system data received and then to make the necessary determinations.

Another comment on this section stated that the National Electric Reliability Council (NERC) already analyzes in great detail the effect of proposed transfers of electricity. The comment further stated that the ERA review may raise problems of overlapping technical reviews. As stated previously, the ERA has a statutory responsibility under Section 202(e) of the Federal Power Act to make such reviews. The Department of Energy Organization Act specifies that authority to approve exports of electric energy shall reside with the DOE. Furthermore, the ERA is not aware of any NERC program to review specific electricity exports.

Finally, a commenter suggested that the applicant be required to submit information regarding only its own service area, and not for the appropriate Fuel Use Electric Region. The DOE is persuaded by this comment, and this final rule will only require information for the applicant's system.

4. Required Exhibits § 205.303.

The ERA received a comment on Exhibit A stating that while

international agreements are being negotiated, it may not be in the best interest of any of the parties to submit these agreements, supplemental memoranda, or drafts of agreements to the ERA as public documents.

The ERA does not intend this Exhibit to include working memoranda or supplemental memoranda, but only documents which are intrinsic to the agreement itself. The Exhibit A requirement is changed to permit the applicant to request that this information be treated as proprietary by the ERA.

A comment concerning Exhibit C questioned whether a Presidential Permit number would be assigned before a Presidential Permit is issued, and how an applicant could identify the border crossing by Presidential Permit number on the key map. The ERA docket number will become the Presidential Permit number, if it is issued. Thereby, an applicant can use the docket number which will be assigned at the time a filing is accepted.

The ERA received a number of comments on Exhibit F. One of the comments suggested that economy transfers be exempted from the regulations, along with diversity exchanges and emergency situations. The reasons cited by the commentors are the time restraints and the random nature of such transfers. The ERA recognizes that there can be significant benefits from international electricity exchanges, and has provided the applicant with a means to obtain waiver of the time requirement where good cause is shown (§ 205.301). A number of comments were received on the requirement that the applicant explain the methodology employed to inform other U.S. electric utilities of the available capacity and energy which may be in excess of the applicant's requirements. The purpose of this requirement is to ensure that the electric energy or capacity proposed for export is made available to other U.S. domestic utilities before it is exported, so that electric supply within the United States is adequate. The information filed shall be in sufficient detail to explain the applicant's proposed procedures. Its complexity will be dependent upon the applicant's existing communication links with neighboring utilities. However, the establishment of a formal operating procedure which requires that the dispatch centers of neighboring utilities be formally contacted prior to initiating economy or other non-firm exports normally will be satisfactory.

5. Other Information § 205.304.

A comment was received on the exemption of less than 1 million kWh annual usage. The comment stated that it is less than the peak usage of four or five residences and implied that a higher limit should be established. The ERA disagrees. The average U.S. residential customer uses 8,000 kWh annually. The ERA did not change the limit.

6. Filing Schedule and Annual Reports § 205.308.

One party commented that the requirements in Section 205.308 are also required by the Federal Energy Regulatory Commission in FPC Form 12, Schedule 11. The ERA recognizes this fact and the final rule provides for accepting this data in its existing format.

7. Filing Procedures and Fees § 205.309.

A comment was received requesting the ERA to reconsider charging a $500 fee for filing an export application and to state the cost support for this fee. The statutory authority and direction for the ERA to assess fees for utility applications is the Independent Offices Appropriation Act of 1952, Public Law No. 82–137, 31 U.S.C. Section 483a. The work performed by the ERA in processing these applications is considered for the present to be consistent with the proposed $500 filing fee applying the criteria of this Act. Therefore, pending further review of the work performed in light of these criteria, the filing fee will be the same as originally established by the Federal Power Commission.

B. Application for a Presidential Permit.

1. Contents of Application § 205.321 (in Proposed Rules). The ERA received a comment on the fact that a Presidential Permit application does not specify when such application should be filed. Pursuant to DOE's responsibilities under the National Environmental Policy Act (NEPA), the DOE must make an environmental determination of the proposed action. If, as a result of this determination, an environmental impact statement is required, a minimum 18–24 month permit processing time is necessary. If no environmental impact statement is required, then a processing time of six months normally would be sufficient. A new § 205.321, Time of Filing, was added to the final rules in response to this comment and the remaining sections were renumbered accordingly.

A comment on the originally proposed § 205.321, was received by the ERA requesting that the power flow plots be submitted in the format customarily used by the applicant. The ERA agrees with this comment but will require a detailed legend to be included with the power flow plots.

III. The Final Regulations.

A. Application for Authorization to Transmit Electric Energy.

The Economic Regulatory Administration of the Department of Energy hereby gives notice of the issuance of regulations implementing the provisions of Section 202(e) of the Federal Power Act. Section 202(e) of the Federal Power Act specifies that the export of electric energy shall be authorized provided that the proposed transmission will not impair the sufficiency of electric supply within the United States or impede or tend to impede the coordination in the public interest of facilities subject to the jurisdiction of the Department of Energy. Section 202(e) further provides the authority to impose such terms and conditions on the export authorization as may be appropriate.

B. Application for a Presidential Permit.

The Economic Regulatory Administration of the Department of Energy hereby gives notice of the issuance of regulations implementing the provisions of Executive Order 10485, as amended by Executive Order 12038.

These Executive Orders establish the procedures and standards for issuance of a Presidential Permit authorizing the construction, connection, operation and maintenance of electrical transmission facilities at an international boundary and further provide that the ERA may impose such terms and conditions on the Presidential Permit as may be appropriate.

C. General.

The regulations are adopted as originally proposed except for the modifications described above, and other minor clarifying and conforming modifications.

IV. Other Matters.

The DOE has determined that this rulemaking is nonsignificant as that term is used in Executive Order 12044 and DOE Order 2030. The rule is not considered likely to have a major impact as defined by Executive Order 12044, and as amplified in DOE Order 2030. Accordingly, no regulatory analysis has been performed.

Section 404 of the Department of Energy Organization Act (DOE Act) requires that the Federal Energy Regulatory Commission (FERC) be notified whenever the Secretary proposes to prescribe rules, regulations and statements of policy of general applicability in the exercise of functions transferred to him under sections 301 and 306 of the DOE Act. The FERC was

notified and requested to make the necessary determination regarding impact on any function within its jurisdiction under Sections 402(a)(1), (b) and (c)(1) of the DOE Act. FERC notified ERA on October 17, 1980, that it would not take referral of these regulations; however, the FERC suggested informally that copies of applications under these regulations should also be furnished to the FERC and the appropriate state regulatory agencies. We concur and have modified §§ 205.309 and 205.326 to incorporate this suggestion.

In consideration of the foregoing, Chapter II of Title 10, Code of Federal Regulations, is amended by establishing §§ 205.300–.309 and 205.320.–327 as set forth below.

Issued in Washington, D.C., on October 21, 1980.

Hazel R. Rollins,

Administrator, Economic Regulatory Administration.

PART 205—ADMINISTRATIVE PROCEDURES AND SANCTIONS

Subpart W—Electric Power System Permits and Reports; Applications; Administrative Procedures and Sanctions

Application for Authorization to Transmit Electric Energy to a Foreign Country.

Sec.

Application for Presidential Permit Authorizing the Construction, Connection, Operation, and Maintenance of Facilities for Transmission of Electric Energy at International Boundaries.

Sec.

Authority: Department of Energy Organization Act, Pub. L. No. 95–91, 91 Stat. 565 (42 U.S.C. Section 7101). Federal Power Act, Pub. L. 66–280, 41 Stat. 1063 (16 U.S.C. Section 792) *et seq.*, Department of Energy Delegation Order No. 0204–4 (42 FR 60726). E.O. 10485, 18 FR 5397, 3 CFR, 1949–1953, Comp., p. 970 as amended by E.O. 12038, 43 FR 4957, 3 CFR 1978 Comp., p. 136.

Subpart W—Electric Power System Permits and Reports; Applications; Administrative Procedures and Sanctions

Application for Authorization to Transmit Electric Energy to a Foreign Country.

§ 205.300 Who shall apply.

(a) An electric utility or other entity subject to DOE jurisdiction under Part II of the Federal Power Act who proposes to transmit any electricity from the United States to a foreign country must submit an application or be a party to an application submitted by another entity. The application shall be submitted to the Office of Utility Systems of the Economic Regulatory Administration (EPA).

(b) In connection with an application under §§ 205.300 through 205.309, attention is directed to the provisions of §§ 205.320 through 205.327, below, concerning applications for Presidential Permits for the construction, connection, operation, or maintenance, at the borders of the United States, of facilities for the transmission of electric energy between the United States and a foreign country in compliance with Executive Order 10485, as amended by Executive Order 12038.

§ 205.301 Time of filing.

Each application should be made at least six months in advance of the initiation of the proposed electricity export, except when otherwise permitted by the ERA to resolve an emergency situation.

§ 205.302 Contents of application.

Every application shall contain the following information set forth in the order indicated below:

(a) The exact legal name of the applicant.

(b) The exact legal name of all partners.

(c) The name, title, post office address, and telephone number of the person to whom correspondence in regard to the application shall be addressed.

(d) The state or territory under the laws of which the applicant is organized or incorporated, or authorized to operate. If the applicant is authorized to operate in more than one state, all pertinent facts shall be included.

(e) The name and address of any known Federal, State or local government agency which may have any jurisdiction over the action to be taken in this application and a brief description of that authority.

(f) A description of the transmission facilities through which the electric energy will be delivered to the foreign country, including the name of the owners and the location of any remote facilities.

(g) A technical discussion of the proposed electricity export's reliability, fuel use and system stability impact on the applicant's present and prospective electric power supply system. Applicant must explain why the proposed electricity export will not impair the sufficiency of electric supply on its system and why the export will not impede or tend to impede the regional coordination of electric utility planning or operation.

(h) The original application shall be signed and verified under oath by an officer of the applicant having knowledge of the matters set forth therein.

§ 205.303 Required exhibits.

There shall be filed with the application and as a part thereof the following exhibits:

(a) *Exhibit A.* A copy of the agreement or proposed agreement under which the electricity is to be transmitted including a listing of the terms and conditions. If this agreement contains proprietary information that should not be released to the general public, the applicant must identify such data and include a statement explaining why proprietary treatment is appropriate.

(b) *Exhibit B.* A showing, including a signed opinion of counsel, that the proposed export of electricity is within the corporate power of the applicant, and that the applicant has complied or will comply with all pertinent Federal and State laws.

(c) *Exhibit C.* A general map showing the applicant's overall electric system and a detailed map highlighting the location of the facilities or the proposed facilities to be used for the generation and transmission of the electric energy to be exported. The detailed map shall identify the location of the proposed border crossing point(s) or power transfer point(s) by Presidential Permit number whenever possible.

(d) *Exhibit D.* If an applicant resides or has its principal office outside the United States, such applicant shall designate, by irrevocable power of attorney, an agent residing within the United States. A verified copy of such power of attorney shall be furnished with the application.

(e) *Exhibit E.* A statement of any corporate relationship or existing contract between the applicant and any other person, corporation, or foreign government, which in any way relates to the control or fixing of rates for the

purchase, sale or transmission of electric energy.

(f) *Exhibit F.* An explanation of the methodology (Operating Procedures) to inform neighboring electric utilities in the United States of the available capacity and energy which may be in excess of the applicant's requirements before delivery of such capacity to the foreign purchaser. Approved firm export, diversity exchange and emergency exports are exempted from this requirement. Those materials required by this section which have been filed previously with the ERA may be incorporated by reference.

§ 205.304 Other information.

Where the application is for authority to export less than 1,000,000 kilowatt hours annually, applicants need not furnish the information called for in §§205.302(g) and 205.303 (Exhibit C). Applicants, regardless of the amount of electric energy to be exported, may be required to furnish such supplemental information as the ERA may deem pertinent.

§ 205.305 Transferability.

(a) An authorization to transmit electric energy from the United States to a foreign country granted by order of the ERA under Section 202(e) of the Federal Power Act shall not be transferable or assignable. Provided written notice is given to the ERA within 30 days, the authorization may continue in effect temporarily in the event of the involuntary transfer of this authority by operation of law (including transfers to receivers, trustees, or purchasers under foreclosure or judicial sale). This continuance is contingent on the filing of an application for permanent authorization and may be effective until a decision is made thereon.

(b) In the event of a proposed voluntary transfer of this authority to export electricity, the transferee and the transferor shall file jointly an application pursuant to this subsection, setting forth such information as required by §§ 205.300 through .304, together with a statement of reasons for the transfer.

(c) The ERA may at any time subsequent to the original order of authorization, after opportunity for hearing, issue such supplemental orders as it may find necessary or appropriate.

§ 205.306 Authorization not exclusive.

No authorization granted pursuant to Section 202(e) of the Act shall be deemed to prevent an authorization from being granted to any other person or entity to export electric energy or to prevent any other person or entity from making application for an export authorization.

§ 207.307 Form and style; number of copies

An original and two conformed copies of an application containing the information required under Sections 205.300 through 205.309 must be filed.

§ 205.308 Filing schedule and annual reports.

(a) Persons authorized to transmit electric energy from the United States shall promptly file all supplements, notices of succession in ownership or operation, notices of cancellation, and certificates of concurrence. In general, these documents should be filed at least 30 days prior to the effective date of any change.

(b) A change in the tariff arrangement does not require an amendment to the authorization. However, any entity with an authorization to export electric energy shall file with the ERA, and the appropriate state regulatory agency, a certified copy of any changed rate schedule and terms. Such changes may take effect upon the date of filing of informational data with the ERA.

(c) Persons receiving authorization to transmit electric energy from the United States shall submit to the ERA, by February 15 each year, a report covering each month of the preceding calendar year detailing the gross amount of kilowatt-hours of energy, by authorized category, received or delivered, and the cost and revenue associated with each category.

§ 205.309 Filing procedures and fees.

Applications shall be addressed to the Office of Utility Systems of the Economic Regulatory Administration. Every application shall be accompanied by a fee of $500.00. Fee payment shall be by check, draft, or money order payable to the Treasurer of the United States. Copies of applications and notifications of rate changes shall be furnished to the Federal Energy Regulatory Commission and all affected State public utility regulatory agencies.

Application for Presidential Permit Authorizing the Construction, Connection, Operation, and Maintenance of Facilities for Transmission of Electric Energy at International Boundaries.

§ 205.320 Who shall apply.

(a) Any person, firm, co-operative, corporation or other entity who operates an electric power transmission or distribution facility crossing the border of the United States, for the transmission of electric energy between the United States and a foreign country, shall have a Presidential Permit, in compliance with Executive Order 10485, as amended by Executive Order 12038. Such applications should be filed with the Office of Utility Systems of the Economic Regulatory Administration.

Note.—Executive Order 12038, dated February 3, 1978, amended Executive Order 10485, dated September 3, 1953, to delete the words "Federal Power Commission" and "Commission" and substitute for each "Secretary of Energy." Executive Order 10485 revoked and superseded Executive Order 8202, dated July 13, 1939.

(b) In connection with applications hereunder, attention is directed to the provisions of §§ 205.300 to 205.309, above, concerning applications for authorization to transmit electric energy from the United States to a foreign country pursuant to Section 202(e) of the Federal Power Act.

§ 205.321 Time of filing.

Pursuant to the DOE's responsibility under the National Environmental Policy Act, the DOE must make an environmental determination of the proposed action. If, as a result of this determination, an environmental impact statement (EIS) must be prepared, the permit processing time normally will be 18–24 months. If no environmental impact statement is required, then a six-month processing time normally would be sufficient.

§ 205.322 Contents of application.

Every application shall be accompanied by a fee prescribed in § 205.326 of this subpart and shall provide, in the order indicated, the following:

(a) *Information regarding the applicant.*

(1) The legal name of the applicant;

(2) The legal name of all partners;

(3) The name, title, post office address, and telephone number of the person to whom correspondence in regard to the application shall be addressed;

(4) Whether the applicant or its transmission lines are owned wholly or in part by a foreign government or directly or indirectly assisted by a foreign government or instrumentality thereof; or whether the applicant has any agreement pertaining to such ownership by or assistance from any foreign government or instrumentality thereof.

(5) List all existing contracts that the applicant has with any foreign government, or any foreign private concerns, relating to any purchase, sale or delivery of electric energy.

(6) A showing, including a signed opinion of counsel, that the construction, connection, operation, or maintenance of the proposed facility is within the corporate power of the applicant, and that the applicant has complied with or will comply with all pertinent Federal and State laws;

(b) *Information regarding the transmission lines to be covered by the Presidential Permit.* (1)(i) A technical description providing the following information: (A) number of circuits, with identification as to whether the circuit is overhead or underground; (B) the operating voltage and frequency; and (C) conductor size, type and number of conductors per phase. (ii) If the proposed interconnection is an overhead line the following additional information must also be provided: (A) the wind and ice loading design parameters; (B) a full description and drawing of a typical supporting structure including strength specifications; (C) structure spacing with typical ruling and maximum spans; (D) conductor (phase) spacing; and (E) the designed line to ground and conductor side clearances. (iii) If an underground or underwater interconnection is proposed, the following additional information must also be provided: (A) burial depth; (B) type of cable and a description of any required supporting equipment, such as insulation medium pressurizing or forced cooling; and (C) cathodic protection scheme. Technical diagrams which provide clarification of any of the above items should be included.

(2) A general area map with a scale not greater than 1 inch=40 kilometers (1 inch=25 miles) showing the overall system, and a detailed map at a scale of 1 inch=8 kilometers (1 inch=5 miles) showing the physical location, longitude and latitude of the facility on the international border. The map shall indicate ownership of the facilities at or on each side of the border between the United States and the foreign country. The maps, plans, and description of the facilities shall distinguish the facilities or parts thereof already constructed from those to be constructed.

(3) Applications for the bulk power supply facility which is proposed to be operated at 138 kilovolts or higher shall contain the following bulk power system information:

(i) Data regarding the expected power transfer capability, using normal and short time emergency conductor ratings;

(ii) System power flow plots for the applicant's service area for heavy summer and light spring load periods, with and without the proposed international interconnection, for the year the line is scheduled to be placed in service and for the fifth year thereafter. The power flow plots submitted can be in the format customarily used by the utility, but the ERA requires a detailed legend to be included with the power flow plots;

(iii) Data on the line design features for minimizing television and/or radio interference caused by operation of the subject transmission facilities;

(iv) A description of the relay protection scheme, including equipment and proposed functional devices;

(v) After receipt of the system power flow plots, the ERA may require the applicant to furnish system stability analysis for the applicant's system.

(c) Information regarding the environmental impacts shall be provided as follows for each routing alternative:

(1) Statement of the environmental impacts of the proposed facilities including a list of each flood plain, wetland, critical wildlife habitat, navigable waterway crossing, Indian land, or historic site which may be impacted by the proposed facility with a description of proposed activities therein.

(2) A list of any known Historic Places, as specified in 36 CFR, Part 800, which may be eligible for the National Register of Historic Places.

(3) Details regarding the minimum right-of-way width for construction, operation and maintenance of the transmission lines and the rationale for selecting that right-of-way width.

(4) A list of threatened or endangered wildlife or plant life which may be located in the proposed alternative.

(d) A brief description of all practical alternatives to the proposed facility and a discussion of the general environmental impacts of each alternative.

(e) The original of each application shall be signed and verified under oath by an officer of the applicant, having knowledge of the matters therein set forth.

§ 205.323 Transferability.

(a) Neither a permit issued by the ERA pursuant to Executive Order 10485, as amended, nor the facility shall be transferable or assignable. Provided written notice is given to the ERA within 30 days, the authorization may continue in effect temporarily in the event of the involuntary transfer of the facility by operation of law (including transfers to receivers, trustees, or purchases under foreclosure or judicial sale). This continuance is contingent on the filing of an application for a new permit and may be effective until a decision is made thereon.

(b) In the event of a proposed voluntary transfer of the facility, the permittee and the party to whom the transfer would be made shall file a joint application with the ERA pursuant to this paragraph, setting forth information as required by § 205.320 *et seq.*, together with a statement of reasons for the transfer. The application shall be accompanied by a filing fee pursuant to § 205.326.

(c) No substantial change shall be made in any facility authorized by permit or in the operation thereof unless or until such change has been approved by the ERA.

(d) Permits may be modified or revoked without notice by the President of the United States, or by the Administrator of the ERA after public notice.

§ 205.324 Form and style; number of copies.

All applicants shall file an original and two conformed copies of the application and all accompanying documents required under §§ 205.320 through 205.327.

§ 205.325 Annual report.

Persons receiving permits to construct, connect, operate or maintain electric transmission facilities at international boundaries shall submit to the ERA, by February 15 each year, a report covering each month of the preceding calendar year, detailing by category the gross amount of kilowatt-hours of energy received or delivered and the cost and revenue associated with each category.

§ 205.326 Filing procedures and fees.

Applications shall be forwarded to the Office of Utility Systems of the Economic Regulatory Administration and shall be accompanied by a filing fee of $150. The application fee will be charged irrespective of the ERA's disposition of the application. Fee payment shall be by check, draft, or money order payable to the Treasurer of the United States. Copies of applications shall be furnished to the Federal Energy Regulatory Commission and all affected State public utility regulatory agencies.

§ 205.327 Other information.

The applicant may be required after filing the application to furnish such supplemental information as the ERA may deem pertinent. Such requests shall be written and a prompt response will be expected. Protest regarding the supplying of such information should be directed to the Administrator of the ERA.

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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/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
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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

INTERIOR DEPARTMENT

Land Management Bureau—

64179 9–29–80 / Arizona; Transfer of jurisdiction of reserved land

63851 9–26–80 / California, restoration of certain lands in The Chocolate Mountain Gunnery Range (Riverside and Imperial Counties) to public land laws

64178 9–29–80 / Oregon; Revocation of stock driveway withdrawal

List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last Listing **October 24, 1980**

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

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WHEN: December 5 and 19, January 16 and 30; at 9 a.m. (identical sessions).

WHERE: Office of the Federal Register, Room 9409, 1100 L Street NW., Washington, D.C.

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